

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-V**

**Item No.-209**

IB-813/ND/2021

IA-3402/2023

**IN THE MATTER OF:**

Trimurti Trading Co.

**Vs.**

Rukmini Iron Pvt. Ltd.

**....Applicant**

**.....Respondent**

**SECTION**

U/s 9 IBC

**Order delivered on 10.11.2023**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL,  
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open Court vide separate sheets. IA-3402/2023 is **allowed**.

Sd/-

**(RAHUL BHATNAGAR)  
MEMBER (T)**

Sd/-

**(MAHENDRA KHANDELWAL)  
MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH, COURT-V**

**I.A. 3402/ND/2023**  
**IN**  
**C.P. No. IB- 813/ND/2021**

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

**IN THE MATTER OF:**

TRIMURTI TRADING CO.

.... Operational Creditor

Vs.

RUKMINI IRON PRIVATE LIMITED

.... Corporate Debtor

**AND**

**IN THE MATTER OF:**

MR. AJIT KUMAR  
RESOLUTION PROFESSIONAL OF  
RUKMINI IRON PRIVATE LIMITED

**ORDER DELIVERED ON: 10.11.2023**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**PRESENT**

**For the Applicant:** Mr. Abhishek Anand, Mr. Kunal Godhwani

**For the RP:** Adv S Kumar

## **ORDER**

### **PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by Mr. Ajit Kumar Resolution Professional (RP), on behalf of Rukmini Iron Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by Mr. Sanjay Kejriwal and Ors ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') in its 7<sup>th</sup> CoC Meeting held on 21.09.2022.
2. Briefly stated, the facts as averred by the applicant in the application are stated are as follows:
  - a) That by an order dated 11.05.2022, this Adjudicating Authority had initiated Corporate Insolvency Resolution Process against the Corporate Debtor (Rukmini Iron Private Limited) and the applicant was appointed as IRP in the matter.
  - b) That Public Announcement in the matter for inviting the claims from the creditors of Corporate Debtor was made on 15.05.2022 by the IRP in Form-A in "Financial Express (English language), in Jansatta (Hindi language) in New Delhi Edition and The Hawk (English) and Dainik Hawk (English) in Haridwar Edition. The last date of submission of claims was 25.05.2022.
  - c) That on 22.06.2022, IRP appointed two valuers for determining the Fair Value and Liquidation Value of the Corporate Debtor for Plant and Machinery, Land and Building and Securities and Financial Assets for determining Fair Value and Liquidation Value of the assets of Corporate Debtor in terms of Regulation 27 and 35 of the CIRP Regulations. On account of legal requirement to maintain confidentiality of the liquidation value and fair value of the Corporate

Debtor, the Applicant craves leaves of this Adjudicating Authority to produce the aforesaid values, if so, directed by this Adjudicating Authority.

- d) That the Applicant convened the Second Meeting of Committee of Creditors (“COC”) on 05.08.2022, in the said meeting the COC resolved to appoint the Applicant i.e., Interim Resolution Professional as Resolution Professional and thereafter presented the Evaluation Matrix to ensure the viability and feasibility of the Resolution Plan, keeping in mind the business structure and process of the Corporate Debtor. The Applicant herein presented the said Evaluation Matrix before the CoC in the meeting held on 05.08.2022 wherein it was approved by the members of CoC.
- e) That on 11.08.2022, the Applicant in compliance with its duties under Section 25 (2) (h) of the Code read with Regulation 36A, published an invitation for Expression of Interest (EOI) in Form- G as prescribed under the CIRP Regulations inter-alia in Financial Express, Jansatta in English and Hindi Inviting Expression of Interest (“EOI”) from prospective Resolution Applicants in accordance with the provisions of the Code. The Copy of Form G was also uploaded on the website of the IIBI (under Form 6).
- f) That on 05.09.2022, as per the Minimum Eligibility Criteria approved by the CoC, 3 Applicants who had submitted their Expression of Interest within stipulated time period were included in the Provisional list of Prospective Applicants. Moreover, the Applicant also states and submits that since the Corporate Debtor is an MSME, wherein the Code has provided an exemption to MSME under sub section (c) and (h) of section 29A read with Section 240 A of the insolvency and Bankruptcy Code, 2016, therefore, the Suspended Board has also submitted their Expression of Interest and have also been shortlisted in the provisional list of Prospective Resolution Applicants.
- g) That pursuant to the approval of CoC with a vote of 100% in the Third Meeting of the CoC held on 28.10.2022, the Resolution Professional filed an application on 02.11.2022 before this Adjudicating Authority to grant an extension of 90 days’ time period from the last date of stipulated time period of 180 days, in the CIRP which was getting completed on 08.11.2022 and accordingly this Adjudicating Authority vide order dated 15.11.2022 was pleased to grant an extension of 90 days.

