



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH (COURT-II)**

**I.A. NO. 3713/2023**

**IN**

**C.P.(IB) – 996(ND)/2020**

**IN THE MATTER OF:**

**Tulsi Nandan Kant Bansal**

**... Financial Creditor**

**Versus**

**PG Advertising Private Limited**

**(Formerly known as Prabhatam Advertising  
Private Limited)**

**... Corporate Debtor**

**AND IN THE MATTER OF IA. NO. 3713/2023:**

**Mr. Vinay Kumar Singhal**

Resolution Professional

PG Advertising Private Limited

(Formerly Known as Prabhatam Advertising Private Limited)

411, Fourth Floor, Essel House,

Asif Ali Road, Near Turkman Gate,

National Capital Territory of Delhi -110002.

**... Applicant/RP**

**Versus**

**1. Sanjay Nayak**

Address – B-319, H.E.C. Colony,

Sector- 02, Dhurwa, Ranchi,

Jharkhand-834004.

**... Respondent- 1**



**2. Jyoti Singh**

Address- 886/ A-50, Ward No. 8,  
Mehrauli, South Delhi- 110030.

**... Respondent- 2**

**3. RK Advertising Service**

Address- 72-A, Mohammadpur Village,  
New Delhi -110066.

Also at – 1269, Sector- 8 C, Chandigarh-160018. **... Respondent- 3**

**Order delivered on: 12.03.2025**

**UNDER SECTION: 30(6) of IBC, 2016**

**CORAM:**

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

**SH. SUBRATA KUMAR DASH HON'BLE MEMBER (T)**

**PRESENT:**

**For the RP** : Adv. Abhishek Anand, Adv. Karan Kohli, Adv. Ishaan  
Dhingra, Mr. Vinay Kumar Singhal, RP

**ORDER**

The present I.A. No. 3713 of 2024 has been preferred by Mr. Vinay Kumar Singhal, Resolution Professional qua PG Advertising Private Limited (hereinafter referred to as the '**Applicant/RP**') under Section 30(6) of IBC, 2016, seeking the following reliefs:

*"a. Allow the present Application;*

*b. Allow the present application and approve the Resolution Plan dated 27.06.2023 submitted by RK Advertising Service*



*as unanimously approved by the Committee of Creditors in its 7<sup>th</sup> CoC meeting convened on 01.07.2023;*

*c. Declare that upon approval of the Resolution Plan by this Hon'ble Adjudicating Authority, the provisions of the Resolution Plan shall be binding on the Company, its creditors, guarantors, members, employees, Statutory Authorities and other stakeholders in accordance with Section 31 of the Code, and shall be given effect to and implemented pursuant to the order of this Hon'ble Authority;*

*d. Approve the appointment of the monitoring agency as stated in the Resolution Plan and approved by the Committee of Creditors;*

*e. Approve and grant reliefs and directions sought under the Resolution Plan by the Resolution Applicant;*

*f. Any other relief as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.”*

## **2. Preliminary**

2.1 To put the facts concisely, the underlying main petition C.P.(IB)-996/(ND)/2020 was filed by Tulsi Nandan Kant Bansal (hereinafter referred to as the “**Financial Creditor**”) against P.G. Advertising Private Limited (hereinafter referred to as the “**Corporate Debtor**”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) which was admitted vide Order dated 18.10.2022 of this Adjudicating Authority. Consequently, the Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) in respect of the Corporate Debtor



was initiated and Mr. Vinay Kumar Singhal was appointed as the Interim Resolution Professional (IRP).

2.2 Subsequently, the Committee of Creditors (CoC) resolved to appoint the IRP as Resolution Professional (RP) in the 1st CoC meeting convened on 05.12.2022, and the same was confirmed by this Tribunal vide order dated 14.12.2022.

### **3. Collation of claims by RP**

3.1. It is stated by the Applicant that in terms of Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Applicant made a public announcement in Form-A on 06.11.2022 to invite claims from creditors of the Corporate Debtor. The Applicant further stated that after due verification of the claims received, the list of creditors was prepared.

3.2. It is further stated by the Applicant that after collating the claims, a Committee of Creditors (CoC) was constituted in terms of Section 21(1) of the Code. In pursuance of his duties as contained under the Code, it came to the knowledge of the RP that the Corporate Debtor was holding 99% shareholding in Dev Versha Publication Private Limited i.e., one of the members of the CoC. Since Dev Versha Publication Private Limited would be a related party of the Corporate Debtor as per Section 5(24) of the Code, it could neither be a member nor could have voting rights in the CoC. Thus, the final list of claims, including that of the related party as mentioned by the applicant, is reproduced herein below:



### **A. FINANCIAL CREDITORS**

<b>Name of the Financial Creditor</b>	<b>Amount Claimed (In Rs.)</b>	<b>Amount Admitted (In Rs.)</b>
Mr. Tulsinandan Kant Bansal	1,34,77,370/-	1,34,77,370/-
IPK Exports Private Limited	10,42,88,671/-	10,42,88,671/-
Dev Versha Publication P. Ltd.	8,63,55,685/-	8,63,55,685/-
<b>TOTAL</b>	<b>20,41,21,726/-</b>	<b>20,41,21,726</b>

### **B. OPERATIONAL CREDITORS**

<b>Sl.No.</b>	<b>Name</b>	<b>Nature</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>
1.	GST, North Delhi	Govt Dues	106,39,99,046	105,62,72,318
2.	Green Valley Bio Energy Private Limited	Operational Creditors	1,47,50,000	1,47,50,000
3.	Mr. Mahesh Bajaj, Prop. M/s Premier Advertising	Operational Creditors	1,06,11,685	1,06,11,485
4.	Noida Media Solutions	Operational Creditors	2,21,224	2,21,224
5.	Digital Radio (Delhi) Broadcasting Limited	Operational Creditors	23,48,093	23,48,093
6.	Digital Radio (Mumbai) Broadcasting Limited	Operational Creditors	20,14,542	20,14,542



7.	Digital Radio (Kolkata) Broadcasting Limited	Operational Creditors	32,28,455	14,98,896
8.	Kal Radio Limited	Operational Creditors	13,39,878	5,63,451
9.	South Asia FM Ltd.	Operational Creditors	10,68,048	7,77,804
10.	GMN Media Private Ltd.	Operational Creditors	15,35,637	6,51,844
11.	DTC, New Delhi	Operational Creditors	7,63,77,996	1,72,63,017
12.	Ad Vantage, Faridabad	Operational Creditors	2,56,255	2,56,255
13.	New Delhi Municipal Council	Operational Creditors	95,16,103	42,95,751
<b>Total (B)</b>			<b>Rs. 118,72,66,762</b>	<b>Rs. 111,15,24,680</b>
<b>Total Claim Amount (A+B)</b>			<b>Rs. 139,13,88,488</b>	<b>Rs. 131,56,46,406</b>

3.3. The RP has got the assets of the Corporate Debtor valued under the relevant rules, and the Fair Value and Liquidation Value are as under:

S. No.	Name of Valuer	Fair Value	Liquidation Value	Average	
				Fair Value	Liquidation Value
<b>A.</b>	<b>PLANT &amp; MACHINERY</b>				
1.	Ompal Singh	38,37,177	26,86,023	37,96,081	26,41,508
2.	Garg and Associates	37,54,985	25,96,993		



<b>B. SECURITIES AND FINANCIAL ASSET</b>					
1.	Mukesh Chand Jain	26,58,08,664	13,31,29,019	27,49,35,231	13,28,51,452
2.	Subodh Kumar	28,40,61,799	13,25,73,886		
<b>TOTAL</b>				<b>27,87,31,312</b>	<b>13,54,92,960</b>

3.4. The details of the meetings of CoC as stated in the Application read thus:

<b>Particulars</b>	<b>Date of meeting</b>	<b>Main Agenda of discussion</b>	<b>Important decisions ratified.</b>
1 <sup>st</sup> CoC Meeting	05.12.2022	<p><b>The following agendas were put before CoC for voting:</b></p> <ul style="list-style-type: none"><li>• To consider and ratify the expenses incurred by the Interim Resolution Professional (“IRP”).</li><li>• To approve the remuneration of IRP.</li><li>• To consider appointment of IRP as the Resolution Professional (“RP”).</li><li>• To authorize the IRP/RP to invite Expression of interest (“EOI”) from registered valuers and appointment thereof.</li></ul>	<p><b>The following resolution/agenda was approved by the CoC:</b></p> <ul style="list-style-type: none"><li>• The expenses incurred by the IRP towards the CIRP cost were ratified to be reimbursed to the IRP.</li><li>• The fee payable to the IRP was approved and same was to form part of CIRP Cost.</li><li>• Applicant was confirmed as the Resolution Professional.</li><li>• Approval to RP to invite EOI’s from registered valuers</li></ul>



