

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-III, NEW DELHI  
IA-2971/2022**

**in  
(IB)-2058(ND)/2019**

**IN THE MATTER OF:**

**PUNJAB NATIONAL BANK**

**..... Financial Creditor**

**VERSUS**

**M/S. AMZEN MACHINES (P) LTD.**

**..... Corporate Debtor**

**IN THE MATTER OF IA-2971/2022**

*Under Section 30(6) r/w Section 31 r/w Section 60(5) of IBC, 2016 r/w Regulation 39(4) of IBBI (CIRP Regulations), 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016*

**MR. ANURAG GOEL**

Resolution Professional of M/s. Amzen Machines (P) Ltd.

**..... Applicant/Resolution Professional**

**VERSUS**

**RKG ASSETS MANAGEMENT LLP**

**INVESTMENT MANAGER**

**RKG FUND-I, A SCHEME OF RKG TRUST,**

**CATEGORY II ALTERNATIVE INVESTMENT FUND**

**..... Respondent/Successful Resolution Applicant**

**Pronounced On: 17.04.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PUNJAB NATIONAL BANK vs. M/S. AMZEN MACHINES (P) LTD.**

**IA-2971/2022 IN (IB) – 2058(ND)/2019**

**Date of Order : 17.04.2023**

**PRESENT:**

For the Applicant : Mr. P. Nagesh, Sr. Advocate along with Mr. Rishi Singhal, Mr. Akshay Sharma, Advocates and Mr. Anurag Goel for RP  
For the Respondent :

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**1. Description of the Parties**

- 1.1. The present application has been filed by MR. ANURAG GOEL Resolution Professional ("RP") of M/s. AMZEN MACHINES (P) LTD. ("Corporate Debtor") on 14.06.2022 under the provisions of Sections 30(6) read with Section 31 read with Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("the Code" or "IBC") read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") and Rule 11 of the National Company Law Tribunal Rules, 2016, for approval of the Resolution Plan in respect of M/s. AMZEN MACHINES (P) LTD. ("Corporate Debtor") submitted by Respondent/Successful Resolution Applicant ("SRA").
- 1.2. The Corporate Debtor ("CD") was incorporated on 10.11.2010, as a Company Limited by Shares (Non- govt. Company) having CIN: U74120DL2010PTC210299, under the Companies Act, 1956. The Authorised Share Capital of the CD is Rs. 5,45,00,000/- (Rupees Five Crores Forty Five Lakhs Only) and the Paid-up Share Capital of the CD is Rs. 5,44,41,568/- (Rupees Five Crores Forty Four Lakhs Forty One Thousands Five Hundred Sixty Eight Only). The Registered Office Address of the CD is DSC 245, first floor, the south court, DLF Saket, Saket, New Delhi, Delhi-110017. On the date of Application, the CD is engaged in the business of manufacturing High Pressure Die Casting Aluminum Components for Automotive applications and Machining of Forged/Casting components in its manufacturing facilities located at Haryana, Chennai, and Pune.

1.3. The Successful Resolution Applicant (“SRA”) namely RKG ASSET MANAGEMENT LLP, RKG Fund-I, A scheme of RKG Trust, category II Alternative Investment Fund (AIF), managed by RKG ASSET MANAGEMENT LLP is a Limited Liability Partnership under Limited Liability Partnership Act, 2008 with LLP Identification No. AAQ-2273. The SRA was established vide Indenture of Trust dated 05.11.2019 with Shri Aneesh Goel as the settler of the Trust. The Registered Office Address of SRA is A-1/25, Paschim Vihar, New Delhi-110063. RKG Fund I, a scheme of RKG Trust, a category II AIF registered with the Securities and Exchange Board of India managed by RKG Asset Management LLP. RKG Trust obtained its Certificate of Registration from the Securities and Exchange Board of India on May 21, 2020 as a Category-II AIF. On the date of application, the SRA is carrying on the activity of a Category II AIF, managing and disposing of investments with a view of achieving long-term capital appreciation by investing in permissible securities/instruments in accordance with the investment objectives of the Scheme. The Fund has been involved in raising funds and has invested them in diverse portfolio ties as per well-defined investment strategies for the benefit of the investors.

