

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

Item No. 113

IA/3725/ND/2023 in IB/692/ND/2021

IN THE MATTER OF:

Gls Films Industries Private Limited	...	Applicant
Versus		
Kay Pan Fragrance Private Limited	...	Respondent

Order under Section 9 of IBC, 2016.

Order delivered on 31.10.2023

CORAM:

**MR. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

ORDER

IA/3725/ND/2023 in IB/692/ND/2021 stands allowed.

Sd/-

**DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA-3725/2023

IN

Company Petition No. IB- 692(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:-

Mr. Shashi Bhushan Prasad
(Resolution Professional of
M/s. Kay Pan Fragnance Private Limited)

..... Applicant

AND IN THE MATTER OF:

M/s. GLS Films Industries Private Limited

... Operational Creditor

VERSUS

M/s. Kay Pan Fragrance Private Limited

... Corporate Debtor

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on:31.10.2023

I.A./3725/2023

IN

C.P.(IB)/692/2021

Date of Order:31.10.2023

ORDER

PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

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') on behalf of Mr. Shashi Bhushan Prasad, applicant herein and Resolution Professional (RP) of M/s. Kay Pan Fragrance Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by Mr. Sushil Kumar Tyagi and Mr. Nitin Kumar ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') in its 14th CoC Meeting with 100% voting in favor in terms of Section 30(4) of I&B Code, 2016.

2. Briefly stated, the facts as averred by the applicant in the application are as follows:

- a) The Corporate Insolvency Resolution Process against M/s. Kay Pan Fragrance Private Limited ('Corporate Debtor') had been initiated by this Hon'ble Adjudicating Authority vide its order dated 13.05.2022 in C.P.(IB) No.692/2021, an application under Section 9 of the Code, 2016 filed by M/s. GLS Films Industries Private Limited ('Operational Creditor') and the applicant Mr. Shashi Bhushan Prasad was appointed as the Interim Resolution Professional of the Corporate Debtor and later confirmed as the Resolution Professional of the Corporate Debtor.
- b) The Corporate Debtor is engaged in the business of manufacturing, marketing and sale of Pan Masala, Elaichi and other allied products.
- c) The Public Announcement in Form A dated 16.05.2022 was made in the newspaper 'Business Standard' wherein all the creditors were invited to submit their claim and the last date for submission of proof of claim was 27.05.2022. The Applicant had received claim from the one (1) Financial Creditor namely M/s. Tarini Enterprises Limited. The Applicant pursuant to the receipt of the claims from the creditors had constituted a Committee of Creditors.
- d) The details of the claims received from the Creditors of the Corporate Debtor are extracted below:-

Financial Creditors (Kay Pan Fragrance Private Limited)				
S. No.	Name of Financial Creditor(s)	Amount Claimed (In Rs.)	Amount Admitted (In Rs.)	Voting Share Percentage (%)
1.	M/s Tarini Enterprises Limited		3,03,10,685/-	100%
Total		3,03,10,685/-	3,03,10,685/-	100%
Operational Creditors (Other than Statutory Authority)				
S. No.	Name of Operational Creditor(s)	Amount Claimed (In Rs.)	Amount Admitted (In Rs.)	
1.	M/s GLS Films Industries Pvt. Ltd.	8,52,04,134/-	8,52,04,134/-	
2.	Other Creditors	36,31,20,520/-	362980670	
Operational Creditors - Statutory Authority				
1.	DCIT, Income Tax Department through Mr. Piyush Kumar Kothari	67,66,84,948/-	67,66,84,948/-	
2.	DC, State Tax, Ghaziabad	4,51,75,48,545/-	4,51,75,48,545/-	
3.	DC, CGST, Kamla Nehru Nagar, Ghaziabad	2,37,64,49,000/-	61,03,44,500/-	
Total		7,57,06,82,493/-	7,57,06,82,493/-	
SUM TOTAL		804,93,17,832/-	628,30,73,482/-	