2 <sup>nd</sup> CoC Meeting	02.01.2023	<p><u>The following agendas were put before CoC for voting.</u></p> <ul style="list-style-type: none"><li>• To ratify CIRP Costs.</li><li>• To approve eligibility criteria for Prospective Resolution Applicant (“PRA”).</li><li>• To invite EOI from PRA for submission of Resolution Plan and to authorize RP to release Form G in newspapers.</li><li>• To approve evaluation matrix for evaluating resolution plan and request for resolution plan (“RFRP”).</li><li>• To authorize the RP to invite EOI for transaction audit/forensic audit and appointment of transaction auditor.</li></ul>	<p><u>The following resolution/agenda was approved by the CoC:</u></p> <ul style="list-style-type: none"><li>• Members approved the resolution.</li><li>• Eligibility criteria for PRA approved.</li><li>• Submission of EOI for PRA for participating in the Resolution Plan and publication of FORM-G in leading newspapers (2) approved.</li><li>• Members of CoC approved the resolution for submission of EOI for PRA for submission of Resolution Plan and approval for publication of Form G.</li><li>• Approval for RP to invite EOI and to appoint the Transaction Auditor to do transaction audit for last two years.</li></ul>
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3 <sup>rd</sup> CoC Meeting	04.03.2023	<p><u>The following agendas were put before CoC for voting.</u></p> <ul style="list-style-type: none"><li>To authorize RP to allow extension for submission of Resolution Plan to PRA's.</li><li>To approve extension of CIRP period by 90 days beyond 180 days and authorize the RP to file application before this Hon'ble Adjudicating Authority.</li></ul>	<p>The following resolution/agenda was approved by the CoC:</p> <ul style="list-style-type: none"><li>Approval given to the RP to extend the timelines for submission of resolution plan by the Resolution Applicants by not more than 30 days beyond 30 days as prescribed.</li><li>Extension of CIRP period by 90 days beyond 180 days approved and further authorized RP to file an application seeking extension.</li></ul>
4 <sup>th</sup> CoC Meeting	14.04.2023	<p><u>The following agendas were put before CoC for voting.</u></p> <ul style="list-style-type: none"><li>To ratify expenses incurred by the Resolution Professional since the last date of CoC meeting</li></ul>	<p>The following resolution/agenda was approved by the CoC:</p> <ul style="list-style-type: none"><li>Resolution was put to vote and approved unanimously.</li></ul>



5 <sup>th</sup> CoC Meeting	29.04.2023	<p><b><u>The following agendas were put before CoC for voting.</u></b></p> <ul style="list-style-type: none"><li>• To ratify expenses incurred by the Resolution Professional since the last date of CoC meeting.</li><li>• To rectify appointment of Professional for evaluation of the Resolution Plan as per Evaluation Matrix as provided along with RFRP</li></ul>	<p><b>The following resolution/agenda was approved by the CoC:</b></p> <ul style="list-style-type: none"><li>• Resolution was put to vote and approved unanimously.</li><li>• Mr. Vijendra Jain, an Insolvency Professional was appointed for remuneration of Rs. 15,000/- plus out of pocket expenses.</li></ul>
6 <sup>th</sup> CoC Meeting	19.05.2023	<p><b><u>The following agendas were put before CoC for voting.</u></b></p> <ul style="list-style-type: none"><li>• To ratify and discuss non consideration of Resolution Plan submitted by ineligible PRA being KDM Business Network Ltd. consequent to SEBI Order dated 02.03.2023 prohibiting Mr. Arpan Gupta, Director of KDM Business Network Ltd. from accessing the securities market.</li></ul>	<p><b>The following resolution/agenda was approved by the CoC:</b></p> <ul style="list-style-type: none"><li>• After detailed discussion on legal opinion sought by RP from his counsel with the CoC, the members of CoC passed the resolution unanimously declaring KDM Business Network Ltd. as ineligible as per Section 29 A of the Code to submit the resolution plan.</li></ul>



7 <sup>th</sup> Coc Meeting	01.07.2023	<p><b><u>The following agendas were put before CoC for voting.</u></b></p> <ul style="list-style-type: none"><li>• Ratification of CIRP Cost incurred by RP since last date of CoC meeting till date.</li><li>• To discuss, consider and approve the compliant resolution plan submitted by R.K. Advertising Services and authorize the RP to file the CoC approved Resolution Plan before the Hon'ble NCLT in terms of Section 30(6) of the Code.</li><li>• To discuss approval of estimated Liquidation Cost as per Regulation 2 (ea) of and in terms of Regulation 39B of IBBI (CIRP Regulations), 2016.</li><li>• To discuss approval of Liquidation of the Corporate Debtor and filing of an application.</li><li>• To discuss approval of continuation of Resolution Professional as the Liquidator and fix fee.</li><li>• To discuss and approve the assessment of Compromise or Arrangement under Regulation 39BA of IBBI (CIRP Regulations), 2016.</li></ul>	<p><b>The following resolution/agenda was approved by the CoC:</b></p> <ul style="list-style-type: none"><li>• Resolution was put to vote and approved unanimously.</li><li>• <b>The Resolution plan of R.K. Advertising Services was approved by CoC with 100% voting share.</b></li><li>• Resolution was put to vote and rejected by the COC with 100% voting share.</li><li>• Resolution was put to vote and rejected by the COC with 100% voting share.</li><li>• Resolution was put to vote and rejected by the COC with 100% voting share.</li><li>• Resolution was put to vote and rejected by the COC with 100% voting share.</li></ul>
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		<ul style="list-style-type: none"><li>• To discuss option for exploring the sale of Corporate Debtor as a going concern in accordance with Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016.</li></ul>	<ul style="list-style-type: none"><li>• Resolution was put to vote and rejected by the CoC with 100% voting share.</li></ul>
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#### 4. Evaluation and voting

4.1. The Applicant further stated that in compliance with Regulation 36A(1) of CIRP Regulations, 2016, 'Form-G' was published by the Applicant on 03.01.2023, thereby inviting Prospective Resolution Applicants (PRAs) to submit their Expression of Interest (EOI). In terms of Form G, the last date of submission of EOI was 18.01.2023. The Applicant submits that subsequently, it had received EOIs from two PRAs, viz. one being **"RK Advertising Service, Proprietor Mr. Ashok Kumar Singhal"** and another being **"KDM Business Network Limited"**.

4.2. It has been further submitted by the Applicant that the prescribed period of expiry of 180 days from the commencement of CIRP for the purpose of Section 12 of the Code was 15.04.2023. The CoC resolved to extend the CIRP period by 90 days at its 3rd meeting on 04.03.2023. Accordingly, I.A. No. 1624/2023 was moved before this Tribunal for the aforesaid extension, and the same was allowed vide order dated 23.03.2023.

4.3. The Applicant has stated that at the 4<sup>th</sup> meeting of the CoC convened on 14.04.2023, the Resolution Plans submitted by both the aforesaid PRAs



were opened and discussed. Later, at the 6th meeting of the CoC, the Applicant placed a legal opinion before the CoC in respect of the ineligibility of one of the PRAs, i.e., KDM Business Network Limited, since one of the directors of the said PRA had been debarred from trading in securities by SEBI. As a result, RK Advertising Service was the only PRA left to consider.

4.4. It is further stated by the Applicant that the Resolution Plan of RK Advertising Service was approved unanimously by members of the CoC in the 7th meeting of the CoC convened on 01.07.2023.

## **5. Details of Resolution Plan**

5.1. The brief outlines of the Resolution Plan as mentioned by the Applicant are extracted herein below for ease of reference:

**The Financial Outlay as proposed under the Resolution Plan is as follows:.**

### **A. Unsecured Financial Creditors:-**

It is proposed to settle all the Claims of Unsecured Financial Creditors (excluding the Related Party) pertaining to the period prior to the Insolvency Commencement Date settled by way of maximum payment of Rs. 11,21,85,556/- (Rupees Eleven Crore Twenty One Lakhs Eighty Five Thousand Five Hundred Fifty Six Only). It is proposed under the plan that out of the afore-said total amount, upfront payment of INR 45,00,000 shall be paid to the Unsecured Financial Creditors (excluding the Related Party) on the Effective Date and remaining amount will be paid within the Deferred



Payment Period which shall be paid out of cash accruals generated by the Corporate Debtor during the Deferred Payment Period or by fresh infusion of money by the Resolution Applicant in the Corporate Debtor.

**B. Statutory Dues**

The Resolution Professional has admitted an amount of Rs. 105,62,72,318 of the GST Department and the Resolution Applicant has proposed to pay an amount of Rs. 46,47,598.

