

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**IA-1512/2019, IA-1684/2019, IA-1522/2019**

**IN**

**Company Petition No. (IB)-1138(ND)/2018**

**IN THE MATTER OF:**

**R.J. Packwells Pvt. Ltd.**

**... Operational Creditor**

**Versus**

**Nibula Print & Pack Pvt. Ltd**

**... Corporate Debtor**

**AND IN THE MATTER OF: IA 1512 of 2019:**

(Under Section 30(6) of IBC, 2016)

Ashok Kriplani, RP,  
17 / 13, Ground Floor,  
Old Rajinder Nagar,  
New Delhi - 110060

**... Applicant**

**AND IN THE MATTER OF: IA 1684 of 2019**

(Rule 11 r/w Rule 31 of NCLT Rules, 2016)

HDFC Bank Ltd.  
Department for Special Operations,  
5th Floor, AnsalClassique Tower,  
Rajouri Garden, New Delhi-110027

**...Applicant**

**AND IN THE MATTER OF: IA 1522 of 2019**

(Section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016)

Itenderpal Singh  
S/o Sh. Ram Singh,  
R/o H. No. 76A & 78A, Chopra,

**... Applicant**

**Versus**

Sh. Ashok Kriplani, RP  
10/18, FF, Old Rajender Nagar,  
New Delhi-60

**... Respondent**

**Order Delivered on: 22.04.2024**

**CORAM:**

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

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the RP** : RP Mr. Ashok Kriplani  
**For HDFC Bank** : Adv. Kunal Tandon, Adv. Richa sandhya and Adv. Bhawana Vijay  
**For Suspended Director** : Adv. Rakesh Kumar, Adv. Preeti Kashyap, Adv. Ankit Sharma.

**ORDER**

The present IA No. 1512 of 2019 has been preferred by Mr. Ashok Kriplani, Resolution Professional of M/s Nibula Print and Pack Private Limited (hereinafter referred to as the '**Applicant**') under Section 30(6) of IBC, 2016 praying for the following reliefs:

- "a. an order approving the Resolution plan as submitted under Annexures 13(Colly) and subsequently under Annexure A24(Colly),*
- b. pass any other order as deem fit and proper to this Hon'ble Tribunal."*

2. To put the facts concisely, the underlying main Petition CP (IB)-776/(ND)/2021 was filed by R. J. Packwells Pvt. Ltd. against the Corporate Debtor namely, Nibula Print & Pack Pvt. Ltd. under Section 9 of IBC, 2016, which was admitted vide Order dated 11.12.2018 of this Adjudicating Authority and the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor was initiated. The Corporate Debtor is currently represented through its RP Mr. Ashok Kriplani, the applicant herein.

3. It is stated by the Applicant that in terms of Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Applicant made a Public Announcement in Form-A on 17.12.2018 to invite

claims, a copy of which was also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).

4. It is submitted that RP thereafter constituted the Committee of Creditors (CoC) comprising of the following Financial Creditors:

**Nibula Print & Packs Limited**  
**List of Financial Claims**

S. No.	Name of the Financial Creditors	Facility Arrangement	Amount as per claimed filed	Amount Admitted*	Voting Right	Remarks
1	Reliance Commercial Finance Limited, 260-261- Dev house, Tribhuvan Complex, New Friends Colony, New Delhi-110065, Paras Gupta, Deputy Manager_Collections Legal Mobile No.08882602722	Secured Loan	₹ 42,187,569.00	₹ 42,187,569.00	31.03%	Subject to verification from books of accounts
2	M/s Neo Growth Credit Pvt. Ltd , Having it's registered office at: 503, Tower 2B, One India Bulls Centre, 841, S.B.Marg, Mumbai -400013. Authorised Representative Devendra Kejariwal, Advocate Ashish Aggarwal & Associates A 47, First Floor, Kailash Colony, New Delhi - 110048. Mob: +91 81305 27868	Unsecured Loan	₹ 1,831,857.00	₹ 1,831,857.00	1.35%	--do--
3	M/s Dewan Housing Finance Corporation Limited Having it's registered office at: 2nd Floor, Warden House, sir P.M. Road, Fort, Mumbai-400023 Plot No. 6, Block-A, Ground Floor, Sector-2, Noida, Uttar Pradesh- 201301 (Near Sector-15, Noida, Delhi Metro Station) Mr. Swarnendu Ghosh, Area Legal Manager, Mobile: 9313431149; Landline- 0120- 4862731	Secured Loan	₹ 63,749,111.00	₹ 63,749,111.00	46.88%	--do--
4	HDFC BANK, Ankush Saini Department For Special Operations 2nd Floor, Indian Express Building, ITO, New Delhi-110002 9310998589	Secured Loan	₹ 28,203,192.67	₹ 28,203,192.67	20.74%	--do-- Filing by Electronic mode not yet done
	<b>Total</b>		<b>₹ 135,971,729.67</b>	<b>₹ 135,971,729.67</b>	<b>100.00%</b>	

