

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-VI

I.A. 22 /2024

IN

C.P. No. IB- 638/ND/2020

(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))

MS. MANJULA TRIPATHI AND ORS.

.... FINANCIAL CREDITOR

VERSUS

M/S CLARION TOWNSHIPS PVT. LTD. & ANR

..... CORPORATE DEBTORS

AND

AND IN THE MATTER OF:

MR. MUKESH GUPTA

RESOLUTION PROFESSIONAL OF

M/S. CLARION TOWNSHIPS PVT. LTD. & LINAKS MICRO

ELECTRONICS LTD.

.... APPLICANT

SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the RP

Adv. Abhishek Anand, Adv. Karan Kohli and
Adv. Palak Kalra

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

ORDER DELIVERED ON: 04.07.2024

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 ('CIRP Regulations') by Mr. Mukesh Gupta Resolution Professional (RP) of M/s. M/S Clarion Townships Pvt. Ltd & Linaks Micro Electronics Ltd. ('Corporate Debtors'), seeking approval of the Resolution Plan submitted by consortium of Lala Jugal Kishore Jewellers, M/s Evanka Construction India Private Limited, M/s Smoothway Realtors LLP, and M/s LJK Construction India Private Limited ('Successful Resolution Applicant') as approved by the Committee of Creditors ('CoC') in its 10th CoC Meeting held on 09.09.2023 with 100% voting shares.

2. Briefly stated, the facts as averred by the applicant in the application are as follows:
 - a) An Application bearing Company Petition (IB) No. 638(ND) of 2020 was filed by Ms. Manjula Tripathi & other financial creditors (allottees/ homebuyers), under Section 7 of the Code seeking initiation of CIRP of M/S Clarion Townships Pvt. Ltd (hereinafter referred to as "Corporate Debtor No.1") which was allowed by this Adjudicating Authority vide order dated 03.05.2021.
 - b) An Application bearing C.P. (IB) No. 410(ND) of 2020 was filed by Canara Bank under Section 7 of the Code seeking initiation of CIRP against M/s Linaks Microelectronics Limited (hereinafter referred to as "Corporate Debtor No. 2") which was allowed by this Adjudicating Authority vide order dated 22.04.2022.
 - c) That this Adjudicating Authority vide Order dated 20.10.2022, consolidated the CIRP(s) of the Corporate Debtor No. 1 and Corporate Debtor No. 2 with the intent of maximisation of the assets of both the Corporate Debtor(s).
 - d) That in pursuance of the order dated 20.10.2022, Applicant convened 1st Joint CoC meeting on 19.11.2022, wherein, Applicant apprised the CoC members of Corporate Debtors about the email dated 22.10.2022 sent by Applicant to all the creditor in which the

Applicant requested the creditors to submit their revised claims as on 20.10.2022 i.e., the date of initiation of consolidated CIRP of the Corporate Debtors.

- e) That Applicant published FORM G on 30.11.2022 inviting EOI for submission of Resolution Plan, in compliance of Regulation 36 A (1) of the CIRP Regulation, 2016.
- f) That Applicant convened 2nd Joint CoC meeting on 30.12.2022, wherein, Applicant presented the list of creditors based on the revised claims received by him for the Corporate Debtors. Further, a revised voting share of the financial creditors of the consolidated CIRPs was presented before the CoC members. Further, Applicant in the 2nd Joint CoC meeting, apprised the CoC members that Mr. Arvind Mittal has been appointed as authorized representative of the Class of Creditors – Real Estate Allottees under the Real Estate project of the Corporate Debtors vide order dated 15.12.2022 passed by this Adjudicating Authority. The Applicant in the 2nd Joint CoC meeting further apprised the CoC members about Expression of Interest received from 4 PRAs in pursuance of publication of FORM G on 30.11.2022
- g) That the Applicant convened the 3rd CoC meeting on 03.02.2023, wherein the Applicant apprised the CoC members that 4 more claims have been received by him from Real Estate Allottees of the Corporate Debtor No. 1, which are under verification. The Applicant apprised the CoC members that the last date to submit Resolution Plan as per the Joint RFRP was 21:00 hour on 29.01.2023 i.e., till the last date of submission of resolution plan only one Resolution Plan in a sealed envelope from one of the Prospective Resolution Applicants i.e., Consortium of Lala Jugal Kishore Jewellers, M/s Evanka Construction India Private Limited, M/s Smoothway Realtors LLP, and M/s LJK Construction India Pvt Ltd had been received.
- h) That the Applicant thereafter convened the 4th Joint CoC meeting on 04.03.2023, wherein Applicant apprised the CoC members that 4 more claims have been received by Applicant from Real Estate Allottees of the Corporate Debtor No. 1, which are under verification. Further, the Applicant apprised the members of CoC regarding queries raised by legal counsel of Resolution Professional i.e. Applicant herein. However, no resolutions were decided to be put to e – voting in the meeting.
- i) That Applicant sought opinion of the CoC members to call upon the representative of the Prospective Resolution Applicant, to deliberate on the said Resolution Plan. The CoC members thereafter unanimously decided and directed Applicant to communicate the observations/feedbacks of the CoC members to the Prospective