**C. Operational Creditors (Employees/ Workmen)**

As per the Information Memorandum and List of Creditors of the Corporate Debtor no claim was received from the Operational creditors (Employees/ Workmen) therefore, the amount proposed by the resolution Applicant is

**NIL**

**D. Operational Creditors (other than Workmen and Employees)**

The Resolution Professional has admitted an amount of Rs. 11,43,67,341 of Operational Creditors, whereas the Resolution Applicant has proposed to pay an amount of Rs. 5,00,000/-.

**5.2. Term of the Resolution Plan**

The term of the resolution plan will be one year from the effective date, and the implementation of the plan will commence from the effective date.

5.3. The amounts provided for the stakeholders under the Resolution Plan as outlined in the revised Form H are as under:



(Amount in Rs. Lakh)

Sl. No.	Category of shareholder	Sub - Category of shareholder	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 Creditor	a) Creditors not having a right to vote under sub-section (2) of Section 21  b) Other than (a) above (i) who did not vote in favour of the Resolution Plan  (ii) who voted in favour of the Resolution Plan	N/A	N/A	N/A	N/A
2	Unsecured Financial Creditor	a) Creditors not having a right to vote under sub-section (2) of Section 21  b) Other than (a) above (i) who did not vote in favour of the Resolution Plan  (ii) who voted in favour of the Resolution Plan	863.56  N/A  1177.66	863.56  N/A  1177.66	NIL   1121.86	N/A   95.26%
Total [(a)+(b)]			<b>2041.22</b>	<b>2041.22</b>	<b>1121.86</b>	<b>54.96%</b>



<b>3</b>	Operational creditors	(a) Related Party of Corporate debtor	147.50	147.50	Proportionate to amount payable to other Operational Creditors	0.44%
		(b) Other than (a) above:				
		(i) Government	10639.99	10562.72	46.48	0.44%
		(ii) Workmen	NIL	NIL	NIL	N/A
		(iii) Employees	NIL	NIL	NIL	N/A
	(iv) Others...	1085.18	996.17	5.00 (Including amount payable to Point 3 (a))	0.44%	
Total [(a)+(b)]			11872.67	11706.40	51.48	0.44%
<b>4</b>	Other debts and dues	-	-	-	-	-
<b>Grand Total</b>			<b>13913.88</b>	<b>13747.61</b>	<b>1173.33 (plus CIRP cost)</b>	

6. The details of compliances made under relevant sections of IBC, 2016 and IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as stated in the revised Form-H are extracted below:

**The compliances of the Resolution Plan is as under:**

Section of the	Requirement with respect to	Clause	of	Compliance
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Code / Regulation No.	Resolution Plan	Resolution Plan	(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 the business of the CD?	Para 3	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit a resolution plan as per the final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Para 14.18	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes	Yes
Section 30(2)	Whether the Resolution Plan-		Yes
	(a) provides for the payment of insolvency resolution process costs?	5.1.3(a)	
	(b) provides for the payment to the operational creditors?	5.1.3.(d)	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	5.1.1.3(e)(iii)	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Para 10	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Schedule 1	Yes
	(f) contravenes any of the	Para 12	



	provisions of the law for the time being in force?]		No
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?	Yes  Yes	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Schedule 1 of the Plan	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	5.1.1.3 (d)(v)	Yes
Regulation 38 (1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Para 13	Yes



Regulation 38(1B)	(1) 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	Para 12	Yes
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	N.A	Yes
Regulation 38(2)	Whether the Resolution Plan provides:		
	(a) the term of the plan and its implementation schedule? Schedule 1	Schedule 1	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Para 10	Yes
	(c) adequate means for supervising its implementation?	Para 10	Yes
38(3)	Whether the resolution plan demonstrates that-		
	(a) it addresses the cause of default?	Para 4(a)	Yes
	(b) it is feasible and viable?	Para 4(c)	Yes
	(c) it has provisions for its effective implementation?	Schedule 1	Yes
	(d) it has provisions for approvals required and the	Para 6	Yes



	timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Para 3	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]		Yes

6.2. With respect to compliance with Section 29A of the Code, the SRA has submitted an affidavit dated 18.01.2023 stating that it does not suffer from disqualification prescribed under the aforesaid provision. Further, the Applicant/ RP has also submitted an affidavit dated 29.02.2024 stating that based on the aforesaid affidavit submitted by the SRA as well as on the basis of due diligence conducted by the Applicant/ RP, the SRA has been found to be eligible to submit the Resolution Plan.

6.3. With respect to Provident Fund Dues, it has been categorically mentioned by the Applicant/ RP that he has not received any claim with respect to Provident Fund dues. On this issue, we refer to the decision of Hon'ble NCLAT in the matter of **Employees Provident Fund Organization**



**Vs. Rajat Mukherjee Liquidator of Enviiro Bulk Handling System Private Limited in Comp App. (AT) (Ins) No. 804 of 2024 in IA No. 2868 of 2024 where in is has been held :**

*“When the entire claim which was filed under 7A and 7Q was paid to the appellant, we fail to see any error in the order of the Adjudicating Authority in rejecting the application. It has been noticed by the Adjudicating Authority that claim under Section 14B was assessed by an order dated 16.6.2021 passed after initiation of CIRP proceedings. Adjudicating Authority has noted the judgment of this Tribunal in **Regional Provident Fund Commissioner, Vatwa, Employees Provident Fund Organisation vs. Manish Kumar Bhagat in Company Appeal (AT) (Ins) No. 808 of 2022** which has rightly been relied upon for not accepting the claim which was subsequent to the initiation of CIRP.”*

*[Emphasis supplied]*

Since the Resolution Professional did not receive any PF liability on the date of CIRP initiation, no further directions are required in this regard.

## **7. Details of Resolution Plan**

The Resolution Plan Provides for payment as per the table appended hereinafter:



Sr. No.	Category of claims	Verified Amount (Rs.)	Proposed Payment (Rs.)
A.	<b>CIRP Cost at actual</b>	<b>73,14,444 (As on 06.11.2024)</b>	<b>On Actual Basis</b>
B.	Payment towards claims		
1.	Secured Financial Creditors	Nil	Nil
2.	Unsecured Financial Creditors (Related Party)	8,63,55,685	Nil
3.	Unsecured Financial Creditors (Non-Related Party)	11,77,66,041	11,21,85,556
4.	Statutory Dues	105,62,72,318	46,47,598
5.	Operational Creditors (Workmen and Employees)	Nil	Nil
6.	Operational Creditors (other than Workmen and Employees)	11,43,67,341	5,00,000

*“CIRP cost will be paid on actual basis and additional CIRP cost incurred from 06.11.2024 till the disposal of resolution plan application shall be paid by the SRA.”*

8. With respect to GST dues, this Adjudicating Authority has sought clarification on 27.08.2024 regarding ;

*“the position of the inter-se claim of the Operational Creditors, particularly that the claim of GST. The RP also should clarify regarding his remark in respect of compliance with the provisions of Section 30(2)(e) of IBC, 2016. Further, the RP should make his stand clear as to whether the GST can be treated as the first charge on the assets of the Corporate Debtor.”*

To the query, the Learned Counsel for the RP submitted his reply in which the reference has been made on the decision of the Hon’ble NCLAT in the matter of **“Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia RP of Jet Airways India Ltd.” [Company Appeal**



**(AT) (INS) 752 of 2021]**, wherein the Hon'ble NCLAT considered Section 82 of the Maharashtra GST Act, 2017, which provides as follows:

*“Tax to be first charge on property- Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.”*

*(Emphasis Supplied)*

8.1. The Learned Counsel has relied on Para 122 and Para 124 of the said judgement in which it was also held:

*“122. The first charge on the property which is envisaged by Section 82 is except as provided under Insolvency and Bankruptcy Code, 2016. Thus, Section 82 of the Maharashtra GST Act, 2017 shall not give any precedence to the charge of claim of the Appellant. In this context, we may refer to a recent judgment of Hon'ble Supreme Court in “Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes and Customs, 2022 SCC Online SC 1101”. In the above case, before the Hon'ble Supreme Court submission was raised relying on Section 142A of the Customs Act. Section 142A has been extracted in Para 31 of the judgment, which is to the following effect:*

*“31. In order to complete the discussion on the Customs Act, it may be necessary to take note of Section 142A extracted below:*



142A. *Liability under Act to be first charge.— Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Act, shall, save as otherwise provided in section 529A of the Companies Act, 1956 (1 of 1956), the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993), and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002) and the Insolvency and Bankruptcy Code, 2016 (31 of 2016) be the first charge on the property of the assessee or the person, as the case may be..”*

124. The provisions of Section 82 of the Maharashtra GST Act, 2017, as extracted above, clearly contains an exception with regard to I&B Code, hence, on the strength of dues under Maharashtra GST Act, 2017, no charge can be claimed on the assets of the Corporate Debtor.