- h) That the Fourth meeting of CoC was held on 14.12.2022 and the same was intimated to all the members of the CoC. As per the newly inserted Regulation 35A (3A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the RP is required to forward the copy of the Application for the preferential and other transactions to enable the Prospective Resolution Applicant to consider the same while submitting the resolution plan. It is noteworthy to mention that the Forensic cum Transaction Auditor appointed by the Resolution Professional submitted its final report on 16.01.2023. On the basis of findings of the said report, the Resolution Professional filed 3 separate applications under section 66 and 43 respectively for the avoidance of preferential and fraudulent transactions and intimated the same to the Prospective Resolution Applicants took cognizance of the above-mentioned applications to revise their plans.
- i) Thereafter, the RP explained to the COC that due to the time taken for the completion of the said report, additional time was required to duly complete the CIRP. The RP further apprised the CoC Members that due to non-cooperation of the suspended Board / earlier management in providing requisite information there has been delay and difficulty in the resolution process and completion of the Forensic Audit.
- j) Accordingly, an Application under Section 19(2) of the Code being IA No. 23 of 2023 was also filed before this Adjudicating Authority and the same is still pending Adjudication.
- k) That the Applicant filed an application bearing IA No 826/2022 before this Adjudicating Authority for extension of CIR Period by 60 days which was approved by this Adjudicating Authority vide order dated 07.02.2023.
- l) That per Regulation 36B of the Code, pursuant to issuance of the request for resolution plan (RFRP) to the Resolution Applicants along with the Information Memorandum and Evaluation Matrix by the Applicant, the Resolution Applicants thereafter submitted the present Resolution Plan on the lines of the said Information Memorandum and the Evaluation Matrix along with an affidavit in compliance with the eligibility criteria under section 29A of the code under Section 30(1) of the Code read with Regulation 39(1)(a) of the CIRP Regulations, as well as undertakings under Regulation 39(1)(c) of the CIRP Regulations. The RFRP, *inter alia*, contained evaluation matrix, timelines,

formats for the purpose of submission of resolution plans and other relevant terms.

- m) That on 10.03.2023, 6th COC Meeting was convened by the Applicant, wherein, the COC Member(s) as well as the Applicant discussed the two Resolution Plan submitted by one of the Resolution Applicants. While the Resolution Plan submitted by one of the Resolution Applicant, being Sponge Sales India Private Limited was out rightly rejected by the COC members. However, the resolution plan submitted by the Suspended Board of Directors/ promoters of the Corporate Debtors was put for voting. Pertinently, even though the voting lines for the resolutions of approval of resolution plan or liquidation was opened from 12.03.2023, the COC members did not vote on any of the resolutions and instead further negotiated with the Resolution Applicant to enhance the resolution amount in the Resolution Plan and maximize the value of Corporate Debtor.
- n) Thereafter, the Applicant convened the 7th CoC meeting on 03.04.2023, the COC Members discussed that as the negotiation with the Resolution Applicant for enhancement of the resolution amount in the Resolution Plan and in order to maximize the value of Corporate Debtor is still underway and is at the final stages for the COC members to take their decision on the submitted Resolution Plan, it would be in the best interest of the Corporate Debtor as well as the stakeholders that instead of pushing the Corporate Debtor into liquidation, the effort should be made for its Resolution and thus necessitating another 60 days extension in the CIRP Period on 06.04.2023.
- o) Thereafter, an application being IA No. 1988 of 2023 was filed on behalf of the Applicant before this Adjudicating Authority, seeking extension of the CIRP period for further 60 days from 06.04.2023, in the best interest of the Corporate Debtor as well as the stakeholders, which was partly allowed by this Adjudicating Authority on 20.04.2023 and an extension of 45 days from 06.04.2023 was granted.
- p) The Applicant herein scrutinized the Resolution Plan to ensure that the Resolution Applicant has complied with the Code along with all the requirements of the information Memorandum, Qualifications set out by the Resolution Professional in pursuance of Section 25(2)(h) and the Evaluation Matrix. It is pertinent to mention that the Resolution Applicant has also