Resolution Applicant by way of an email. Thereafter, the Prospective Resolution Applicant undertook to make necessary changes in view of the observations received from the CoC members.

- j) That the negotiation meeting was held between the Prospective Resolution Applicant and a few Allottees, wherein various queries were raised to the Prospective Resolution Applicant. That the Prospective Resolution Applicant sought time till 18.04.2023 to respond to the said queries and the Prospective Resolution Applicant was to submit a revised Resolution Plan.
- k) That 9th meeting of CoC was convened by Applicant on 11.08.2023, wherein, the Applicant apprised the members of the CoC that the Prospective Resolution Applicant i.e. Consortium of Lala Jugal Kishore Jewellers, M/s Evanka Construction India Private Limited, M/s Smoothway Realtors LLP, and M/s LJK Construction India Private Limited has deliberated the negotiations points of the members of CoC and have requested for time till 25th August, 2023 for submission of Final Resolution Plan. After deliberations, the members of the CoC stated that the requested time can be granted to the PRA.
- l) That thereafter, the Applicant convened the 10th Joint meeting of CoC on 09.09.2023, wherein, the Applicant put forth the agenda to place the final Resolution Plan dated 01.09.2023 submitted by the PRA i.e. Consortium of Lala Jugal Kishore Jewellers, M/s Evanka Construction India Private Limited, M/s Smoothway Realtors LLP, and M/s LJK Construction India Pvt Ltd. in terms of the approved Evaluation Matrix under Section 30(3) of the Code for approval. The Applicant further apprised the members that the PRA has submitted addendums dated 05.09.2023 and 07.09.2023. Accordingly, the following resolution was passed by the members of CoC qua Resolution Plan dated 01.09.2023 read with Addendums dated 05.09.2023 and 07.09.2023: -

“RESOLVED THAT the Resolution Plan submitted by Consortium of Lala Jugal Kishore Jewellers, M/s Evanka Construction India Private Limited, M/s Smoothway Realtors LLP, and M/s LJK Construction India Pvt Ltd dated 01.09.2023 read with Addendum dated 05.09.2023 and Addendum dated 07.09.2023, be and is hereby approved in accordance with the provisions of Section 30(4) of the Insolvency and Bankruptcy Code, 2016 in the matter of joint / consolidated Corporate Insolvency Resolution Process of M/s Clarion Townships Private Limited and M/s Linaks Micro Electronics Limited

FURTHER RESOLVED THAT the Resolution Professional, Mr. Mukesh Gupta be and is hereby authorized to file an application under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 with the Hon'ble Adjudicating Authority seeking approval of the Resolution Plan.

RESOLVED FURTHER THAT the Resolution Professional Mr. Mukesh Gupta shall manage the Corporate Debtor after expiry of period of Corporate Insolvency Resolution Process in terms of the Proviso to Section 23(1) of the Code and that Fee and Expenses incurred by the Resolution Professional during such period to maintain the Corporate Debtor as a Going Concern shall form part of CIRP Costs”.