8.2. Reliance is also placed on the Circular No. 187/19/2022 GST dated 27.12.2022 of the Ministry of Finance, which is extracted below for the sake of discussion:

**Circular No. 187/19/2022-GST**

**F. No. CBIC-20001/2/2022 - GST  
Government of India**

**Ministry of Finance**

**Department of Revenue  
Central Board of Indirect Taxes and Customs  
GST Policy Wing**

**\*\*\*\*\***

**New Delhi, Dated the 27<sup>th</sup> December, 2022**

**To,**

IA. No. 3713/2023 in C.P. (IB)-996/(ND)/2020  
Tulsi Nandan Kant Bansal Vs. PG Advertising Private Limited





**The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /  
Commissioners of Central Tax (All)  
The Principal Directors General / Directors General (All)**

**Madam/Sir,**

**Subject: Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016- reg.**

Attention is invited to Circular No.134/04/2020-GST dated 23<sup>rd</sup> March, 2020, wherein it was clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

2. Representations have been received from the trade as well as tax authorities, seeking clarification regarding the modalities for implementation of the order of the adjudicating authority under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC") with respect to demand for recovery against such corporate debtor under Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows.

4.1 Section 84 of CGST Act reads as follows:

*"Section 84 - Continuation and validation of certain recovery proceedings.-*

*Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then-*

*..*

*(b) where such Government dues are reduced in such appeal, revision or **in other proceedings-***

*(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;*



- (ii) *the Commissioner shall give **intimation** of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;*
- (iii) *any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.”*

4.2. As per Section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

4.3 The word ‘other proceedings’ is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term ‘other proceedings’ in Section 84 of CGST Act.

5. Rule 161 of Central Goods and Services Tax Rules, 2017 prescribes **FORM GST DRC-25** for issuing intimation for such reduction of demand specified under section 84 of CGST Act. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in **FORM GST DRC-07/DRC 07A** against the corporate debtor, and where the proceedings have been **finalised** against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in **FORM GST DRC-25** reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

6. It is requested that suitable trade notices may be issued to publicize the contents of this circular.



7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)

Principal Commissioner (GST)

*(Emphasis Supplied)*

8.3. Ld. counsel for the SRA placed further reliance on the decision of the Hon'ble NCLAT in the case of "**Commercial Tax Department vs. Mrs. Teena Saraswat Pandey**" **Company Appeal (AT)(INS) 1265 of 2022**, wherein the provisions of Section 37 of the MVAT Act were held to be distinguishable from Section 48 of the GVAT Act, and it was held:

*"10. We thus are of the view that the Judgement of the Hon'ble Supreme Court in "Rainbow Paper Limited" relied by Learned Counsel for the Appellant is distinguishable. The Appellant having been treated as Operational Creditor allocation of amount in the Resolution Plan cannot be said to be in violation of Section 30 (2)(b)."*

*(Emphasis Supplied)*

8.4. The SRA has also submitted an affidavit with respect to the treatment of inter se claims of the operational creditor, particularly the GST Department, in which it is stated that:

*"4.... the aforesaid Application was listed on 27.08.2024, wherein this Hon'ble Adjudicating Authority was pleased to direct the Deponent herein to clarify the position of the inter-se claim of the Operational Creditors, particularly the claim of the GST Department and therefore, the Deponent is filing the present Affidavit in compliance of order dated 27.08.2024.*



5. · *It is stated that the matter was listed on 05/09/2024 wherein the SRA has agreed to pay the GST dues in proportion to whatever is paid to the other Operational Creditors.”*

8.5. An affidavit has also been filed by the RP in compliance of the order dated 27.08.2024, in which he has submitted that:

*“Section 82 of the Delhi GST Act, 2017 the legislature has specifically provided for a priority and first charge of the Government however, the Insolvency and Bankruptcy Code, 2016 has been made an exception to it. Section 82 of the Delhi GST Act, 2017 is reproduced hereinbelow:*

*“82. Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person”*

*(Emphasis supplied)*

*Section 82 of the Central GST Act, 2017 the legislature has specifically provided for a priority and first charge of the Government however, the Insolvency and Bankruptcy Code, 2016 has been made an exception to it. Section 82 of the Central GST Act, 2017 is reproduced hereinbelow:*

*“82. Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the*



*Government shall be a first charge on the property of such taxable person or such person.”*

*(Emphasis supplied)*

*It is further submitted that the claim filed by the GST Department, North, New Delhi has been admitted by the Deponent to the extent of Rs. 105.62 Crores in the category of Operational Creditors (Government Dues) and that the Successful Resolution Applicant has proposed to pay NIL amount under the Resolution Plan since the claim of the said Department cannot be considered as that of “secured creditor” defined under Section 3(30) of the Code.*

8.6. In support of his contentions, reliance has been placed on the judgement of the Hon’ble Supreme Court in the matter of **“Swiss Ribbons Private Limited & Anr vs. Union of India & Ors. Writ Petition (Civil) No. 99 of 2018 and Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors. Civil Appeal No. 8766-67 of 2019.**

8.7. It is further submitted as under:

*12...the sub-classes of Operational Creditors (Government/Statutory Dues) and Operational Creditors (Other Creditors) are so distinctly considered under the Code and are so entirely differently situated that they qualify as sub-classes which is apparent from the FORM-H mandated under Regulation 39(4) of the IBBI (CIRP) Regulations which has separate rows for both of the sub-class expressly recognizing their distinctness. The relevant part of FORM-H format is reproduced hereinbelow: -*



Sl. No.	Category of Stakeholder *	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i) Government				
		(ii) Workmen				
		(iii) Employees				
		(iv) Operational creditors other than (i), (ii) & (iii)				
		(v) Other creditors, if any. (other than financial creditors and operational creditors)				
		Total[(a) + (b)]				

13. In the present case, the successful Resolution Applicant has clearly provided differential treatment to the differently situated Operational Creditors being GST Department, North, New Delhi in the subclasses of operational Creditors(Government/Statutory Dues) with an admitted claim of Rs. 105.62 Crores and subclass of Operational Creditors (Other Creditors) with an admitted claim of Rs. 11.44 Crores based on an intelligible differentia and the CoC in their commercial wisdom, after considering the feasibility and viability of the plan, has approved the Resolution Plan of the Successful Resolution Applicant with 100% voting share in their 7th meeting held on 01.07.2023.”

8.8. Having considered that the Central Board of Indirect Taxes and Customs, in its circular dated December 27, 2022, classifies GST dues as "Operational Debt," and in view of the judicial precedents cited in the foregoing paragraphs, this Tribunal finds no irregularity in the classification of the claim of the GST Department as that of an "Operational Creditor" in the Resolution Plan.



Furthermore, the Successful Resolution Applicant (SRA) has filed an affidavit dated September 11, 2024, wherein it has been expressly affirmed that the claim of the GST Department shall be treated on par with other operational creditors. Additionally, an addendum dated November 17, 2024, placed on record by the SRA, clarifies that, in ensuring parity among operational creditors, the GST Department, being an operational creditor, shall receive payment in proportion to other operational creditors.

It is noted that the Resolution Professional has admitted claims amounting to ₹11.44 crores from creditors categorized as Operational Creditors. The Resolution Applicant has proposed a corpus of ₹5,00,000, constituting 0.44% of the admitted claims. In proportion, the GST Department is accordingly being paid 0.44% of its admitted claim, amounting to ₹46,47,598.19, against the total claim of ₹1,05,62,72,318. This fact has been affirmed before this Tribunal by way of an affidavit dated September 11, 2024. The relevant portion of the affidavit is as follows:

*"6. The resolution professional has admitted claims totalling to Rs. 11.44 Crores from creditors categorized as Operation Creditors (Other Creditors). The Deponent has proposed a corpus of Rs. 5,00,000/-, representing approximately 0.44% of the admitted claims, to be distributed on a pro-rata basis among these Operational Creditors.*

*7. It is further submitted that the admitted claim of the GST Department, North Delhi, amounts to Rs.1,05,62,72,318.00p. In line with the payment of 0.44% to other Operational*



*Creditors, we are prepared to pay a corresponding amount of Rs.46,47,598.19.00p to the GST Department, North Delhi."*

9. It is evident from the records that an affidavit has been filed by the Resolution Professional on behalf of PG Advertising Private Limited (formerly known as Prabhatam Advertising Private Limited) clarifying the remarks in Form-H with respect to compliance under Section 30(2)(e) of the Insolvency and Bankruptcy Code, 2016. This affidavit has been submitted in pursuance of the order dated August 27, 2024, passed by this Hon'ble Adjudicating Authority.

Upon perusal, it is observed that the Resolution Plan has been confirmed to be in compliance with the provisions of the Code and the Regulations framed thereunder, particularly Section 30(2)(e) of the Code. It has been affirmed that the Resolution Plan does not contravene any provisions of the law in force at the relevant time.