- e) The Invitation for Expression of Interest in Form –G was published in Business Standard (English & Hindi Edition) on 27.07.2022, wherein the last date for receipt of the EoI was 11.08.2022 and last date of submission of Resolution Plan was 26.09.2022. The Applicant in the 4th CoC Meeting dated 19.09.2022 had apprised the CoC that pursuant to publication of Form-G, no expression of interest was received. The CoC in its 6th CoC meeting dated 07.11.2022 had resolved to re-publish the Form-G to invite more Resolution Applicants.
- f) The CIRP period of 180 days of the Corporate Debtor had ended on 08.11.2022. This Adjudicating Authority vide order dated 08.02.2023 in I.A. No. 2703/2022 an application filed under Section 12(2) of the Code, 2016 had granted the extension of 90 days in CIRP period of the Corporate Debtor. Further, this Adjudicating Authority vide order dated 16.02.2023 in I.A./1064/2023 had further granted 60 days extension from the 270 days CIRP Period of the Corporate Debtor with effect from 08.02.2023 till 08.04.2023
- g) The Expression of Interest in Form-G was republished on 01.03.2023 in 'Business Standard' (English & Hindi Edition), wherein the last date for receipt of EoI was 16.03.2023 consequent to which, Five Expression of Interest were received.
- h) The Applicant had filed an application bearing I.A. No. 1772/2023 under Section 12(3) of the Code, 2016 seeking extension in CIRP for further 60 days beyond 09.04.2023 and the same was allowed vide this Hon'ble Adjudicating Authority Order dated 10.04.2023. Further, an application bearing I.A. No. 3211/2023 was filed seeking extension of CIRP Period for further 30 days with effect from 08.06.2023 and the same was allowed vide this Adjudicating Authority order dated 12.06.2023.
- i) The CoC in its 12th CoC Meeting dated 05.05.2023 was informed that pursuant to the publication of Form-G dated 01.03.2023, only one Resolution Plan from Mr. Sushil Kumar Tyagi and Mr. Nitin Kumar was received and in the 13th CoC Meeting dated 03.06.2023 the shortcoming of the Resolution Plan was discussed. The modified Resolution Plan as submitted by Mr. Sushil Kumar Tyagi and Mr. Nitin

Kumar was placed before the CoC in its 14th CoC Meeting held on 07.06.2023 for discussions and voting. The Resolution Plan dated 03.06.2023 along with addendum dated 04.06.2023 as submitted by Mr. Sushil Kumar Tyagi and Mr. Nitin Kumar ('Successful Resolution Applicant') was approved by the CoC in its 14th CoC Meeting held on 07.06.2023 with 100% voting in favor.

j) The Applicant had issued a Letter of Intent dated 07.06.2023 to the Successful Resolution Applicant and the Successful Resolution Applicant had conveyed his unconditional acceptance on 07.06.2023 and further furnished the Performance Bank Guarantee to the tune of Rs.1,00,00,000/- in addition of Rs.1,00,000/- received as EMD in the form of Demand Draft dated 14.06.2023 bearing DD No. 031651.

3. We have heard the submissions made by the Ld. Counsel for the Applicant and have meticulously gone through the documents produced on record. The copy of the Resolution Plan dated 03.06.2023 along with addendum dated 04.06.2023 submitted by the Successful Resolution Applicant and approved by the CoC is annexed as Annexure A-24 to the present application. The salient features of the Resolution Plan dated 03.06.2023 along with addendum dated 04.06.2023 as submitted by Mr. Sushil Kumar Tyagi and Mr. Nitin Kumar ('Successful Resolution Applicant') was approved by the CoC in its 14th CoC Meeting held on 07.06.2023 with 100% voting in favor are reproduced herein below:

I. BACKGROUND OF THE RESOLUTION APPLICANT:

The Successful Resolution Applicant are Mr. Sushil Kumar Tyagi ('Applicant') and Mr. Nitin Kumar ('Co-Applicant'). Mr. Sushil Kumar Tyagi is the director of M/s. Grid Floors Private Limited which specializes in supply and installation of wooden floors. Mr. Nitin Kumar is an experienced manufacturing consultant who has worked mainly in the food products sector having vast knowledge in the areas of SCM, Manufacturing, Quality, Assurance, Warehousing and Distribution.