- m) That the e-voting on the aforesaid agendas commenced on 11.09.2023 at 4.30 p.m. and ended on 13.09.2023 at 06:00 p.m. That the resolution plan as placed for approval was approved with 100% voting share.
- n) That the Resolution Applicant has submitted an undertaking stating that the Resolution Applicant is eligible under Section 29A of the Code.
- o) That Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that the Resolution Professional shall endeavour to submit the Resolution Plan approved by the Committee of Creditors to the Adjudicating Authority at least 15 days before the maximum period for completion of CIRP under Section 12 of the Code 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. However, on account of delay on part of SRA to submit Performance Bank Guarantee and Letter of Intent the applicant was not able to file the application for approval of Resolution Plan within 15 days from the date of approval of Resolution Plan.
- p) That the Resolution Applicant vide email dated 18.05.2024 conveying his unconditional acceptance and submitted the Performance Bank Guarantee / Fixed Deposit dated 18.05.2024 for an amount of Rs. 5 crores.
- q) That in terms of Regulation 39(4) of the CIRP Regulations, the Applicant has submitted the Compliance Certificate in prescribed

format, i.e., FORM-H stating that the Resolution Plan is compliant of the provisions of the Code.

r) Average Fair Value is Rs. 38.375 Crores and Average Liquidation Value is Rs. 26.275 Crores

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:

Summary of list of Creditors

Committee of Creditors: -

S. No.	Financial Creditor	Number of Claims	Claim Admitted (Rs.)	Voting Share %
1.	Secured Financial Creditor – Canara Bank (erstwhile Syndicate Bank)	1	41,17,35,610	51.98
2.	Unsecured Financial Creditor – Financial Creditors in a Class – Real Estate Allottees (Joint CIRP)	144	38,03,68,799	48.02
Total		145	79,21,04,408	100

APPLICATION OF FUNDS [AS APPROVED BY COMMITTEE OF CREDITORS]

Particulars	Payment Proposed (Rs.)	Timeline
CIRP Costs	1.85 Crores	Actual CIRP cost to be

	(Approx.)	provided by the RP on effective date will be paid in full and in priority to any other creditors of the Corporate Debtors within 15 days from the effective date
Employee/ Workmen dues	NIL	No admitted Claims
Financial Creditor (Secured) – Canara Bank	18 Crores	<ul style="list-style-type: none"> • Rs. 100 Lakhs within 3 months from effective date. • Rs. 100 Lakhs within 6 months from effective date. • Next Rs. 450 Lakhs within 12 months from effective date. • Next Rs. 450 Lakhs within 24 months from effective date. • Next Rs. 450 Lakhs within 36 months from effective date. • Remaining Rs. 250 Lakhs within 48 months from effective date.
Financial Creditor (Unsecured) –	-	<ul style="list-style-type: none"> • The Project Rohtas Platina in which Real Estate Allottees has been allotted units by the Corporate Debtor No. 1 has been left abandoned by the Corporate Debtor. • The Resolution Applicant proposes to construct the Project Rohtas Platina and deliver / handover the units to various Allottees, within 4 years from the effective date

		<p>with grace period of 6 months.</p> <ul style="list-style-type: none">• The Allotees shall have to make payments at Rs. 3990/- per sq ft for the units allotted to them on super area and principal amount already paid by the Allotees shall be adjusted, along with other statutory dues such as EDC & IDC etc, on the basis of Construction linked Plan given in the Resolution Plan• Alternatively, the Allotees may opt for a refund of 72.5% of principal amount paid by the Allotees payable in tranches, as follows:<ol style="list-style-type: none">i. First 20% within 9 months from effective date.ii. Next 20% within 18 months from effective date.iii. Next 20% within 30 months from effective date.iv. Next 40% within 42 months from effective date.• In the case of Allotments of same unit to more than one allottee The Resolution Plan provides that the unit shall
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		be available to the creditor who has been allotted the unit first, subsequent creditors shall have choice of either -opt for different units with the same terms and conditions applicable to other allottees as per the terms of Resolution Plan, or -opt for refund of 40% of principal amount payable in tranches.
DISSENTING FINANCIAL CREDITOR	NIL	-
Operational Creditor	NIL	-
Other Stakeholders	NIL	No claim received
Shareholders	Rs. 10 Lakhs (Corporate Debtor No.1) Rs. 1.73 Lakhs in Equity, Rs. 3.22 Lakhs in Optionally Convertible Preference Shares (Corporate Debtor No.2)	The Resolution Plan provides 1% of paid-up share capital as payment to shareholders of Corporate Debtor No.1 and 2.
Total (Rs.)	~ Rs. 20crs (Plus, Refunds, if any opted by the Allottees)	
Further investment	Rs. 25 crores ++	