1.4. **Brief Background of the Case**

This Adjudicating Authority *vide* order dated 11.03.2021 was pleased to admit the Company Petition (IB)-2058(ND)/2019 filed by Punjab National Bank (“Financial Creditor/FC”), for initiating the Corporate Insolvency Resolution Process (“CIRP”) under Section 7 of the Code against the Corporate Debtor and declared the moratorium and appointed the Applicant Mr. Anurag Goel as an Interim Resolution Professional (“IRP”). A copy of the admission order dated 11.03.2021 is filed along with the application.

**2. Collation of claims by RP**

2.1. In terms of Regulation 6(1) of the CIRP Regulations, the Applicant made public announcements under **Form-A** dated 17.03.2021 and published in the following newspapers:

<b>Newspaper</b>	<b>Date</b>	<b>Language</b>	<b>Edition</b>
Financial Express	18.03.2021	English	All India
Jansatta	18.03.2021	Hindi	Delhi-NCR
The Hindu	18.03.2021	Tamil	Tamil Nadu
Navshakti	18.03.2021	Marathi	Maharashtra

Copy of the public notice was duly uploaded on the website of the Insolvency and Bankruptcy Board of India (“IBBI”). Copy of the public announcements under **Form-A** dated 17.03.2021 are filed along with the application.

- 2.2. In terms of Section 18(b) and 18(c) of the Code and Regulations 13 to 16 of CIRP Regulation, IRP has received, verified, determined and prepared the List of Creditors. In terms of Section 18(c) and 21 of the Code and Regulation 17 of CIRP Regulation, IRP had constituted a Committee of Creditors ("CoC") and submitted it along with the list of creditors to this Adjudicating Authority on 07.07.2021.
- 2.3. The 1<sup>st</sup> meeting of the CoC was convened on 15.07.2021, wherein the Applicant in terms of Regulation 13(2)(e) of the CIRP Regulations informed the members of the CoC regarding the list of creditors. Further, upon discussions and deliberations, the CoC members confirmed the Applicant as the Resolution Professional (“RP”) with 100% voting share. A copy of the minutes of 1<sup>st</sup> meeting of the CoC dated 15.07.2021 is filed along with the application.
- 2.4. Summary of total claims received by the Applicant is as follows:

<b>S.No.</b>	<b>Category of Creditor</b>	<b>Claim Amount</b>	<b>Claim Amount Admitted</b>	<b>Claim Amount not Admitted</b>
<b>1.</b>	Secured Financial Creditors	4,99,25,12,161	4,99,25,12,161	-

<b>2.</b>	Un-Secured Financial Creditors	-	-	-
<b>3.</b>	Operational Creditors (Workmen and Employees)	3,51,86,858	88,22,149	2,63,64,709
<b>4.</b>	Operational Creditors (Government Dues)	77,14,197	77,14,197	-
<b>5.</b>	Operational Creditors (other than Workmen and Employees and Government Dues)	28,77,27,145	22,12,48,539	6,64,78,606
<b>Total</b>		<b>5,32,31,40,361</b>	<b>5,23,02,97,046</b>	<b>9,28,43,315</b>

2.5. The RP submits that a total of 14 CoC meetings have been held during the CIRP period as follows:

<b>S. No.</b>	<b>Sequence of Meeting of CoC</b>	<b>Date of Meeting</b>	<b>CoC Members Present</b>
<b>1.</b>	First Meeting of CoC	15.07.2021	Yes
<b>2.</b>	Second Meeting of CoC	04.09.2021	Yes
<b>3.</b>	Third Meeting of CoC	07.10.2021	Yes
<b>4.</b>	Fourth Meeting of CoC	27.10.2021	Yes
<b>5.</b>	Fifth Meeting of CoC	04.12.2021	Yes
<b>6.</b>	Sixth Meeting of CoC	17.12.2021	Yes
<b>7.</b>	Seventh Meeting of CoC	29.01.2022	Yes
<b>8.</b>	Eighth Meeting of CoC	02.03.2022	Yes
<b>9.</b>	Ninth Meeting of CoC	23.03.2022	Yes
<b>10.</b>	Tenth Meeting of CoC	16.04.2022	Yes
<b>11.</b>	Eleventh Meeting of CoC	30.04.2022	Yes
<b>12.</b>	Twelfth Meeting of CoC	09.05.2022	Yes
<b>13.</b>	Thirteenth Meeting of CoC	12.05.2022	Yes
<b>14.</b>	Fourteenth Meeting of CoC	03.06.2022	Yes