II. PAYMENT OF CIRP COST

The RA proposed to pay the CIRP cost in actuals in full and in priority to claim of other creditors. The estimated CIRP costs as on 29th April 2023 is Rs.59,12,062/-, out of which an amount of Rs.39,20,065/- (Rupees Thirty-Nine Lakhs Twenty Thousand Sixty-Five Only) has been paid out from the internal accruals of the Corporate Debtor and the remaining CIRP costs of Rs.19,91,997/- plus other CIRP

costs to be incurred till the approval / rejection of the resolution plan, which shall be incurred by Resolution Professional shall be paid by the Resolution Applicant.

III. SETTLEMENT PROPOSAL TO CREDITORS

a) Payment to Financial Creditors –

The total claims filed by the Financial Creditors i.e., M/s Tarini Enterprises Limited in respect of the Corporate Debtor is to the tune of Rs.3,03,10,685/- (Rupees Three Crores Three Lakhs Ten Thousand Six Hundred Eighty-Five Only) which has been admitted in full by the Applicant/ Resolution Professional. The Resolution Applicant proposes a sum of Rs.3,03,10,685/- (Rupees Three Crores Three Lakhs Ten Thousand Six Hundred Eighty-Five Only) to the Financial Creditors as full and final settlement within a period of 90 days from the Resolution Plan approval date by the Hon'ble Adjudicating Authority.

b) Operational Creditors (Workmen / Employees) –

As no claim was received from the Operational Creditors (Employees/Workmen) as per the Information Memorandum and List of Creditors of the Corporate Debtor therefore, the amount proposed by the Resolution Applicant is NIL. However, upon acquisition of control of the Corporate Debtor by the Resolution Applicant, the Resolution Applicant proposes that the existing employee of the Corporate Debtor, if any, will continue to be employed by the Corporate Debtor if so required by the Resolution Applicant

c) Operational Creditors (Statutory Authorities) –

The total claims filed by the Operational Creditors (Statutory Authorities) in respect of the Corporate Debtor are provisionally admitted by the Applicant to the tune of Rs. 580,45,77,993/- (Rupees Five Hundred Eighty Crores Forty-Five Lakhs Seventy-Seven Thousand Nine Hundred and Ninety-Three Only). The Resolution Applicant proposes to pay an amount of Rs. 30,00,000/- (Rupees Thirty Lakhs Only) to the statutory authorities against the admitted claims which shall be distributed amongst them on pro rata basis within a period of 90 days from the effective date. The Resolution

Applicant shall give priority in respect of payment to the Operational Creditor as per Regulation 38 (1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Section 30(2) of the Code.

d) Operational Creditor -

The total verified claim of the Operational Creditors (Other than Statutory Authorities) amounting to Rs. 44,81,84,804/ (Rupees Forty-Four Crores Eighty-One Lakhs Eighty-Four Thousand Eight Hundred and Four Only). The Resolution Applicant proposes to pay Operational Creditors (other than Statutory Authorities) full and final amount of Rs. 30,00,000/- (Rs. Thirty Lakhs) which shall be paid on pro rata basis within a period of 90 days from effective date.

IV. TREATMENT OF RECOVERY FROM “PUFE” APPLICATION

The Resolution Applicant has not added any clause in its Resolution Plan with respect to Sections 43, 45, 49, 50, 66 filed with the Hon'ble Adjudicating Authority, since, there are no applications filed before this Hon'ble Adjudicating Authority till the filing of the instant application.