\* Subject to cross-check from the books of accounts.

5. The Applicant has further submitted that the 'Form-G' was published on 02.04.2019 to invite Expressions of Interest (EOI) from the potential Resolution Applicants. As per the information placed on record, in terms of the last Form-G dated 23.1.2023, last date of submission of Resolution Plan was 01.06.2019.

6. It is stated by the Applicant that it had received plans from 03 PRAs which were rejected by the CoC vide its voting held on 16.08.2019 for the 12th CoC Meeting. The details of the rejected Resolution plans read thus:

Who rejected	Consortium Led by RJ Packwells.	Consortium Led by SPA Associates	Consortium Led by Shiva Pulp & Paper
COC	On EM, Score 30	On EM, Score 31	On EM, Score 25
COC	On Commercial wisdom	On Commercial Wisdom	On Commercial Wisdom
RP	On non-compliance of R39(1)(c)	RP did not provide Adequate Means of Supervising its Implementation.	On non-compliance of R39(1)(c). Capex not infused, not feasible, etc,

7. Thereafter, as sated by the Applicant, RP filed an application dated 23.08.2019 before this Adjudicating Authority seeking liquidation of the Corporate Debtor. It is further submitted by the Applicant that the PRAs resisted the abovesaid application with their entire might as the PRAs being the OCs anticipated to get nothing, if the liquidation order was passed by this Adjudicating Authority. Subsequently, vide its order dated 30.09.2019, on representation of the PRAs, this Tribunal directed all the Resolution Applicants to file reply and directed the RP to place before CoC any amended plan received. Copy of the order of this Tribunal dated 30.09.2019 reads thus:

Pursuant to the directions given to the COC, a meeting was conveyed on 28<sup>th</sup> September, 2019. The minutes of meeting are taken on record. Let a copy of the minutes be circulated to all Resolution Applicants digitally. As per the resolution passed by the COC they have rejected all three resolution plans received which were listed for consideration as item no. 4 on agenda. The resolution applicant have impugned the said directions on ground that the decision was very arbitrary. Be that as it may, the question before this Bench is about exercise of any discretion of an adjudicating authority in questioning the decision of the COC in this matter. Let reply be filed by all resolution applicant. Since the CIR period can be extended and it should be the endeavor to bring ~~about~~ <sup>ground</sup> the business of the Corporate Debtor, any amended resolution plan shall be taken into consideration and shall be placed by the RP before the COC for further consideration.

To come up on 14<sup>th</sup> October, 2019.

8. Thereafter, as submitted by the Applicant, all the PRAs formed a consortium, namely, Vinay Goel & Consortium of Members and submitted a fresh Resolution plan on 25.10.2019, which was approved in the 15<sup>th</sup> meeting of COC with 77.91 % voting share. The copy of minutes and voting sheet, as placed on record, reads thus:

**Item No.3**

**Agenda Title:**

To approve, if any, Fresh RP, duly corrected till date, Copy enclosed at Annexure C1, on the touchstone of mandatory R 39(3) of IBBI—CIRP—Regulations 2016 and proviso to it, R/w S30 of IBC, 2016 filed by PRA so as to get maximum value while resolving the matter as a going concern of the CD.