### 3. Valuation of the Corporate Debtor

In terms of Regulation 27 of CIRP Regulations, the RP has appointed two registered valuers, registered with IBBI for the purpose of determining the Liquidation value and Fair value of the assets of the Corporate Debtor, namely:

1. Resolute Valuers & Consultants Private Limited (IBBI/RV-E/01/2019/111)
2. Crest Valuation Services Private Limited (IBBI/RV-E/05/2020/127)

The Summary of the valuation report are as follows:

<b>S.No.</b>	<b>Assets</b>	<b>Average Fair Value (in Cr.)</b>	<b>Average Liquidation Value (in Cr.)</b>
<b>1.</b>	Land and Building	39.51	31.61
<b>2.</b>	Plant and Machinery	75.71	52.05
<b>3.</b>	Financial Assets	24.13	9.46
	<b>Total</b>	<b>139.35</b>	<b>93.12</b>

The Fair value of the Corporate Debtor is Rs. 139,35,00,000/- (Rupees One Hundred Thirty Nine Crore Thirty Five Lakh only) and the Liquidation value of the Corporate Debtor is Rs. 93,12,00,000/- (Rupees Ninty Three Crore Twelve Lakh only) as per Form-H filed with the application. The Summary of the valuation report along with the complete valuation report is filed along with the application.

### 4. Evaluation and voting


- 4.1. The 2<sup>nd</sup> meeting of the CoC was convened on 04.09.2021, wherein the RP apprised the members of the CoC and put forth the agenda for the invitation of Expression of Interest ("EoI") in the prescribed **Form-G**. The CoC members approved the agenda for publishing **Form-G** for the invitation of EoI.
- 4.2. The Applicant in terms of Section 25(g) & (h) of the Code and Regulation

36A of the CIRP Regulations invited EoI and did the marketing for submission of Resolution Plans for the CD. The EoI was invited under the prescribed **Form-G** and published in the following newspapers:

<b>Newspaper</b>	<b>Date</b>	<b>Language</b>	<b>Edition</b>
Business Standard	07.09.2021	English	All India
Navbharat Times	07.09.2021	Hindi	Delhi-NCR
The Hindu	07.09.2021	Tamil	Tamil Nadu
Navshakti	07.09.2021	Marathi	Maharashtra

A copy of the **Form-G** (public announcement) was duly uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI). A copy of **Form-G** dated 07.09.2021 is filed along with the application.

- 4.3. The 3<sup>rd</sup> meeting of the CoC was convened on 07.10.2021, wherein the Applicant apprised the CoC members that five EoIs were received whereas one EoI was found not eligible. The CoC agreed with the view of RP that there was the possibility of receiving some better Prospective Resolution Applicants (“PRA”) and they took a decision to extend the date of Form-G. Therefore, CoC resolved to extend the period of EoI till 21.10.2021. A copy of the minutes of 3<sup>rd</sup> meeting of the CoC is filed along with the application.
- 4.4. It is submitted that, pursuant to the above RP has published the addendum to **Form-G** on 08.10.2021 in Business Standard (English) - All India Edition, Navbharat Times (Hindi) - Delhi NCR Edition, The Hindu (TAMIL) -All Tamil Nadu Edition, Navashakti (Marathi)-All Maharashtra Edition for EoI for submission of Resolution Plans for the Corporate Debtor with the last date of submissions of EoI as 21.10.2021. A copy of the addendum of **Form-G** dated 08.10.2021 is filed along with the application.
- 4.5. The 4<sup>th</sup> meeting of the CoC was convened on 27.10.2021 wherein, the Applicant apprised that no new EoIs were received. The members of the CoC also discussed and finalised the criteria to be included in the Request for Resolution Plan (“RFRP”). Further, RP prepared Provisional List of 4 PRAs which included:-