10. As per the Resolution Plan of the Successful Resolution Applicant approved by the Committee of Creditors, the SRA has undertaken that any amount realized on account of the PUFEE Application in pursuant to Sections 43, 45, 49, 50 and 66 filed with this Adjudicating Authority shall be deemed to have been received for the benefit of the Corporate Debtor/Resolution Applicant/ the Resulting Companies and the same shall be pursued by the Corporate Debtor Resolution Applicant/ the Resulting Companies at their own cost. At this juncture, it will be apt to refer to the judgement of the Division Bench of the Hon'ble Delhi High





Court in the matter of: **Tata Steel BSL Limited v. Venus Recruiter Private Limited & ors (2023) ibclaw.in 09 HC 89**

*“e. The provisions pertaining to suspect transactions exist specifically to benefit the creditors of the corporate debtor by enhancing the asset pool available for resolution of the corporate debtor. The IBC also envisages increasing credit availability in the country as one of its primary objectives. It is apposite that any kind of benefit acquired from the adjudication of avoidance applications, in cases where treatment of such applications could not be accounted in the plan, must be given to the creditors of the erstwhile corporate debtor, considering especially, that in the present case, the creditors took a massive haircut towards resolution of the corporate debtor. Giving such benefit to the creditors is in consonance with the scheme of the IBC.*

*f. The amount that is made available after transactions are avoided cannot go to the kitty of the resolution applicant. The benefit arising out of the adjudication of the avoidance application is not for the corporate debtor in its new avatar since it does not continue as a debtor and has gone through the process of resolution. This amount should be made available to the creditors who are primarily financial institutions and have taken a haircut in agreeing to accept a lesser amount than what was due and payable to them.*

*(Emphasis Supplied)*

In view of the judgement as above, the proceeds of the avoidance transaction are directed to be distributed among the financial creditors including the



financial institution and the financial creditors are directed to pursue the avoidance applications after the approval of the Resolution plan.

### **11. Scheme of Restructuring and Sources of Funds:**

The Resolution Plan provides for the scheme for restructuring and the sources of funds for implementation of the Resolution Plan, which is extracted below for reference:

#### **h) Scheme of Restructuring**

**As an integral part of this Plan, a composite scheme of restructuring is being entered into, which provides for:**

- i. reduction, cancellation and extinguishment of the entire existing issued, subscribed and paid-up share capital of the Corporate Debtor against its accumulated losses, terms of which are detailed in the Scheme of Capital Reduction annexed herewith this Plan as Schedule 3;**
- ii. demerger of the Demerged Undertaking No. 1 of the Demerged Company with and into the Resulting Company No. 1, terms of which are detailed in the Scheme 1 annexed herewith this Plan as Schedule 4;**
- iii. demerger of the Demerged Undertaking No. 2 of the Demerged Company with and into the Resulting Company No. 2, terms of which are detailed in the Scheme 2 annexed herewith this Plan as Schedule 5; and**
- iv. demerger of the Demerged Undertaking No. 3 of the Demerged Company with and into the Resulting Company No. 3, terms of which are detailed in the Scheme 3 annexed herewith this Plan as Schedule 6.**



### **5.1.2. Proposal for funding**

**5.1.2.1.** It is proposed to infuse / arrange to bring in the Plan Value in the Corporate Debtor for the settlement of all the dues of all the creditors, whether claimed or not claimed, whether appearing as liability in the books or not as on date, including the admitted claims.

Under the terms of this Plan, it is proposed that in the event any amount is required by the Corporate Debtor, then necessary arrangements shall be made for the same so as to ensure that the operations of the Corporate Debtor post the Effective Date can be operated in an optimal manner.

**5.1.2.2.** Out of the aforesaid Rs. 12,00,00,000, INR 50,00,000 shall be infused / arranged to be infused as equity.

#### **5.1.2.3. Terms of Equity Infusion in the Corporate Debtor:**

**On the Effective Date, the Resolution Applicant shall infuse or arrange to infuse an amount of INR 50,00,000 by subscribing for 5,00,000 equity shares of the Corporate Debtor with face value of INR 10 per share, so as to ensure that the shareholding of the Resolution Applicant in the expanded equity share capital base of the Corporate Debtor is 100% post reduction, cancellation and extinguishment of the existing share capital of the Corporate Debtor, as provided in the Scheme of Restructuring. Further, the said infusion by way of issuance of equity shares shall be deemed to be considered at a fair market value for all purposes including, the Companies Act, 2013, Foreign Exchange Management Act, 1999, Income Tax Act, 1961, or any other law.**

**5.1.2.4.** Further, for the amount to be infused or arrange to be infused in the Corporate Debtor as envisaged in this Plan, the Resolution Applicant has a strong financial standing and support, and can rely upon the net worth of the Resolution Applicant is approximately INR 676.44 lac as on the date of this Resolution Plan, and availability of sufficient liquid funds, cash and bank balances to the tune of INR 80,65,157 of the Resolution Applicant.

12. The details of the implementation schedule of the plan are mentioned in Part B of the Resolution Plan, which reads as follows:



### Implementation Schedule

S. No	Activity	Indicative Timeline	Responsibility
<b>Phase I- Approval Process of Resolution Plan</b>			
1.	Approval of Plan by CoC	X	CoC / Resolution Professional
2.	Issuance of Letter of Intent	X+2	Resolution Professional
3.	Acceptance of Letter of Intent	X+4 = Y	Resolution Applicant
4.	Submission of Performance Guarantee	Y + 5 Business Days	Resolution Applicant
5.	Application to NCLT for approval of Resolution Plan	Z	Resolution Professional

S. No	Activity	Indicative Timeline	Responsibility
6.	Approval by NCLT of Resolution Plan and receipt of order	A	Resolution Professional
7.	Notice on the Corporate Debtor's website	Within A + 7 Business Days	Resolution Professional
8.	Intimation to the Governmental Authorities, if required in terms of the Applicable Law		Corporate Debtor
9.	Intimation to all creditors and any other stakeholder of the Corporate Debtor		Corporate Debtor



<b>Phase II- Implementation of Plan</b>			
1.	Execution of material agreements giving effect to the Plan in relation to the equity and giving effect to the Plan	On and from A and prior to the Effective Date	Monitoring Committee
2.	Giving effect to the extinguishment of liability as provided under the Resolution Plan	Effective Date	Monitoring Committee
3.	Infusion of equity subscription amount by the Resolution Applicant in the Corporate Debtor.	Effective Date	Resolution Applicant/ Corporate Debtor
4.	Giving effect to the Scheme of Capital Reduction i.e. capital reduction, cancellation and extinguishment of existing share	Effective Date	Monitoring Committee

<b>S.No</b>	<b>Activity</b>	<b>Indicative Timeline</b>	<b>Responsibility</b>
	capital of the Corporate Debtor and passing all necessary book entries in this regard, immediately after giving effect to extinguishment of liability as per point 2 above and infusion of equity subscription amount by the Resolution Applicant as per point 3 above		
5.	Allotment of equity shares to the Resolution Applicant and passing of necessary book entries in this regard immediately after giving effect to the Scheme of Capital Reduction as per point 4 above	Effective Date	Monitoring Committee
6.	Giving effect to the Scheme 2, Scheme 3 and Scheme 4 i.e. the demerger of the Demerged Undertakings and passing all necessary book entries in this regard, immediately after giving effect to allotment of equity shares as per point 5 above.	Effective Date	Monitoring Committee



7.	Replacement of the Suspended Board of the Corporate Debtor with the new directors on the board of directors, who are qualified to act as directors of the Corporate Debtor in terms of the	Effective Date	Resolution Applicant
S. No	Activity	Indicative Timeline	Responsibility
	Code, as decided by the Resolution Applicant on and with effect from start of business hours of the Effective Date.		
<b>Phase III- Settlement of Creditors</b>			
1.	Payment of CIRP Costs in priority to any other payment under the Plan	Effective Date	Monitoring Committee
2.	Payment to the operational creditors (as defined in the Code) in accordance with the terms of this Plan or the Liquidation Value allocated to the operational creditors, whichever is higher before any payment is made to Financial Creditors.	Effective Date	
3.	Payment of upfront committed amount to Financial Creditors and Operational Creditor to all the Creditors in accordance with the Plan	On Effective Date	
4.	Payment of Deferred Amount to creditors in terms of this Plan	Within 1 years from the Effective Date	Corporate Debtor

'A' refers to the receipt of the order/ judgment approving this Resolution Plan from NCLT.



h) The Resolution Applicant and Corporate Debtor respectively shall take all appropriate corporate actions necessary for implementation of the Resolution Plan which includes filing of appropriate documents or forms with Registrar of Companies, Ministry of Corporate Affairs, Reserve Bank of India, obtaining relevant consents from such regulatory authorities, intimation to existing shareholders, issuance of shares and instruments as provided in this Resolution Plan and as required under Applicable Law.