V. ACQUISITION STRUCTURE

The Resolution Applicant proposes that on becoming Successful Resolution Applicant the Implementation of Resolution Plan shall be made through a Special Purpose Vehicle (SPV) which shall be a body corporate under the control and management of Resolution Applicant herein.

Further, after approval of Resolution Plan by Hon'ble National Company Law Tribunal (NCLT) i.e. on effective date the outstanding admitted debt (Financial Creditor, Operational Creditors) in the books of Corporate Debtor shall be assigned to SPV through an assignment agreement or such other instrument evidencing the transfer of debt to SPV. It may be further noted that only debts which are being paid under the Resolution Plan shall be transferred to the SPV.

Thereafter, all the debts assigned from Corporate Debtor to SPV shall be paid as proposed under the Resolution Plan i.e. within a period of 90 (Ninety) Days from the effective date.

Apart from the above, the balance amount as per the Resolution Plan (other than the amount payable to Operational Creditors and Financial Creditor) shall be paid by the SPV to the Corporate Debtor. Out of this, Rs, 50,00,000 (Fifty Lakhs) shall be inducted as Share Capital and the balance amount shall be in the form of unsecured loan.

After approval of Plan by COC and at the time of filing application under Section 30 (6) of IBC, Code, 2016 by the Resolution Professional before the Hon'ble National Company Law Tribunal a specific prayer shall be made to the NCLT for seeking amalgamation of SPV into Corporate Debtor in accordance with the provisions of Companies Act, 2013.

The Scheme of Arrangement for Amalgamation between the SPV and Corporate Debtor is attached herewith and marked as Annexure-5 to the Resolution Plan..

VI. TIMELINE FOR THE IMPLEMENTATION OF THE RESOLUTION PLAN

ACTIVITY	INDICATIVE TIMELINE
Effective Date/Date of Approval of the Plan by the Hon'ble NCLT	X
Appointment of Monitoring Agency#	X + 2
Payment of CIRP Cost, Upfront full and final payment to Financial Creditors (Banking Institutions), Upfront Full and Final to Operational Creditors (Statutory Authorities), Upfront payment to Operational Creditors (Other than Statutory Authorities)	X + 90
Implementation Date (Date of execution of definitive documents, Security Documentation/Charge Modification)	X + 91

All the decisions after the appointment of monitoring committee and till the issue of completion certificate shall be approved by the Monitoring Agency and prior consent of Monitoring Agency shall be sought.

It may be further noted that any subsequent refund/recoveries received by the Corporate Debtor on account of amounts outstanding under Short Term Loan and Advances as appearing in the balance sheet on implementation date shall be distributed to Operational Creditors (other than Statutory Dues) in the proportionate ratio appearing in the admitted claims.

Nitin Kumar

4. This Adjudicating Authority vide its order dated 16.10.2023 had sought the following clarifications from the Applicant:-

- a. Is the SPV already incorporated?
- b. If not, how the Adjudicating Authority can approve amalgamation of a non-existent entity?
- c. Is there a specific prayer made for approval of merger?
- d. Approval of CD's shareholders is deemed. But CoC only has the FC as member. Can FC's vote bind all other creditors of the CD?
- e. Whether consents of SPV's shareholders are placed on record?

5. The Successful Resolution Applicant in compliance of this Adjudicating Authority's order dated 16.10.2023, had submitted the affidavit dated 21.10.2023, wherein following clarifications are provided:-