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- a. Eclear Leasing & Finance Pvt. Ltd
  - b. RKG Fund-I, A scheme of RKG Trust, Category II AIF ("RKG FUND") managed by RKG Assets Management LLP-Investment Manager
  - c. KL Steels Private Limited
  - d. Suruchi Foods Private Limited

4.6. It is submitted that in terms of Section 29, 36, 36A & 36B(1) of the Code, the RP has served Information Memorandum ("IM") to PRAs after obtaining a confidential undertaking from CoC. The IM was uploaded on the virtual data room ("VDR"), set up by the RP. The VDR, inter alia also contained the relevant documents, data and information in relation to the Corporate Debtor and the CIRP. Access to the VDR was granted to the aforesaid 4 PRAs for conducting their respective due diligence, where IM has been updated from time to time.

4.7. The 5<sup>th</sup> meeting of the CoC was convened on 04.12.2021, wherein, the RP informed the CoC that out of 4 PRAs only two had submitted the resolution plan in the sealed envelope along with EMD through RTGS and names of which are as follows:-

1. Eclear Leasing & Finance Pvt Ltd.
2. RKG Fund-I, A scheme of RKG Trust, Category II AIF ("RKG FUND") managed by RKG Assets Management LLP-Investment Manager.

4.8. The CoC resolved to extend the CIRP period by 90 days, pursuant to the resolution passed by the CoC with 100% voting, the RP filed an application bearing IA-1342/2022 for extension of the CIRP period in addition to 90 days over 180 days as per the provisions of the Code. This Tribunal *vide* order dated 28.03.2022 has granted extension of the CIRP period. Copy of the order dated 28.03.2022 is filed along with the application.

4.9. The 6<sup>th</sup> meeting of CoC was convened on 17.12.2021, wherein the RP informed CoC about discrepancies under plans. Further, the members were of the view that the plans cannot be considered in their present form and need negotiations and modifications which require time. The

7<sup>th</sup> meeting of the CoC was convened on 29.01.2022 and CoC informed RP that Resolution Plans require more negotiations as the term sheet were not satisfactory. The 8<sup>th</sup> meeting of the CoC was convened on 02.03.2022, wherein the RP invited PRAs for negotiation. The CoC requested both the PRAs that plans need more improvement and are not acceptable in their present form.

4.10. The CoC further resolved to extend the CIRP period by 60 days. Pursuant to the resolution passed by CoC with 100% voting, the RP filed an application bearing IA-1343/2022 for further extension of 60 days over 270 days in the CIRP period. This Adjudicating Authority was pleased to allow extension of the CIRP period *vide* its order dated 28.03.2022. Copy of the order dated 28.03.2022 is filed along with the application.

4.11. The 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> meeting of CoC was convened on 23.03.2022, 16.04.2022 and 30.04.2022 respectively wherein the members of the CoC found that Plans of PRAs were not satisfactory and they made several deliberations on various aspects of the plan in detail. Therefore, several rounds of negotiation took place between CoC & RAs. The final chance was given to RAs and resulting final plan was submitted on 03.05.2022 by the RAs. It is further submitted that RP obtained another undertaking and affidavits from RAs stating that the Resolution Applicant is eligible under Section 29A at time of submission of modified plan. A copy of undertaking and affidavits of the Resolution Applicant under Section 29A of the Code and Regulation 39(1) of CIRP Regulations are filed along with the application.

4.12. In the 12<sup>th</sup> meeting held on 09.05.2022, the members of the CoC discussed the Resolution Plans in detail and evaluated and made their deliberation on the submitted plan, that the plan of Eclear Leasing and Finance Pvt Limited is not satisfactory as proposed amounts is not as per benchmarks and much less amount is proposed to stakeholders & therefore Plan is not acceptable at all and should be rejected instantly. The Chairman, informed that as per the requirement of regulation 39 of IBBI (CIRP), it is the duty of RP to put both the plans on voting. The

CoC members informed Chairman that they can forward only RKG plan to their higher authority for consideration as the plan of Eclear Leasing and Finance Pvt Limited is not acceptable at any manner. Therefore, there will be no requirement of tie-breaker formulae as well as an evaluation matrix. However, in compliance to Regulation 39, the RP Informed CoC that he will put both plans on voting. It is further submitted that both the plans have duly complied in terms of Section 30(2) and Regulations 37, 38 & 39 of CIRP Regulations. Further CoC and RP discussed the Resolution Plan in terms of Sections 39B, 39C & 39D in respect of liquidation cost, liquid assets, sale of assets as going concern, the fee of the liquidator, the appointment of the liquidator etc.