**Minutes:**

The above agenda was divided in two parts 3a & 3b because window had to<sup>be</sup> provided for writing the reasons of approval or rejection of the fresh RP. However, that size of window proved to be insufficient for one of the Ld.Mmeber of the COC, namely HDFC Bank and for that it was mutually decided by the said FC and the RP to let the said FC send its said reasoning on the email id of the RP which shall form part of the present minutes and the said email is part of agenda no. 3b and is **Annexure**

**M1.**

The agenda was approved by the DHFL and the RCFL but rejected by the HDFC Bank and Neo Growth but given the % of voting share, it gets passed, which is shown as follows:

**XXX**

**XXX**

**XXX**

**XXX**

### Resolution 3a:

Username	Approve	Reject	Abstain	%
bishwaroop.tiwari@relianceada.com(RCFL)	1	0	0	3.103
bpo-atul.goyal@neogrowth.in(Neo Growth)	0	1	0	1.35
shruti.baid@dhfl.com(DHFL)	1	0	0	46.88
919999706063 (HDFC Bank)	0	1	0	20.74
<b>Total Approved %</b>				<b>78.91%</b>

### Resolution 3b:

Since its consortium of experienced people/ firm who are resolution applicant and happened to be the OC also ,so keeping in view their past experience its transpired that this is the better resolution plan Further the Nibula Print and Pack (CD) is in the business of manufacturing of Boxes and printing job work and the RA itself giving huge work order and in business of paper and board, therefore as per the commercial wisdom of the FC it appears that the RA can run the CD successfully The payment plan is now improved and reduced the tenor of the of payment from 12 month to 8 month and it has been modified and enhanced accordingly The instant FC would recommends that the fee of RP for monitoring i.e. Rs 5 Lac to be given in two part one after approval from Honable NCLT and remaining at the stage of completion of the resolution plan

bishwaroop.tiwari@relianceada.com(RCFL)

bpo-atul.goyal@neogrowth.in(Neo Growth)

shruti.baid@dhfl.com(DHFL)

919999706063 (HDFC Bank)

Satisfied with the work process of previous RP DHFL approves the plan as it is feasible and best way of maximisation of the assets.

As sufficient space is not available in this box to give reasons,thus as per discussion with Resolution Professional, reason are being sent through email id jogendra.singh@hdfcbank.com to email id nibulacirp@gmail.com. It should be treated as integral part of this voting item i.e.Q2

Thus the Resolution gets approved.

9. The details of the CIR process, fair value and liquidation value of the CD, the distribution of the resolution plan value amongst the stakeholders, and compliances are given in the “Compliance Certificate” filed by the RP in Form ‘H’, which is reproduced below for an immediate reference:

**FORM H COMPLIANCE  
CERTIFICATE**

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016  
I, Ashok Kriplani, an insolvency professional enrolled with IPA of institute of Cost Accountants of India and registered with the Board with registration number /IPA-003/IP-N00009/2016-2017/10071, am the resolution professional for the corporate insolvency resolution process (CIRP) of Nibula Print and Pack Pvt. Ltd.

2. The details of the CIRP are as under:

S. No.	Particulars	Description
1	Name of the CD	NIBULA PRINT & PACK PVT. LTD.
2	Date of Initiation of CIRP	11/12/2018
3	Date of Appointment of IRP	17/12/2018
4	Date of Publication of Public Announcement	19/12/2018
5	Date of Constitution of CoC	09/01/2019
6	Date of First Meeting of CoC	15/01/2019
7	Date of Appointment of RP	04/02/2019
8	Date of Appointment of Registered Valuers	14/02/2019
9	Date of Issue of Invitation for EoI	02/04/2019
10	Date of Final List of Eligible Prospective Resolution Applicants	16/05/2019
11	Date of Invitation of Resolution Plan	06/05/2019
12	Last Date of Submission of Resolution Plan	04/06/2019
13	Date of Approval of Resolution Plan by CoC	09/11/2019
14	Date of Filing of Resolution Plan with Adjudicating Authority	11/11/2019
15	Date of Expiry of 180 days of CIRP	08/06/2019
16	Date of Order extending the period of CIRP	02/07/2019
17	Date of Expiry of Extended Period of CIRP	14/11/2019, 330* Days
18	Fair Value	Rs.10.315Cr.
19	Liquidation value	Rs.8.03Cr.
20	Number of Meetings of CoC held as follows:	15