furnished an affidavit under Section 29A and an undertaking in pursuance of Regulation 39(1) declaring that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.

- q) The Resolution Plan states that performance security of Rs 2.10 crore will be submitted within 3 days of approval of resolution plan by the CoC members. The Resolution Applicant, has accordingly deposited Rs. 2.10 crore in the form of bank guarantee, in addition of Rs. 5 Lakh received along with EOI as EMD. A copy of the bank guarantee towards the performance security is placed on record.
- r) The Applicant presented the said Plan before the eighth Meeting of CoC of the Corporate Debtor on 12.05.2023 and allowed the Members of CoC to make their Observations. Thereafter, the members of the CoC deliberated upon the Resolution Plan and approved it with 100% voted through e-voting, which was concluded on 20.05.2023.
- s) The Applicant further submits that the Corporate Insolvency Resolution Process of the Corporate Debtor, initiated by this Adjudicating Authority vide its order dated 11.05.2022, has been carried out by the Applicant in strict compliance of the Code.
- t) The present Application is being filed by the Applicant herein, in pursuance of and in terms of the approval by the CoC of the Resolution Plan submitted by the Respondents, being the Promoters of the Corporate Debtor, Mr. Gopi Krishna Kejriwal, Mr. Sanjay Kejriwal and Mr. Rajeev Kejriwal (“Resolution Applicant for RA”) inasmuch as the Corporate Debtor is an MSME, by 100% of the voting share of the COC after considering the feasibility and viability of the resolution plan and other requirements under the CIRP Regulations. The certificate issued by Ministry of MSME is placed on record as Annexure A-15.
- u) That the Resolution Plan prepared by the Resolution Applicant is proper as per the provisions of statutory law as well as the binding precedents and has been duly approved by the CoC of Corporate Debtor with 100% votes as per Section 30 of the Code and a letter of intent has been issued to the Respondent (Resolution Applicant) in compliance with the RFRP.

- v) The Applicant submits that the Resolution Plan is as per requirement of Regulation 39 (1), Resolution Plan provides for payment of each stake holder.
- w) Brief detail of Resolution Plan:

<b>S. No.</b>	<b>PARTICULARS</b>	<b>AMOUNTS IN CRORE</b>	<b>VOTING IN FAVOUR OF PLAN</b>
<b>1.</b>	CIRP Cost	<b>0.20</b>	
<b>2.</b>	Amount provided in Resolution Plan for Secured Financial Creditors, (being Indian Overseas Bank)	<b>20.75</b>	<b>Approved by the Sole Financial Creditor</b>
<b>3.</b>	All Operational Creditors and Other Claims, i.e. Goods & Service/ Workmen / Employee/ Statutory Dues/ Other Claim	<b>0.05</b>	
<b>4.</b>	Capital Expenditure (Refurbishment & Balancing Equipment)	<b>3.00</b>	
<b>5.</b>	Working Capital	<b>5.00</b>	
	<b>TOTAL</b>	<b>29.00</b>	

- u) The Resolution Professional affirms that the Resolution Plan is in compliance with Section 30(2) as it provides for both the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the Corporate Debtor and for payment of other debts of operational creditors in the manner laid under the section.
- v) The present Application is therefore being filed before this Adjudicating Authority in view of Section 30(6) of the Insolvency and Bankruptcy Code 2016, which provides that "*The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority*" read with Regulation 39(4) which states:



*“The resolution professional shall endeavor to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under Section 12, along with a compliance certificate in Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.”*

The Applicant has placed on record Form-H along with the present Application as Annexure A-16.

w) The Applicant seeks indulgence of this Adjudicating Authority in the present matter and requests this Adjudicating Authority to approve the Resolution Plan as per Section 31(1) of the IB Code. That the Applicant prayed for various reliefs and concessions which are as follows:

- a. Allow the Present Application under section 30(6) of the insolvency and Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:*
- b. Allow the Resolution Plan [annexed as Annexure-9] with respect to the Corporate Debtor and declare the same to be binding on the Resolution Applicant, all the holders of claims, Creditors including financial, operational, other creditors, employees, workmen, members, promoter and all other parties in interest and each of their respective successors and assigns in accordance with Section 31 (1) and 238 of IBC and consequently approve the waivers, reliefs and concessions for the Corporate Debtor as detailed in Clause 8 of the Resolution Plan.*
- c. Directing Resolution Professional to continue to carry out its duties as the Resolution Professional of the Corporate Debtor pending the disposal of the present Application and during such period he shall continue to have all powers, duties and protections as are available to him as a Resolution Professional under the Code and regulations thereunder,*
- d. Directing the Resolution Applicant to implement the Resolution Plan in the manner as set out in the Resolution Plan;*
- e. Directing that the moratorium declared under section 14 of the Code w.r.t the Corporate Debtor shall continue until such date that the*

*Resolution Applicant acquires the control of the Corporate Debtor, i.e. the Cut-off/ Effective Date in accordance with the Resolution Plan;*

*f. Pass any such orders (s) that this Hon'ble Tribunal may deem fit.*

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

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

i. That the following are the list of claims filed and admitted by the Resolution Professional:

**List of Secured Financial Creditors (Amount in Rs.)**

S. No.	Name of Creditors	Amount claimed	Amount of claim admitted
1	Financial Creditor (Indian Overseas Bank)	49,49,81,405/-	49,49,81,405/-

**Operational Creditors (Govt. Dues) (Amount in Rs.)**

S. No.	Name of Creditors	Amount claimed	Amount of claim admitted
1	DGGI, Haridwar	27,30,446/-	27,30,446/-
2.	State Tax, Uttarakhand	1,01,19,545/-	1,01,19,545/-
	Total	128,49,991/-	128,49,991/-

Operational Creditors (other than Workmen and Employees and Government Dues)

S. No.	Name of Creditors	Amount claimed	Amount of claim admitted
1	Trimurti Trading Co.	109,46,217/-	109,46,217/-
2.	State Tax, Uttarakhand	109,46,217/-	109,46,217/-

- ii. That the amounts proposed to be paid towards the Corporate Insolvency Resolution of the Corporate Debtor pursuant to the implementation of the proposed Resolution Plan (Treatment of claims under the Resolution Plan by SRA) is as under: -

<b>S. No.</b>	<b>PARTICULARS</b>	<b>AMOUNTS IN CRORE</b>	<b>VOTING IN FAVOUR OF PLAN</b>
<b>1.</b>	CIRP Cost	<b>0.20</b>	
<b>2.</b>	Amount provided in Resolution Plan for Secured Financial Creditors, (being Indian Overseas Bank)	<b>20.75</b>	<b>Approved by the Sole Financial Creditor</b>
<b>3.</b>	All Operational Creditors and Other Claims, <i>i.e.</i> Goods & Service/ Workmen / Employee/ Statutory Dues/ Other Claim	<b>0.05</b>	
<b>4.</b>	Capital Expenditure (Refurbishment & Balancing Equipment)	<b>3.00</b>	
<b>5.</b>	Working Capital	<b>5.00</b>	
	<b>TOTAL</b>	<b>29.00</b>	