S. NO.	QUERY RAISED BY THE BENCH	CLARIFICATION
1.	<i>Is the SPV already incorporated?</i>	<p>Yes, the SPV is already incorporated and the same has been mentioned in the clause 3 (Acquisition Structure) of Part 1 (Page No. 205) that the Resolution Applicant proposes that on becoming successful Resolution Applicant, the implementation of Resolution Plan shall be made through a SPV which shall be a body corporate under the control and management of Resolution Applicant therein.</p> <p>Accordingly, the SPV referred to in the plan is an incorporated entity with the name of "SKTN Enterprises Private Limited" having its Registered office at Khasra No. 346/58, IGNOU Road, Saidulajaib, Gadaipur, New Delhi – 110030</p> <p>Details of Directors & Shareholders of the SPV are given below for ready reference;</p> <p><u>Name of Directors</u></p> <ol style="list-style-type: none"> 1 Sushil Kumar Tyagi 2 Nitin Kumar <p><u>Details of Shareholders and No. of Shares</u></p> <ol style="list-style-type: none"> 1 Sushil Kumar Tyagi 9500 shares @ Rs. 10/- 2 Nitin Kumar 500 shares @ Rs. 10/- <p>Total 10000 shares @ Rs. 10/-</p> <p>Accordingly, both Directors of SPV are having 100% shareholding and are also Resolution Applicant of resolution plan under consideration for approval under Section 30(6) of IBC, 2016.</p>

2.	<i>If not, how the Adjudicating Authority can approve amalgamation of a non-existent entity?</i>	The SPV is an incorporated entity as mentioned above.
3.	<i>Is there a specific prayer made for approval of merger?</i>	Merger has been proposed to be done as per the provisions of Section 230 – 232 of Companies Act, 2013 post approval of Resolution Plan (Page No. – 272 - 278)
4.	<i>Approval of CD's shareholders is deemed. But CoC only has the FC as member. Can FC's vote bind all other creditors of the CD?</i>	Once Resolution Plan is approved by this Hon'ble Tribunal, creditors of the CD will be paid in accordance with the approved Resolution Plan within the given time and accordingly, the liability towards the creditors of the CD will be NIL, hence, approval of creditors of CD will no longer be required.
5.	<i>Whether consents of SPV's shareholders are placed on record?</i>	Since the Resolution Applicant/s themselves therein are the shareholders of SPV's, their consent is deemed.
6.	<i>Whether the steps for amalgamation are clearly delineated?</i>	Steps as provided under the provisions of Section 230 to 232 of the Companies Act, 2013 read along with rules made thereunder will be undertaken and accordingly, a petition under the aforesaid provisions of the Companies Act, 2013 will be filed separately before the Hon'ble NCLT, New Delhi for the approval of Merger / Amalgamation.

6. The Applicant had further submitted the stepwise details for Amalgamation of SKTN (SPV) with the Corporate Debtor in the event the Resolution Plan is approved. The same is reproduced hereunder:-

- a) Step 1-Approval of the Resolution Plan by this Hon'ble Tribunal.
- b) Step 2-Creditors of the CD will be paid in accordance with the approved Resolution Plan within the given time and accordingly, the liability towards the creditors of the CD will be NIL.

[Note-Pursuant to the approval of the Resolution Plan by this Hon'ble Tribunal and payment to creditors thereafter, the existing share capital of the corporate debtor shall be cancelled and new shares shall be allotted to the SPV. Hence, Corporate Debtor shall become 100% subsidiary of SKTN (SPV)]

- c) Step 3-Approval of the Scheme of Amalgamation by the board of directors of both Companies (CD & SPV).
 - d) Step 4-Filing of Application u/s 230-232 of the Companies Act, 2013 before Hon'ble NCLT for seeking directions for dispensation/ calling of meetings of Shareholders and Creditors (Where meetings are dispensed with (affidavits stating no objection to Scheme have been received from Shareholders and Creditors), a second motion application shall be filed after the pronouncement of order by Hon'ble NCLT/Where meetings are directed to be convened, same shall be held in accordance with the order of Hon'ble NCLT and thereafter second motion application shall be filed)
 - e) Step 5-Filing of Second Motion Application before Hon'ble NCLT for approval of Scheme.
 - f) Step 6- Issuance of notice to Regulatory Authorities under Section 230 (5) of the Companies Act, 2013.
 - g) Step 7 – Publication of Newspaper Publication for calling objections
 - h) Step 8 – Filing of Affidavit of Compliance.
7. This Adjudicating Authority had meticulously gone through the clarification affidavit dated 21.10.2023 filed by the Applicant in compliance of this Adjudicating Authority's order dated 16.10.2023. Upon comparison of the settled position of law, with the facts and circumstances of the present case, this Adjudicating Authority is satisfied with the clarifications given by the Applicant. Henceforth, this Adjudicating Authority is proceeding further for considering the fulfilment of mandatory requirements as per the Code by the proposed Resolution Plan.
8. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code.