- 4.13. The CoC informed the Chairman that they need at least 15 days period to take the approval of their higher authority for rejection or approval of the Resolution plan and requested to keep voting around 21.05.2022. The Chairman expressed his difficulty as the CIRP closure timeline was 20.05.2022.
- 4.14. The 13<sup>th</sup> meeting of the CoC was convened on 12.05.2022 wherein, CoC Members informed to RP that they are only taking forward the plan submitted by the M/s RKG Asset Management LLP to their higher authority for consideration as the plan submitted by M/s E-clear Leasing and Finance Pvt Ltd is not acceptable in any manner. The CoC made their deliberation that the final plan is feasible and viable and should be put on e-voting after 15-20 days' time, keeping in mind the time required from obtaining approval from their respective higher authority, being public sector banks.
- 4.15. The RP filed an application bearing IA-2343/2022 to this Adjudicating Authority to allow a period of 30 days, keeping 15 days for voting on the plan and 15 days for necessary compliance and filing application. This Adjudicating Authority, *vide* order dated 23.05.2022 was pleased to allow 30 days for getting final approval of CoC on the Resolution plan as liquidation is the last resort for keeping the preamble of IBC under its inherent power under Rule 11 of NCLT Rules. A copy of the order dated 23.05.2022 passed by this Adjudicating Authority is filed

along with the application.

- 4.16. The 14<sup>th</sup> CoC meeting was convened on 03.06.2022 wherein in terms of Section 30(3), the Resolution Professional presented both the plans (final amended/modified Resolution plans) to the CoC for its approval after making due diligence that both plans have duly complied in terms of Section 30(2) of the Code and Regulations 37 & 38 and 39(1) & (2) of the CIRP Regulations therefore and Section 29A & 30(1).
- 4.17. In terms of the amendment in Regulation 39(3) of the CIRP Regulations both the resolution plans submitted by the prospective Resolution Applicants were placed before the CoC members for approval. The Resolution Plan submitted by E-clear Leasing and Finance Limited was rejected by 100% voting. Accordingly, the resolution plan submitted by M/s RKG Fund was approved by the CoC in its 14<sup>th</sup> meeting dated 03.06.2022 with 100% voting share.
- 4.18. The CoC has approved the Resolution Plans in terms of section 30 (4) as submitted by the M/s RKG Asset Management LLP, by 100% voting as against the requisite 66% voting. The Following resolution was approved by CoC at voting agenda No. 1:

***"RESOLVED THAT the Final Resolution Plan submitted by M/s RKG Fund (read along with the addendum to the Resolution Plan, if any) is being hereby accepted."***

- 4.19. Pursuant to the approval of the Resolution Plan by the CoC and in terms of RFRP, the RP has issued Letter of Intent ("LOI") to the Successful Resolution Applicant on 09.06.2022. The Successful Resolution Applicant has conveyed its unconditional acceptance on 13.06.2022 and deposited the required Performance Security of Rs. 9,05,00,000/- (Rupees Nine Crores Five Lakhs only), [10% of the Resolution Plan value i.e. Rs.90,50,00,000/-] which includes Rs 8,05,00,000/- (Rupees Eight Crores Five Lakhs Only) by way of RTGS in the Bank Account on 14.06.2022, maintained with one of Financial Creditor, Punjab National Bank, besides adjustment of the EMD Amount submitted earlier of Rs 1,00,00,000/- (Rupees One Crores Only), which is also made part of Performance Security. A copy of Letter of Intent duly signed and acknowledged with unconditional acceptance

by the SRA along with evidence of credit of receipt of RTGS against Performance Security as well as EMD receipt is filed along with the application.

4.20. It is further submitted that IRP/RP has carried operation of Corporate Debtor since the commencement of CIRP with best efforts and has kept it as a going concern. The Corporate debtor has three plants out of which two plants at Chennai and at Pune are non-operational and one plant at Dharuhera, Distt. Rewari, Haryana is operational, having approx. 50 workmen & employees. During his tenure, CD has achieved a turnover of Rs. 15.00 Crores and has monthly job orders worth Rs. 1.50 to 2.00 Crores for its Dharuhera Plant.