for Construction of the Project	
Total Resolution Cost (Rs.)	Rs. 45crs (rounded off) ++

SOURCES OF FUNDS

The Resolution Applicant shall infuse the funds required for payment to the Financial Creditors, CIRP Costs and towards construction of the Project Rohtas Project Platina from their internal accruals. The Resolution Applicant has declared that they have their own resources to meet the financial obligations under the Resolution Plan. Apart from the above, if needed, Loans from NBFC shall be procured.

MONITORING COMMITTEE

The Resolution Applicant has proposed that within 15 days approval of the Resolution Plan, the Resolution Applicant shall constitute a board of the Company and the Reconstituted Board and Monitoring Committee shall be responsible for the implementation of the Resolution Plan until the final payment is made under the plan. Monitoring Committee shall comprise of: -

- I. Resolution Professional
- II. 1 member from Real Estate Allottees
- III. 1 representative of Canara Bank
- IV. 3 members of Resolution Applicant

TOTAL OUTLAY

The total outlay under the Resolution Plan stands as follows:

Particulars	Payment Proposed (Rs.)
CIRP Cost	1,85,00,000 (Approx.)
Employee/ Workmen dues	NIL
Financial Creditor (Secured) – Canara Bank	18,00,00,000
Financial Creditor (Unsecured) –	The Resolution Applicant

Financial Creditors in a Class – Real Estate Allottees	<p>proposes to develop and complete the project Rohtas Platina and deliver the units within 4 years from effective date with grace period of 6 months. The Allotees shall have to make payments at Rs. 3990/- per sq ft for the units allotted to them on super area and principal amount already paid by the Allottees shall be adjusted along with other statutory dues such as EDC & IDC etc.</p> <p>Alternatively, the Allottees may opt for a refund of 72.5% of principal amount paid by the Allottees payable in tranches.</p> <p>Allotments of same unit to more than one allottee</p> <p>The Resolution Plan provides that the unit shall be available to the creditor who has been allotted the unit first, subsequent creditors shall have choice of either opt for different units with the same terms and conditions applicable to other allottees, or opt for refund of 40% of principal amount payable in tranches.</p>
Operational Creditor	NIL
Statutory Dues	10,00,000
Other Stakeholders	NIL
Shareholders	1% of the paid up share capital

Total	Rs. 20crs.
Further Investment for Construction of the Project and other overheads	Rs. 25 crores
Total Resolution Cost	Rs. 45crs

OTHER INFORMATION

The Equity structure post the approval of the Resolution Plan and Clarification in respect of share of consortium members:

Corporate Debtor No. 1	<ul style="list-style-type: none"> • 50% equity of Corporate Debtor No. 1 shall be held by M/s LJK Construction India Private Limited • 50% M/s Evanka Construction India Private Limited • M/s Smoothway Realtors LLP are technical / construction Partners • M/s Lala Jugal Kishore Jewellers are financial partners.
Corporate Debtor No. 2	<ul style="list-style-type: none"> • 25% of capital of Corporate Debtor No. 2 shall be held by M/s LJK Construction India Private Limited • 75% of capital shall be held by M/s Evanka Construction India Private Limited • M/s Smoothway Realtors LLP are technical / construction Partners • M/s Lala Jugal Kishore Jewellers are financial partners