13. The details of the Management and Control of the business of the corporate debtor is stated under Clause 10 of the Resolution Plan. As per Regulation 38(4) of the CIRP Regulations, 2016, the CoC may consider the requirement of a Monitoring Committee for the implementation of the plan. In this respect, clause 10 of the plan states that from the date of approval of plan by this Tribunal and till the Effective Date (“Monitoring Period”), a Monitoring Committee shall be constituted for monitoring and supervising the implementation of the resolution plan. It is also stated in the plan that the Monitoring Committee shall consist of 5 members comprising 2 representatives of the Resolution Applicant, 2 representatives of the financial creditors and the Monitoring Agent. The excerpt of the clause 10 reads thus: -

**10. Mechanism regarding management and Control of the affairs of the Corporate Debtor**

**10.1 Management and Control of the business of the Corporate Debtor from NCLT Approval Date till the Effective Date**

**10.1.1** On the NCLT Approval Date, the Resolution Applicant hereby requests the Insolvency Professional, who was acting as RP and therefore, experienced in managing the affairs during the CIRP Process, to act as a monitoring agent (“Monitoring Agent”) on such remuneration as is being currently paid to the RP till the Effective Date, subject to approval of the said remuneration by the Monitoring Committee. In the event the Insolvency Professional refuses to or is unable to continue post approval of this Plan by the NCLT, the Monitoring Committee shall appoint an independent person to act as the Monitoring Agent and such person shall discharge all functions of the Monitoring Agent as envisaged under this Plan.

**10.1.2** On and from the NCLT Approval Date till the Effective Date (“Monitoring Period”), the Monitoring Agent, acting on the sole instructions of the Monitoring Committee, shall perform duties *inter alia* similar to that of a resolution professional under the CIRP and shall have powers similar to that of a resolution professional under the CIRP.



10.1.3 During the Monitoring Period, a monitoring committee shall be constituted (“**Monitoring Committee**”) which during the Monitoring Period, shall comprise of 5 (five) members comprising of two representatives from the Resolution Applicant, two representatives from Financial Creditors and the Monitoring Agent. During the Monitoring Period, the Resolution Applicant shall also have the right to appoint an observer on the Monitoring Committee who will be entitled to receive all notices, agendas, explanatory statements, minutes of meetings sent to the members of the Monitoring Committee and participate in all meetings of the Monitoring Committee but not vote in any such meetings.

10.1.4 During the Monitoring Period: (i) the Monitoring Committee shall monitor the implementation of the Plan; (ii) the Monitoring Committee may decide to appoint

advisors, legal and technical consultants, etc. as may be required; and (iii) the management and operations of the Company shall be undertaken, by the nominees of the Resolution Applicant on the Monitoring Committee along with the Monitoring Agent who will be subject to the guidance of the Monitoring Committee, in the ordinary course and on a going concern basis, and the promoters or the existing promoter group shall not, during such period, participate in the Company’s management. During the Monitoring Period, the nominees of Financial Creditor on the Monitoring Committee and Monitoring Agent shall not be liable for any action / breach of the Resolution Applicant or their nominees on the Monitoring Committee.

10.1.5 During the Monitoring Period, the Monitoring Agent and the advisors / legal advisors to the Monitoring Committee shall receive such fee that the Monitoring Committee may, at their discretion, decide the apportionment of the fee as deemed fit. All fees payable to the advisors of the Monitoring Committee (including any legal costs) till the Effective Date shall be borne and paid out of the internal accruals/cash flow of the Corporate Debtor. If the internal accruals/cash flows are insufficient to meet the above referred expenses, to the extent approved by the Monitoring Committee, then the same shall be borne by the Resolution Applicant in addition to the commitments made to the creditors in this Resolution Plan.





- 10.1.6 It is hereby clarified that any cost (including legal costs) in relation to the avoidance transactions filed under section 43, 45, 50 and 66 of the Code (as applicable) or any other litigation before any court or regulatory body shall be borne by the Corporate Debtor / Resolution Applicant / the Resulting Companies and the Financial Creditors shall not be a party to such litigation after the approval of Resolution Plan. It is further clarified that any recovery from the litigation in relation to the avoidance transactions under section 43, 45, 50 and 66 of the Code (as applicable) mentioned above shall be for the benefit of the Corporate Debtor / Resolution Applicant / the Resulting Companies.
- 10.1.7 During the Monitoring Period, all the decisions which could otherwise have been taken by the Corporate Debtor's board shall be taken by the Monitoring Committee and that the Corporate Debtor's board shall have no authority whatsoever to conduct the business of the Corporate Debtor. Any decisions taken by the Corporate Debtor's board during the Monitoring Period shall be null and void and not be binding on the
- 
- Monitoring Committee and/or the Corporate Debtor. All decisions of the Monitoring Committee shall be by way of a majority vote of all members present and voting.
- 10.1.8 Further, the Monitoring Committee shall be required and entitled to do all such acts, deeds, matters and things as may be necessary, desirable or expedient to supervise the implementation and give effect to this Plan in accordance with its terms and shall act under the ultimate supervision of the NCLT.
- 10.1.9 Upon the NCLT Approval Date and till the Effective Date, the Monitoring Committee shall be considered to be authorized by the NCLT to implement the Plan in accordance with its terms. The Monitoring Committee or its members or the entities nominating such members shall not in any manner be implicated in, or in any manner adversely affected by, or have any liability in relation to any actions and/or omissions.
- 10.1.10 The existing board of the Corporate Debtor ("**Suspended Board**") shall be and remain suspended post the NCLT Approval Date till the Effective Date and all powers and duties of the board shall vest with the Monitoring Committee.
- 10.1.11 In accordance with Clause 10.1.2 above, the Monitoring Committee shall be deemed to have been carrying on and shall carry on the business and activities of the Corporate Debtor in trust for the Resolution Applicant and strictly as provided in the Resolution Plan through the Monitoring Agent. Without prejudice to this clause, Monitoring Committee shall be entitled to enter into any new tenders, agreements or any arrangements on and after the NCLT Approval Date.



10.1.12 The Monitoring Committee shall have full and final authority to decide all matters relating to the business of the Corporate Debtor arising during the Monitoring Period or incidental thereto. It is clarified that until the Effective Date, the Corporate Debtor shall not make any payments (including interest) to the Financial Creditors, Operational Creditors or the Other Creditors.

10.1.13 Upon and with effect from the Effective Date, the Monitoring Committee shall cease to have any powers, duties or obligations in terms of this Plan and the Suspended Board of the Corporate Debtor shall stand replaced by the board of directors as nominated by

the Resolution Applicant i.e. the sole proprietor of the Resolution Applicant, Mr. Ashok Singhal and his nominee, Mrs. Suman Lata. Further Mr. Ashok Singhal and Mrs. Suman Lata shall be the board of directors and the shareholders of the Resulting Companies.

10.1.14 The Corporate Debtor and all its facilities shall continue to receive supply of essential supplies, goods and services (as defined in the IBC and the CIRP Regulations) on an uninterrupted basis, and shall not for any reason be shut down or restricted in its activities in any manner. The Monitoring Committee shall be entitled to make an application to the Adjudicating Authority directing local law enforcement authorities and local district administration authorities to maintain law and order with regard to the various premises owned and/or used by Company, and to assist in the implementation of the Plan.

10.1.15 The existing promoters/promoter group and the current management team of the Company will undertake all such actions and shall do all such acts, deeds and things required by the Monitoring Committee, including executing any and all documents as may be required for the purposes of implementation of the Plan.

10.1.16 The Suspension Period commenced on the Insolvency Commencement Date shall continue to be in effect till the Effective Date.



**10.1.17 Notwithstanding the powers conferred on the Monitoring Committee, on and from the NCLT Approval Date until the date of dissolution of Monitoring Committee (both days inclusive), the Monitoring Committee and the Reconstituted Board shall, except with consent of the Resolution Applicant, not undertake any of the following actions:**

- a) entry by the Corporate Debtor into unrelated line of business;
- b) any acquisition or disposition of assets by the Corporate Debtor;
- c) any capital expenditure;
- d) any merger, demerger, reorganisation or dissolution of the Corporate Debtor;
- e) establishment of subsidiaries, joint ventures and/or partnerships by the Corporate Debtor;
- f) any issuance or allotment of any securities in favour of any Person other than Resolution Applicant and its nominees;
- g) any change to the accounting or tax policies of the Corporate Debtor;
- h) giving/incurring any indebtedness by the Corporate Debtor:

- i) revision in the wages/salaries or any remuneration including perquisites payable to the workmen/employees of the Corporate Debtor;
- j) execute any contract except short term contracts in ordinary course for purchase or sale of raw materials or finished goods; and
- k) any agreement or commitment to do any of the above.