## 5. Details of Resolution Plan/Payment Schedule

5.1 The brief contours of the Resolution Plan submitted by the M/s RKG Asset Management LLP as approved by the CoC in its 14<sup>th</sup> meeting dated 03.06.2022 with 100% voting share is detailed herein below:

S. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed (in Cr.)	Amount Admitted (in Cr.)	Amount provided under the plan (in Cr.)	Amount provided to the Amount claimed (%)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21.	Nil	Nil	Nil	Nil
		(b) Other than (a) above:				
		(i) who did not vote in favour of the Resolution Plan.	Nil	Nil	Nil	Nil
		(ii) who voted in favour of the Resolution Plan.	499.25	499.25	88.20	17.67%
		<b>Total [(a) + (b)]</b>	<b>499.25</b>	<b>499.25</b>	<b>88.20</b>	<b>17.67%</b>
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21.	Nil	Nil	Nil	Nil

S. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed (in Cr.)	Amount Admitted (in Cr.)	Amount provided under the plan (in Cr.)	Amount provided to the Amount claimed (%)
		(b) Other than (a) above:				
		(i) who did not vote in favour of the Resolution Plan.	Nil	Nil	Nil	Nil
		(ii) who voted in favour of the Resolution Plan.	Nil	Nil	Nil	Nil
		<b>Total [(a) + (b)]</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>
3	Operational Creditors	(a) Related party of Corporate Debtor	16.82	13.79	0.00	0.00%
		(b) Other than (a) above:				
		(i) Government	11.95	8.30	0.01	0.12%
		(ii) Workmen	0.60	0.60	0.01	1.67%
		(iii) Employees	3.52	0.88	0.41	45.98%
		(iv) PF & ESI Dues	0.17	0.17	0.17	100.00%
		<b>Total [(a) + (b)]</b>	<b>33.06</b>	<b>23.74</b>	<b>0.60</b>	<b>2.53%</b>
4.	Other Debts and Dues	Nil	Nil	Nil	Nil	Nil
<b>Grand Total</b>			<b>523.31</b>	<b>523.00</b>	<b>88.80</b>	<b>16.98%</b>

**Note:** A copy of the Resolution Plan of the M/s RKG Asset Management LLP as approved by the CoC in its 14<sup>th</sup> meeting dated 03.06.2022 with 100% voting share is filed along with the application.

5.2 The Resolution Plan size is Rs.90,50,00,000/- (Rupees Ninety Crores Fifty Lakhs Only). The Resolution Plan defines “Effective Date” as the date of receipt of the certified copy of the order of approval of the Resolution Plan of the Resolution Applicant by the NCLT.

5.3 It is submitted that the Resolution Professional has received the claims time to time and updated the list of creditors of the Corporate Debtor. The CoC constitutes the following financial creditors as on date:

<b>S. No.</b>	<b>Name of the FC</b>	<b>Voting %</b>
<b>1.</b>	Punjab National Bank	65.83%
<b>2.</b>	Bank of India	34.17%
	<b>Total</b>	<b>100.00%</b>

5.4 Section 30(6) of the Code mandates the Applicant as a Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority for approval under Section 31(1) of the Code. Accordingly, the resolution plan submitted by the M/s RKG Asset Management LLP has been duly approved by the members of the CoC by a voting share of 100% which is more than the requisite voting share i.e. 66%, hence, the Applicant is filing the present application for approval of the resolution plan before the Adjudicating Authority.

#### **5.5 Business Plan of the Resolution Applicant**

The Resolution Applicant proposes a total financial outlay of Rs.90,50,00,000/- (Rupees Ninety Crores Fifty Lakhs Only) (Resolution Plan Amount) which shall be utilised for payment of CIRP costs as prescribed in Clause 1(iii) of Part 2 of the Resolution Plan, payment to the creditors and other stakeholders of the Corporate Debtor. Further, the Resolution Applicant shall also bring in additional funds up to INR 35.00 crores which shall be utilised by the Corporate Debtor towards the working capital, capex and costs incurred towards operationalising the units of the Corporate Debtor.