COMPLIANCES

- i. That the final Resolution Plan submitted by SRA 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 costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;	Yes Clause 5.1, of the Resolution Plan.
30(2)(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- <ul style="list-style-type: none">(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	Yes Clause 5.2, 9.7 of the Resolution Plan

	the order of priority in sub-section (1) of section 53	
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Yes Clause 12 of the Resolution Plan.
30(2)(d)	the implementation and supervision of the resolution plan;	Yes Clause 16 and 1.17 of the Resolution Plan.
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	Yes Clause 5.5 - Statement has been included in the Resolution Plan
30(2)(f)	conforms to such other requirements as may be specified by the Board.	Yes Statement has been included in the Resolution Plan

- ii. It is stated by the applicant in the application that Applicant/ Resolution Professional has examined the resolution plan and has certified the resolution plan is being compliant of IBC, 2016.
- iii. That the Resolution Applicant has also submitted an undertaking stating that the Resolution Applicant is eligible under Section 29A of the Code. Copy of undertaking submitted by the Resolution Applicant under Section 29A of the Code is annexed with this application.
- iv. Average Fair Value is Rs. 38.375 Crores and Average Liquidation Value is Rs. 26.275 Crores
- v. 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	Yes

	<p>resolution plan –</p> <p>(a) to the operational creditors shall be paid in priority over financial creditors; and</p> <p>(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 priority over financial creditors who voted in favour of the plan.]</p>	<p>Clause 7.1 of the Resolution Plan</p>
38(1A)	<p>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.]</p>	<p>Yes</p> <p>Clause 7.1.3 of the Resolution Plan.</p>
38(1B)	<p>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.]</p>	<p>Yes</p> <p>Clause 7.1.4 of the Resolution Plan.</p>
38(2)(a)	<p>A resolution plan shall provide the term of the plan and its implementation schedule;</p>	<p>Yes</p> <p>Clause 7.2.1 of the Resolution Plan.</p>
38(2)(b)	<p>A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and</p>	<p>Yes</p> <p>Clause 7.2.2 of the Resolution Plan.</p>
38(2)(c)	<p>A resolution plan shall provide adequate means for supervising its implementation</p>	<p>Yes</p> <p>Clause 7.2.3 of the Resolution Plan.</p>
38(2)(d)	<p>provides for the manner in</p>	<p>Not applicable since no</p>

	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 proceedings shall be distributed:	application w.r.t PUFETransactions have been filed
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	Yes Clause 7.3.1 of the Resolution Plan
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	Yes Clause 7.3.2 of the Resolution Plan
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	Yes Clause 7.3.3 of the Resolution Plan
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	Yes Clause 7.3.4 of the Resolution Plan
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	Yes Clause 7.3.5 of the Resolution Plan

vi. The other requirements as specified under the IB Code and Regulations of IBBI CIRP Regulations 2016 are as under: -

Section/Regulation	Provisions under the said Regulation of IBBI CIRP Regulations 2016.	Compliance- Yes/No
Section 25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the COC having regard to the complexity and	Yes, the same has been verified by the RP

	scale of operations of business of the CD?	
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Yes, as per final list of Resolution Applicants, PRA is eligible to submit the Resolution Plan.
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes, an affidavit has been submitted by the SRA
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Yes The Performance Security has been issued after a substantial delay than the period mentioned in the RFRP

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

viii. 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.

5. The applicant has prayed for number of waivers in the Resolution Plan more specifically under Clause 19, Page 304 of the Application. As to the relief and concessions sought in the Resolution Plan, we may refer to judgement of Hon'ble Supreme Court in the matter of **Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308**, 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.”*

Further the RP has filed an additional affidavit dated 09.06.2024 stating that non-grant of any reliefs and concessions by the Adjudicating Authority does not have any adverse effect on the validity of the Resolution Plan and is not a violation of the law. Further the same is not contingent precedent upon approval of the Resolution Plan.

In view of the aforesaid judgement of Hon'ble Supreme Court and the submission of the RP as stated above, 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.