Section 30 (2) is quoted below: -

“(2) The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –

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

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

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

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

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

(i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;

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

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

(c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;

(d) The implementation and supervision of the Resolution Plan;

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

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

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

9. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in Pt.4 & Pt. 5, Part -III at pg no. 30 of the Resolution Plan provides that IRP cost in actuals in full and in priority to claim of any other creditors.

10. In respect of compliance of Section 30(2)(b) of the Code, it is seen that there is a provision in Pt.7 & Pt. 8, Part -III at pg no. 30-32, of the Resolution Plan. The Corporate Debtor had not received any claims from the workmen and Employees. The tabular representation of the payment to Operational Creditor (Statutory Dues) and Operational Creditor (other than Statutory Dues) is represented below:-

Five)		
ii. Operational Creditors (Statutory Dues)		
S. No.	Payment Schedule	Amount (INR)
1.	Upfront Payment as priority to Operational Creditor as per Regulation 38 (1) IBBI (Insolvency Resolution Process for Corporate Persons), 2016 read with Section 30 (2) of the IBC, 2016, subject to NCLT approval and other terms	Rs. 30,00,000.00 (INR Thirty Lakhs Only)

iii. Operational Creditors (Other than Statutory Dues)		
S. No.	Payment Schedule	Amount (INR)
1.	Upfront Payment as priority to Operational Creditor as per Regulation 38 (1) IBBI (Insolvency Resolution Process for Corporate Persons), 2016 read with Section 30 (2) of the IBC, 2016, Subject to NCLT approval and other terms	Rs. 30,00,000.00 (INR Thirty Lakhs Only)

11. In respect of compliance of Section 30(2)(c), it is seen that the said provision shall not be applicable, since there is only one Financial Creditor in the Corporate Debtor and is a part of the CoC of the Corporate Debtor, who had approved the Resolution Plan with 100% voting in favor.

12. In respect of compliance of Section 30(2)(d) and 30(2)(e) of the Code, it is seen that the manner of the management of the affairs and control of the business of the Corporate Debtor has been provided in detail in Pt 4 (Management of the Corporate Debtor) of Part II at pg no. 27 -28 of the Resolution Plan. Further Pt. 4(I)(ii) provides that a Monitoring Committee shall constitute of the (i) Resolution Professional who shall be Monitoring Agent, (ii) 1 representative of the Resolution Applicant and (ii)1 representative of Operational Creditor and (iv) one representative of Financial Creditor. The term of the Monitoring Committee shall be for a period of 03 months or payment of dues envisaged under the Resolution Plan.

13. In respect of compliance of Section 30(2)(f) of the Code, it is seen that the information provided in the Resolution Plan and the supporting documents provided by the

Successful Resolution Applicant, it seems that the Resolution Plan is in compliance with the applicable laws.