5.6 The Resolution Applicant in its Resolution Plan, has dealt with the interests of all the stakeholders of the Corporate Debtor, including the Financial Creditors, the Operational Creditors and the CIRP Cost. It is submitted that there were no transactions were found by RP on avoidance transactions PUFÉ (“Preferential Undervalued Fraudulent Extortionate”) in terms of Sections 43 to 50 and 66 of the Code, as well as no such Transactions have been observed in Independent Transaction Review Audit.

## 6. Compliance of the successful Resolution Plan with various provisions:

6.1. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to as follows:

<b>Section of the Code/ Regulation No.</b>	<b>Requirement with respect to Resolution Plan</b>	<b>State of Compliance</b>
<b>Section 30(2)(a)</b>	Resolution Plan must provide for the payment of Corporate Insolvency Resolution process costs in priority to the payment of other debt.	Complied with.
<b>Section 30(2)(e)</b>	The Resolution Plan does not contravene any of the provisions of the law for the time being in force	Complied with.
<b>Regulation 37(a)</b>	Transfer of all or part of the assets of the corporate debtor to one or more persons; we hereby confirm that we shall continue to operate the existing operations of Dharuhera Unit assets of the Corporate Debtor and propose to dispose-off part of the assets of defunct units. Will operate the Corporate Debtor as a going concern.	Complied with.
<b>Regulation 37</b>	(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; (k) change in technology used by the corporate debtor; and	Complied with.
<b>Regulation 38(1)</b>	(a) The amount payable to the operational creditors under a resolution plan shall be paid in priority over the financial creditor. (b) The Resolution Plan shall provide priority payment to the financial creditors, who 1 have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, on the priority over financial creditors who voted in favour of the plan. (c) Notwithstanding anything mentioned under this Resolution Plan, the payment of dissenting Financial Creditors shall be made prior to other financial creditors.	Complied with.
<b>Regulation 38(1A)</b>	(A) 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.	Complied with.
<b>Regulation 38(3)</b>	The Resolution Plan should demonstrate that: (a) it addresses the cause of default; (b) it is feasible and viable; (c) it has provisions for its effective implementation; (d) it has provisions for approvals required and the timeline for the same; and (e) the Resolution Applicant has the capability to implement the resolution plan.	Complied with.
<b>Regulation 38(1B)</b>	The Resolution Plan shall include a statement giving details if the resolution applicant or any	Complied with.



	of its related parties has failed to implement or contributed to the failure of this implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past.	
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- 6.2. In terms of Regulation 39(4) of the CIRP Regulations, the Applicant is required to submit a compliance certificate in prescribed format i.e. Form-H stating that the resolution plan is compliant of the provisions of the Code. The Form-H duly signed by the Applicant being the compliance certificate is filed along with the application.
- 6.3. The Resolution Plan filed with the Application meets the requirements of Sections 30 and 31 of IBC, 2016 and Regulations 37, 38, 38(1A) and 39(4) of the IBBI (CIRP) Regulations, 2016. The provisions of Section 29A of IBC are not attracted. The RP has also verified that the "Resolution Plan" approved by the CoC does not contravene any of the provisions of the law for the time being in force.

**7. Details on Management/Implementation and Reliefs as per the Resolution Plan**

As per the approved Plan, the Resolution Plan also provides details of management and control, implementation and supervision of the Resolution Plan and term of the plan. The same is already set out in various clauses of Part-III as enumerated in the Resolution Plan.

**8. Waivers, Reliefs and Exemptions**

The Resolution Applicant has prayed for the reliefs as enumerated under the Resolution Plan approved by the CoC. From the plan approval date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn, satisfied and discharged. From the date of approval of the Resolution Plan, the Resolution Applicant shall be legally authorised to seek appropriate orders from respective authorities/courts/tribunals for renewal of licences/withdrawal/dismissal or abatement of the proceeding as the

case may be.