**10.1.18 The responsibilities of the Monitoring Committee shall include:**

- a. to ensure supervision of implementation of the Resolution Plan as approved by NCLT;
- b. make or cause to be made, on behalf of the Corporate Debtor, all applications for regulatory and third party approvals required for implementation of the transactions contemplated in the Resolution Plan in a form and manner agreed with the Resolution Applicant;
- c. to provide updates to the relevant authorities as and when required;
- d. Monitoring Committee, shall be deemed to be fully authorized to act on behalf of the Corporate Debtor to sign all applications that are proposed to be made to any regulatory authority in order to obtain the necessary approvals for implementation of this Resolution Plan including any secretarial filings, corporate actions and/or any other actions, filings, intimations, etc., within the timelines set out herein; and



- e. further, upon approval of the Resolution Plan by the NCLT, necessary steps will be taken to file the same as necessary with various governmental authorities, income tax authorities, various Courts, Tribunals and regulatory authorities where proceedings with respect to the Corporate Debtor are pending, for disposal, dismissal or withdrawal (as the case may be) of all such civil and criminal proceedings. To the extent possible and feasible under Applicable Law, necessary applications towards obtaining approvals that may be required to keep the Corporate Debtor as a going concern or implementation of the Resolution Plan, may be made after approval of Resolution Plan by COC in the interests of time.

**10.2 Management and Control of the business of the Corporate Debtor on and from the Effective Date**

10.2.1 After the expiry of the Monitoring Period, it is proposed to reconstitute the board of

directors of the Corporate Debtor as necessary, to spearhead their business plan and nominations may be made to appoint the members on the board of directors of the Corporate Debtor as deemed fit by the Resolution Applicant.

10.2.2 The Resolution Applicant shall identify members of the board of directors and the same shall be appointed in compliance with all Applicable Laws on the expiry of the Monitoring Period. Such new board of directors shall not have as its members any of the members who constituted the board of directors of the Corporate Debtor immediately prior to the CIRP Date.

10.2.3 The Resolution Applicant shall provide its expertise in operating and managing the day-to-day operations of the Corporate Debtor. Further, the advisory board of the Resolution Applicant shall oversee the Corporate Debtor in the same manner as it perform for the Resolution Applicant.

10.2.4 The Monitoring Agent shall, on the Effective Date,

- a. handover or allow along with possession of the premises/offices of the Corporate Debtor, all passwords, bank account details, cheque books, email accounts, statutory registers, minute books, financial and tax records, all communication with vendors, customers, government and regulatory authorities and all other documents pertaining to the Corporate Debtor and its business, information technology systems (including all software and hardware), access to ERP system etc. to the authorised representative of the



Corporate Debtor as nominated by the Resolution Applicant; and  
b. inform all the banks regarding the change (as per the instructions of the Resolution Applicant) in signatory/authorized representative with respect to passwords, bank account details, email account, cheque books etc.

It is clarified that on and from the Effective Date, the signing authority for cheque and other negotiable instruments and to operate the bank accounts, ERP systems etc., shall be the person(s) authorized by the Resolution Applicant in this regard. The Monitoring Committee shall take all necessary actions and do/cause all necessary deeds, documentation, authorization (including execution of any power attorney to that effect, if required by the Monitoring Committee) etc., as may be required in that regard.

14. As can be seen from Clause 7 of the certificate given by the RP on prescribed form viz. Form H, the SRA has proposed to pay much less than the amount admitted by the RP and the Liquidation value, to the different stakeholders. We are, however, conscious of the decision of the Hon'ble Apex Court in the cases of **Vallal RCK vs. M/s Siva Industries and Holdings Limited and Others**, (Civil Appeal Nos. 1811-1812 of 2022) and **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr.** (Civil Appeal No. 3224 of 2020) wherein the Hon'ble Court ruled that the scope of examination of the application for approval of Resolution Plan by this Tribunal is confined to the provisions of Section 30(2) of IBC, 2016. Para 153 of the Judgment reads thus: -

*“153. Regulation 38(3) mandates that a Resolution Plan be feasible, viable and implementable with specific timelines. A Resolution Plan whose implementation can be withdrawn at the behest of the successful Resolution Applicant, is inherently unviable, since open-ended clauses on*



*modifications/withdrawal would mean that the Plan could fail at an undefined stage, be uncertain, including after approval by the Adjudicating Authority. It is inconsistent to postulate, on the one hand, that no withdrawal or modification is permitted after the approval by the Adjudicating Authority under Section 31, irrespective of the terms of the Resolution Plan; and on the other hand, to argue that the terms of the Resolution Plan relating to withdrawal or modification must be respected, in spite of the CoC's approval, but prior to the approval by the Adjudicating Authority. The former position follows from the intent, object and purpose of the IBC and from Section 31, and the latter is disavowed by the IBC's structure and objective. The IBC does not envisage a dichotomy in the binding character of the Resolution Plan in relation to a Resolution Applicant between the stage of approval by the CoC and the approval of the Adjudicating Authority. The binding nature of a Resolution Plan on a Resolution Applicant, who is the proponent of the Plan which has been accepted by the CoC cannot remain indeterminate at the discretion of the Resolution Applicant. The negotiations between the Resolution Applicant and the CoC are brought to an end after the CoC's approval. The only conditionality that remains is the approval of the Adjudicating Authority, which has a limited jurisdiction to confirm or deny the legal validity of the Resolution Plan in terms of Section 30 (2) of the IBC. If the requirements of Section 30(2) are satisfied, the Adjudicating Authority shall confirm the Plan approved by the CoC under Section 31(1) of the IBC.”*

15. The Applicant/RP has also filed on record, the proof of the Performance Guarantee worth Rs. 50,00,000/- (Rupees Fifty Lakhs Only)



deposited by the SRA vide RTGS Mode. The Bank Statements in respect of the same have been placed on record.

16. Besides, we note that in terms of the judgment of Hon'ble Supreme Court in the case of **Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors.** [Civil Appeal No. 8766-67 of 2019], it is the subject matter of commercial wisdom of CoC to take decision regarding the amount of bid offered by SRA and the scope for this Tribunal to interfere on such issues is negligible. The above view was also reiterated by Hon'ble Supreme Court in **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr.** (Civil Appeal No. 3224 of 2020) wherein the Hon'ble Court ruled that the scope of examination of the application for approval of Resolution Plan by this Tribunal is confined to the provisions of Section 30(2) of IBC, 2016. Para 153 of the Judgment reads thus: -

*“153. Regulation 38(3) mandates that a Resolution Plan be feasible, viable and implementable with specific timelines. A Resolution Plan whose implementation can be withdrawn at the behest of the successful Resolution Applicant, is inherently unviable, since open-ended clauses on modifications/withdrawal would mean that the Plan could fail at an undefined stage, be uncertain, including after approval by the Adjudicating Authority. It is inconsistent to postulate, on the one hand, that no withdrawal or modification is permitted after the approval by the Adjudicating Authority under Section 31, irrespective of the terms of the Resolution Plan; and on the other hand, to argue that the terms of the Resolution Plan*



*relating to withdrawal or modification must be respected, in spite of the CoC's approval, but prior to the approval by the Adjudicating Authority. The former position follows from the intent, object and purpose of the IBC and from Section 31, and the latter is disavowed by the IBC's structure and objective. The IBC does not envisage a dichotomy in the binding character of the Resolution Plan in relation to a Resolution Applicant between the stage of approval by the CoC and the approval of the Adjudicating Authority. The binding nature of a Resolution Plan on a Resolution Applicant, who is the proponent of the Plan which has been accepted by the CoC cannot remain indeterminate at the discretion of the Resolution Applicant. The negotiations between the Resolution Applicant and the CoC are brought to an end after the CoC's approval. The only conditionality that remains is the approval of the Adjudicating Authority, which has a limited jurisdiction to confirm or deny the legal validity of the Resolution Plan in terms of Section 30 (2) of the IBC. If the requirements of Section 30(2) are satisfied, the Adjudicating Authority shall confirm the Plan approved by the CoC under Section 31(1) of the IBC."*

17. As far as the issue of reliefs and concessions which fall in the jurisdiction of different Government Authorities, and/ or are subjected to the provisions of different laws for the time being in force are concerned, it is made clear that the amount payable by the SRA in terms of the plan to different creditors, stakeholders, and to keep the Corporate Debtor as a going concern cannot be subject to any condition, assumptions, relief/ concessions and/ or qualification. It also needs to be underlined that the provisions of Section 31(4) of IBC, 2016 mandates the Resolution Applicant to 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 Section 31 of the IBC, 2016. In terms of the provisions of Section 14 of the Code even during the period of CIRP, no default in payment of current dues is a precondition for continuation of the License, Permit, Registration and similar rights. Thus, even during the moratorium period, some of the facilities forming part of the reliefs and concessions sought are made available to the CD only when there is no default in payment of the current dues. On approval of the Resolution Plan, the SRA/CD cannot be put on a better footing by exempting it from paying its legitimate dues under the law. For the sake of convenience, the explanation below Section 14 of the code is extracted below:

**“14. Moratorium. –**

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

*(a) .....*

*(b) .....*

*(c) .....*

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

*Explanation.- For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in*



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

(Emphasis Supplied)

18. In any case, in terms of the provisions of Sections 13 and 15 of the IBC 2016 read with Regulations 6, 6A, 7, 8, 8A, 9 and 9A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, all the claimants such as Operational Creditors, Financial Creditors, Creditors in Class, Workmen and Employees and other Creditors can raise their claims before the IRP/RP. The claims are dealt with by IRP in terms of the provisions of Section 18(1)(b) of the IBC, 2016 and by RP in terms of the provisions of Section 25(1)(b) thereof read with Regulations 12A, 13 and 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thereafter, the RP prepares an Information Memorandum in terms of the provisions of Regulation 36(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Memorandum contains inter alia a list of creditors containing the range of creditors, the amounts claimed by them, the amount of their claim admitted and the security interest if any in respect of such claims. As has



been provided in Regulation 36(1) of the Regulations (ibid), the Information Memorandum is required to be submitted in electronic form to each member of CoC, on or before 95th day from the Insolvency commencement date. As has been provided in Regulation 36A of the Regulations the RP publish brief particulars of the invitation for Expression of Interest in Form G of Schedule I to the Regulations at the earliest i.e. not later than 60th day from the Insolvency commencement date, from interested and eligible Prospective Resolution Applicants to submit Resolution Plans. As can be seen from Regulation 36B of the Regulations, the RP shall issue Information Memorandum Evaluation Matrix (IMEM) and request for Resolution Plans, within 5 days of the date of issue of provisional list of eligible Prospective Resolution Applicants (required to be issued under Regulation 36A(10) of the Regulations). It is with reference to such Information Memorandum Evaluation Matrix that the RP issues request for Resolution Plan. The request for Resolution Plan details each step in the process and the manner and purposes of interaction between the Resolution Professional and the Prospective Resolution Applicant. The Resolution Plan submitted after consideration of the IMEM and RFRP is then examined by the Committee of Creditors. Nevertheless, it needs to satisfy the requirements of Regulation 37 and 38 of the extant Regulations. Once the plan is approved by the CoC, in terms of the provisions of Regulations 39 of the aforementioned Regulations, it virtually becomes a contract entered into between the CD represented through RP, SRA and the Creditors of the CD. On being approved by this Adjudicating Authority, by operation of Section 31(1) of



the Code, the plan becomes binding on the Corporate Debtor and its employees, members, creditors (including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being enforced such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Thus, Section 31(1) of IBC, 2016, takes care of most of the relief/concession/waiver solicited by the Resolution Applicant.

19. Besides, in terms of the provisions of Section 32A, for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process, the liability of the CD ceases and the CD is not liable to be prosecuted from the date of approval of Resolution Plan by this Adjudicating Authority, if the Resolution Plan results in change of management or control of the CD to a person who was not promotor or in the management or control of the CD or a related party of such a person or a person with regard to whom the concerned Investigating Agency has reason to believe that he had abated or conspired for the commission of the offence and has submitted or filed a report or a complaint to the relevant statutory authority or Court. In such cases, where the prosecution is instituted against the CD, during CIRP, the CD stands discharged qua the same from the date of approval of the Resolution Plan. Nevertheless, every person who was a designated partner as defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008, “an officer who is in default” as defined in Clause (60) of Section 2 of Companies Act, 2013 or was in any



manner in charge of, or responsible to the CD for the conduct of his business or associated with the CD in any manner and was directly or indirectly involved in the commission of an offence as per the report submitted or complaint filed by Investigating Agency shall continue to be liable to be prosecuted and punished for such an offence committed by the Corporate Debtor notwithstanding the Corporate Debtors' liability ceases after approval of the plan.

20. In this context, a reference is made to the decision of Hon'ble NCLAT in Worldfa Exports Pvt. Ltd Vs. Vivek Raheja and Anr. [Company Appeal (AT) (Insolvency) No. 827 of 2024 & I.A. No. 2994 of 2024] dated 30.04.2024 wherein a challenge was laid against the following observation of the NCLT:

*“16. 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. The same view has been held by the Hon'ble Supreme Court in Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).”*

The Hon'ble NCLAT, however, dismissed the Appeal with the following observation:

*“Adjudicating Authority has already referred to the Judgment of the Hon'ble Supreme Court in the matter of Ghanshyam*



*Mishra & Sons Private Limited' Vs. 'Edelweiss Asset Reconstruction Company Limited', in Civil Appeal No.8129 of 2019, which clearly laid down that all claims which have not been dealt in the Resolution Plan does not survive after the approval of Resolution Plan.*

*6. Insofar as statutory waivers and concessions, Adjudicating Authority has rightly observed that SRA to file appropriate necessary application before the necessary Forum/Authority in order to avail the relief and the concession.*

*7. The Resolution Plan having been approved it is always open for the Applicant to make an appropriate application before the Statutory Authority for grant of such relief as permissible after approval of the Resolution Plan.*

*8. It goes without saying that all past liabilities which are not dealt with in the Resolution Plan stand extinguished by view of the Judgment of the Hon'ble Supreme Court in 'Ghanshyam Mishra & Sons Private Limited' (Supra) which is a well settled law."*

21. In the wake of the provisions of Section 32A(2), no action is taken against the property of the Corporate Debtor in relation to an offence committed prior to the commencement of the Corporate Insolvency Resolution Process of the CD, where such property is covered under Resolution Plan approved by this Authority under Section 31, which result in the change in the control of the CD to a person who was not a promoter or in the management or control of the Corporate Debtor or related party of such person or a person with regard to whom the Investigating Agency has reason to believe that he had abated or conspired for commission of the



offence and has submitted or filed a report or complaint to the relevant statutory authority or Court.

22. The action against the property of the Corporate Debtor as referred to in Section 32A of the Code includes the attachment, seizure, retention or confiscation under such law as may be applicable to the Corporate Debtor. One may also be not oblivious of the fact that in the backdrop of provisions of Section 31(3)(a) of the IBC, 2016, the moratorium order passed by the Adjudicating Authority under Section 14 ceases to have effect. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver except those, which are available to it as per the provisions of Section 31(1) and 32A of IBC, 2016.

23. In the sequel to the above, we are inclined to approve the Resolution Plan as approved/recommended by the CoC as placed by the Applicant before this Adjudicating Authority. We, therefore, allow the present Application and approve the COC-approved Resolution Plan as placed before us by the Applicant/RP with the following directions: -

- i. The approved Resolution Plan shall become effective from the date of passing of this Order and shall be implemented strictly as per the term of the plan and implementation schedule given in the Plan;
- ii. The SRA/CD would be entitled to no other reliefs/concessions/waivers except those are available/permissible to it as per the provisions of Section 31(1) and 32A of IBC, 2016. The SRA



is at liberty to approach the relevant authorities who would consider these claims as per the provisions of the relevant law in an expeditious manner;

iii. Following steps would be taken in terms of the resolution plan: -

<b>SL. NO.</b>	<b>STEP TO BE TAKEN</b>	<b>TIMELINE</b>
1.	Constitution of Monitoring Committee	On the Date of Approval of Plan
2.	Payment of CIRP Cost	Effective Date
3.	Payment of upfront committed amount to Financial Creditors and Operational Creditor to all the Creditors in accordance with the Plan	Effective Date
4.	Payment to the operational creditors (as defined in the Code) in accordance with the terms of this Plan or the Liquidation Value allocated to the operational creditors, whichever is higher before any payment is made to Financial Creditors.	Effective Date
5.	Payment of Deferred Amount to creditors in terms of this Plan	Effective Date

- iv. The order of the moratorium in respect to the corporate debtor passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order;
- v. The SRA shall act in terms of the provisions of Section 31(4) of IBC 2016;
- vi. The Monitoring Committee shall file progress report regarding implementation of the Plan before this Tribunal, every month;
- vii. The RP shall forward all the records relating to the conduct of the





- CIRP and the Resolution Plan to the IBBI for its record and database;
- viii. The RP shall also forthwith send a copy of this order to the participants and the Resolution Applicant. He would also send a copy of this order to the ROC concerned within 15 days of this order;
- ix. The RP shall intimate each claimant about the principle or formulae, as the case may be, for payment of debts under the Plan;
24. The Court Officer and Resolution Professional (RP) shall forthwith make available/send a copy of this Order to the CoC and the Successful Resolution Applicant (SRA) for immediate necessary compliance.
25. A copy of this order shall also be sent by the Court Officer and Applicant to the IBBI for their records.

Sd/-  
**(SUBRATA KUMAR DASH)**  
**MEMBER (T)**

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