- iii. The average fair value and liquidation value of Corporate Debtor is Rs. 22.80 Crores and Rs. 17.65 respectively.
- iv. That the final resolution plan and its addendum submitted by Mr. Sanjay Kejriwal and Ors. meets the requirements of Section 30(2) of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(a)	provides for the payment of insolvency resolution process	YES Clause 5.1 (V) of Plan,

	costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;	Page No. 8.
30(2)(b)	<p>provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-</p> <p>(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or</p> <p>(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53</p>	<p>YES</p> <p>Clause 5.3 Page No. 10</p>
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	<p>YES</p> <p>Clause 7 Page No. 13</p>
30(2)(d)	the implementation and	YES

	supervision of the resolution plan;	Clause 8, Page No. 13-14
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	NO

- v. That the RA has provided the indicative timeline of events for implementation of the Resolution Plan at page 189 which is reproduced as under: -

S.No.	Activity	Estimated Time Line
1.	Submission of proposed Resolution Plan by the Resolution Applicant	20-10-2022
2.	Order of NCLT for Approval of Resolution Plan (NCLAT in case of Appeal)	Cut Off Date = X
3.	Handing over of possession of Assets to RA	Within X + 10 days
4.	Payment of CIRP Costs	Within X+ 90 days
5.	Payment to Operational Creditors	Within X+ 90 days
6.	Upfront Payment to Financial Creditors	Within X+ 90 days
7.	Balance Payment to Financial Creditors	As per Schedule

- vi. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in	YES  Clause 5.3 Page No. 10

	priority over financial creditors who voted in favour of the plan.]	
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]	YES Clause 5, Page No. 6
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]	NO Clause 9, Page No. 14
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	YES Clause 6 Page No. 13
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	YES Clause 6 Page No. 13
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	YES Clause 6 Page No. 13
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such	YES Clause 5.5 Page No. 12  The Corporate Debtor shall pursue the application for avoidance transactions after approval of resolution plan and proceeds from the same if any shall be

	proceedings shall be distributed:	received by the Corporate Debtor.
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	YES Clause 5, Page No. 6 Clause 8, Page No. 14 Clause 2, Page No. 2
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	YES Clause 5, Page No. 6 Clause 8, Page No. 14 Clause 2, Page No. 2
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	YES Clause 5, Page No. 6 Clause 8, Page No. 14 Clause 2, Page No. 2
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	YES Clause 5, Page No. 6 Clause 8, Page No. 14 Clause 2, Page No. 2
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	YES Clause 5, Page No. 6 Clause 8, Page No. 14 Clause 2, Page No. 2

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

### **Plan for revival**

viii. The Resolution Plan envisages the settlement of liabilities and other contingent and unclaimed liabilities in respect of the Corporate Debtor whether accrued or not as pertaining to any period prior to Cut-Off Date. Further, the Resolution Plan envisages the revival of operations through capex and infusion of working capital. The Resolution Plan envisages to address all the operational restructuring and envisages that the plant & machinery set up is shifted to a larger space which shall be taken on long lease. The shifting of unit to a larger space will enable to provide for proper process flow and provision of pollution control infrastructure and equipment's to ensure proper adherence to all environmental laws. The Resolution Plan envisages capital expenditure of Rs. 3 crores for shifting, reestablishment of the unit and provision of pollution

control infrastructure and equipment's. The resolution plan also provides for infusion/ build-up of working capital of Rs. 5-10 crore by fund infusion and credit purchase through trusted vendors who are willing to support the revival of RIPL.

- ix. With respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016.
- x. The applicant has prayed for number of waivers in the Resolution Plan as mentioned in Para 8, Page 14 of the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, we direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below: -

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

*"25. Duties of resolution professional –*

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

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

*(a).....*



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

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

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

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

*35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188*

*of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.*

6. Also the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

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

7. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.

8. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. In view of the above, ***I.A. 3402/ND/2023 stands allowed.***
9. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
10. However, the resolution plan shall not construe any 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).**
11. Accordingly, MoA and AoA of the corporate debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
12. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises,

properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.

13. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.

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

**Sd/-**  
**RAHUL BHATNAGAR**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**MAHENDRA KHANDELWAL**  
**MEMBER (JUDICIAL)**