14. In respect of compliance regarding Regulation 38 (1A) of the CIRP Regulations, it is seen that pt 6,7,8 & 9 of Part III of the Resolution Plan provides how it will deal with the interest of all the stakeholders including secured and unsecured financial creditors, operational creditors of the corporate debtor, statutory dues and interests of the employees and workmen, as per the requirement of Regulation 38(1A) of the CIRP Regulations.
15. In 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. The copy of Form-H (Compliance Certificate) is annexed as Annexure A-26 to the present application.
16. On perusal of Form-H annexed as Annexure-26 at page no.291-298 of the present application, we observe that the Average Fair Market Value of the Corporate Debtor as provided in Form- H is Rs. 5.22 crore and Average Liquidation Value is Rs.3.65 crore.
17. We further observe that no Application under Section 43,45,50 and 66 of the IBC, 2016 is pending before this Adjudicating Authority for adjudication.
18. Further, on a perusal of the proposed Resolution Plan, we observe that Annexure -A5 (pg. no. 67-87) of the Resolution Plan, provides for amalgamation of M/s. SKTN Enterprises Private Limited ('Special Purpose Vehicle') with M/s. Kay Pam Fragrance Privet Limited ('Corporate Debtor'). The Appointed Date define in clause 1.4 of the said scheme provides, that 'Appointed Date' means a date after 90 (Ninety) days from Implementation Date

of Resolution Plan, with effect from which this scheme shall come into effect or such other date(s) as may be fixed or approved by the Central Government or Tribunal or any other competent authority.” Further Clause 1.6 defines Effective Dates, which provides that, ‘Effective Date’ means the Appointed Date’.

19. This Adjudicating Authority is of the considered view that the present order of Approval of Resolution Plan cannot be a blanket approval for the proposed amalgamation of M/s. SKTN Enterprises Private Limited (‘Special Purpose Vehicle’) with M/s. Kay Pam Fragrance Privet Limited (‘Corporate Debtor’). The proposed amalgamation will be given effect only after following the proper procedure as laid down in Section 230-232 of the Companies Act, 2013 and the rules made thereunder. Accordingly, the Successful Resolution Applicant is directed to obtain the necessary approval as prescribed under Section 230-233 of the Companies Act, 2013 or other applicable provision within a period of one year from the date of approval of the resolution plan or such period as provided under law, to give effect to the present scheme of Amalgamation.

20. As to the relief and concessions sought in the Resolution Plan more specifically set out in Clause 7 (Relief), 8 (Tax Liabilities), 9 (inquiries, Investigations) and 10 (No legal action by creditors) of the Resolution Plan, 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**, this Adjudicating Authority 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.”

21. In so far as the approval of the resolution plan is concerned, this authority is not sitting on an appeal against the decision of the Committee of Creditors and 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.

22. 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.”

23. 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. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan dated 24.02.2023.

24. Accordingly, subject to the aforesaid observations, we hereby **approve the Resolution Plan Resolution Plan dated 03.06.2023 along with addendum dated 04.06.2023 ('Approved Resolution Plan')** submitted by **Mr. Sushil Kumar Tyagi and Mr. Nitin Kumar (Successful Resolution Applicant)**, 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. Resultantly, **I.A.3725/ND/2023 stand allowed.**

25. We reiterate that the Successful Resolution Applicant is directed to obtain the **necessary approval as prescribed under Section 230-233 of the Companies Act, 2013 or other applicable provision within a period of one year from the date of approval of the resolution plan or such period as provided under law, to give effect to the present scheme of Amalgamation** of M/s. SKTN Enterprises Private Limited ('Special Purpose Vehicle') with M/s. Kay Pam Fragrance Privet Limited ('Corporate Debtor') as annexed as ANNEXURE-A5 to the approved Resolution Plan.
26. 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.
27. We further reiterate that the Approved 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 Approved 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).**
28. 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 Approved Resolution Plan as mentioned above, it is clarified that the Successful 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.

29. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the Corporate Debtor and the Approved 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.
30. 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, subject to our observations regarding concessions, reliefs and waivers sought therein.
31. The Supervisory Committee/Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.
32. In view of the above, the **I.A./3725/ND/2023 stands allowed in terms of aforesaid discussion.**

Let the copy of the order be served to the parties

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**