6. The Hon'ble Supreme Court vide its order dated 21.11.2023 in the matter of **Ramkrishna Forgings Ltd. v. Acil Ltd. (Resolution Professional), (2024) 2 SCC 122** had held as follows: -

"27. Having considered the matter in depth, the Court is unable to uphold the decisions rendered by the Adjudicating Authority-NCLT as also the NCLAT. The moot question involved is the extent of the jurisdiction and powers of the Adjudicating Authority to go on the issue of revaluation in the background of the admitted and undisputed factual position that no objection was raised by any quarter with regard to any deficiency/irregularity, either by the RP or the appellant or the CoC, in finally approving the Resolution Plan which was sent to the Adjudicating Authority-NCLT for approval. Further, the statutory requirement of the RP involving two approved valuers for giving reports apropos fair market value and liquidation value was duly complied with and the figures in both reports were not at great variance. Significantly, the same were then put up before the CoC, which is the decision-maker and in the driver's seat, so to say, of the Corporate Debtor. K Sashidhar (supra) and Committee of Creditors of Essar Steel India Ltd. (supra) are clear authorities that the CoC's decision is not to be subjected to unnecessary judicial scrutiny and intervention. This came to be reiterated in Maharashtra Seamless Limited (supra), which also emphasised that the CoC's commercial analysis ought not to be qualitatively examined and the direction therein of the NCLAT to direct the successful Resolution Applicant to enhance its fund flow was disapproved of by this Court. Thus, if the coc, including the FC(s) to whom money is due from the Corporate Debtor, had undertaken repeated negotiations with the appellant with regard to the Resolution Plan and thereafter, with a majority of 88.56% votes, approved the final negotiated Resolution Plan of the appellant, which the RP, in turn, presented to the Adjudicating Authority-NCLT for approval, unless the same was failing the tests of the provisions of the Code, especially Sections 30 & 31, no interference was warranted. In Kalpraj Dharamshi v Kotak Investment Advisors Limited, (2021) 10 SCC 401, the Court concluded that in view of the paramount importance given to

the decision of CoC, which is to be taken on the basis of "commercial wisdom", NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%."

7. 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 SCC 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.

8. Further, we would rely upon the judgment rendered by the NCLAT in **Roshan Lal Mittal v. Rishabh Jain, 2023 SCC OnLine NCLAT 2398** wherein it was held that:

7. “The Resolution Plan does not absolve the personal guarantors from their guarantee. The law well settled by the Hon’ble Supreme Court in the matter of “Lalit Kumar Jain v. Union of India - (2021) 9 SCC 321), that by approval of resolution plan the guarantees are not ipso facto discharged.”

9. Also, the Hon’ble Supreme Court of India in the matter of **Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531**, vide 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.”

10. 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.
11. As far as compliances under the Insolvency and Bankruptcy Code, 2016 and IBBI (Insolvency Resolution Process for Corporate Persons), 2016 are concerned, we are satisfied that the resolution plan as approved by the Committee of Creditors under sub section (4) of Section 30 meets the requirements as referred to in Sub Section (2) of Section 30 if the Code and regulations made thereunder.

12. Further, we would like to rely upon the judgement of Hon'ble Supreme Court in **Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.** **2021 SCC Online SC 313** wherein it was held that approval of the resolution plan has a clean slate effect and all claims that were not part of the resolution process 'stand extinguished' on approval of the resolution plan. Relevant extract of the aforesaid judgement is as under: -

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan."

13. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby approve the Resolution Plan along with the addendums to the Resolution Plan, which shall be binding on the Corporate Debtors and its employees, shareholders of Corporate Debtors, 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. 22/ND/2024 stands allowed.**

14. 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.

15. However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities as stated in para 5 of this order.
16. Accordingly, MoA and AoA of the Corporate Debtors 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.
17. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the Corporate Debtors 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 Debtors to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
18. 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.

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

SD/-

(RAHUL BHATNAGAR)
MEMBER TECHNICAL

SD/-

(MAHENDRA KHANDELWAL)
MEMBER JUDICIAL