## **9. Analysis & Findings**

- 9.1 This Adjudicating Authority had raised a specific query *vide* order dated 06.07.2022, the relevant extract of the order is as follows: ***“that the Resolution Applicant has claimed the benefit of carry forward and set up of losses in the Resolution Plan. We, therefore, deem it appropriate to issue notice to the Jurisdictional Principal Commissioner/ Commissioner of Income Tax before approval of the Resolution Plan. The Applicant is directed to serve notice upon the Principal Commissioner/Commissioner of Income Tax and file proof of service and affidavit of service within a week.”***

In reply, the Counsel for the Liquidator has filed an affidavit dated 15.07.2022 in compliance of the order dated 06.07.2022 of this Adjudicating Authority. The notice has been served by hand from the office of the Counsel for the Liquidator on 13.07.2022. Copy of the acknowledged notice is filed along with the Affidavit.

Despite the service to the Principal Commissioner/Commissioner of Income Tax, the Counsel for the Liquidator did not receive any report/reply. Even after approval of the Resolution Plan, the Income Tax Department (the Principal Commissioner/Commissioner of Income Tax) is entitled to initiate any proceedings and to recover the outstanding demands under the Income Tax Act, 1961 or any other law.

- 9.2 On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC in its 14<sup>th</sup> meeting dated 03.06.2022 with 100% voting share. As per the CoC, the Plan meets the requirement of being a viable and feasible and revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.
- 9.3 At this juncture, we rely upon the Judgement passed by the Hon'ble Supreme Court in the matter of **“Vallal RCK versus M/s Siva**

**Industries and Holdings Limited and Others, Civil Appeal Nos. 1811-1812 of 2022”**

whereby the Hon’ble Apex Court has answered the question as to whether **‘the adjudicating authority (NCLT) or the appellate authority (NCLAT) can sit in an appeal over the commercial wisdom of the Committee of Creditors (hereinafter referred to as the “CoC”) or not’**. We rely upon the following paragraphs:

**“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring the completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts.”**

A reference in this respect could be made to the judgments of this Court in the cases of **“K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.**

27. This Court has, time and again, emphasized the need or minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal**

***Steel and Power Limited and Another<sup>1</sup>:***

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***“95. However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC”***

- 9.4 In light of the above-quoted judgements, it is clear that the **“Commercial wisdom of CoC”** is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The Resolution Plan with a voting strength of 100% approved the Resolution Plan submitted by the M/s RKG Asset Management LLP unanimously in the 14<sup>th</sup> CoC meeting dated 03.06.2022 and this Adjudicating Authority cannot interfere in the same.
- 9.5 On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with Regulations 38 and 39 of the CIRP Regulations.
- 9.6 The reliefs, concessions and waivers sought by the Successful

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<sup>1</sup> Civil Appeal No. 9664 of 2019, Dated 15.03.2021

Resolution Applicant will be dealt with strictly as per law.

- 9.7 As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under Section 31(4) of the Code.
- 9.8 In case of non-compliance of this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant as well as the Performance Bank Security.
- 9.9 The present application has been filed bonafide, in the interest of justice and to advance the objectives of the Code.

## **10. Orders**

- 10.1 The **IA-2971/2022** which is for approval of the Resolution Plan is **allowed** and the Resolution Plan of Rs.90,50,00,000/- (Rupees Ninety Crores Fifty Lakhs Only) is hereby **approved. The Resolution Plan shall form part of this Order.**
- 10.2 The Resolution Plan is binding on the CD and other stakeholders involved so that the revival of the CD shall come into force with immediate effect.
- 10.3 The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 10.4 The RP shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India (“IBBI”) for their record.
- 10.5 Accordingly, **IA-2971/2022** stands disposed of as becomes infructuous. The main Company Petition, i.e., **(IB)-2058(ND)/2019** stands **disposed of** accordingly.
- 10.6 Liberty is hereby granted for moving appropriate application(s) if

required in connection with the implementation of this Resolution Plan.

- 10.7 A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.
- 10.8 The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- 10.9 The Resolution Professional is further directed to hand over all records, premises/factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalise the further course of action required for starting of operations of the Corporate Debtor.
- 10.10 The Registry is hereby directed to send copies of the order forthwith to the IBBI, all the parties and their Ld. Counsel for information and for taking necessary steps.
- 10.11 Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.  
File be consigned to the record.  
No order as to costs.

**-SD-**

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

**-SD-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**