**Particulars**

1st CoC Meeting  
2nd CoC Meeting  
3rd CoC Meeting  
4th CoC Meeting  
5th CoC Meeting  
6th CoC Meeting

**Dates of CoC meeting**

15/01/2019  
22/02/2019  
27/03/2019  
26/04/2019  
15/05/2019  
27/05/2019





7th COC Meeting	05/06/2019
8th COC Meeting	10/06/2019
9th COC Meeting	01/07/2019
10th COC Meeting	09/07/2019
11th COC Meeting	26/07/2019
12th COC Meeting	16/08/2019
13th COC Meeting	28/09/2019
14th COC Meeting	02/11/2019
15th COC Meeting	08/11/2019

\* The period of the CIRP got extended beyond 330 days because of the proviso inserted u/s12 on 16/08/19 which gave further 90 days from 16/08/19. See relevant proviso u/s12 as follows:  
*"Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019."*

- 2A. 3 (three) no. R-Plans were received as on 04.06.2019 from following PRAs: (1) Vinay Goel & Consortium of Members, (2) Consortium of Vibha Press Pvt. Ltd. & SPA Associates, and (3) Shiva Pulp & Papers Pvt. Ltd.  
 The R-Plans were considered in the 8th COC Meeting and put up for consideration at the 9th COC Meeting, which was cancelled/adjourned, and then at the 10th COC Meeting. All 3 (three) no. R-Plans were not approved in the 10th COC Meeting, and decision was taken to file an Application for liquidation of the CD.

During the period that the Application liquidation was pending adjudication before the Hon'ble NCLT, on a representation of a PRA, Mr. Vinay Goel, the Hon'ble NCLT directed vide Order dated 24.09.2019 that reasons for rejection of R-Plans be provided by the COC, which were filed before the Hon'ble NCLT.

Thereafter, on further the representation of the PRA, Mr. Vinay Goel, the Hon'ble NCLT directed vide order dated 30.09.2019 that COC to reconsider any amended Resolution Plan.

The SDs of the CD pressed their OTS proposal dated 26.07.2019 in the 11th COC Meeting held on 26.07.2019, and the proposal was not accepted by the COC in the 12th COC Meeting held on 16/08/2019.

At the 13th COC Meeting dated 28.09.2019, the SDs again submitted OTS Proposal with a different amount. The SDs having admitted to misappropriation of assets of the CD, which misappropriations were part of Applications filed by the RP before the Hon'ble NCLT for Fraudulent Transactions, were persons disqualified u/s 29A of the Code and not eligible to submit the Proposal. There was no R-Plan submitted by SDs at any point of time, and no proposal qualifying the parameters u/s 12A of the Code was ever submitted by the SDs.

In the 14th COC Meeting held on 02/11/2019, COC considered the R-Plan of the Consortium of reconstituted PRA, Vinay Goel & Consortium of Members with the inclusion of member of SPA Associates and the members of Shiva Pulp and Paper Pvt. Ltd. (the 2 other PRAs), and the R-Plan dated 25.10.2019, further amended on 04.11.2019 and 07.11.2019, was finally approved by the COC in the 15th COC Meeting concluded as on 09.11.2019 by Voting of 77.91% in favour of the R-Plan.

The SRA Consortium comprises 7 no. Members, which includes all 3 (three) no. PRAs who had filed R-Plans earlier and which R-Plans were rejected by the COC at the 10<sup>th</sup> COC Meeting held on 09/07/2019.

3. I have examined the approved Resolution Plan received from Resolution Applicant Vinay Goel and Consortium of Members, having following Members, approved by Committee of Creditors (CoC) of NIBULA PRINT & PACK PVT Ltd.:

S.NO.	NAME OF MEMBER OF CONSORTIUM	NET WORTH in Rs. Lakhs
1.	Vinay Goel	194.36
2.	Vikas Goel	158.95
3.	Sandeep Kumar Mittal	207.44
4.	Ashok Shukla	81.33
5.	Neeraj Arora	320.78
6.	Kamal Arora	165.72
7.	Dheeraj Arora	170.85
	<b>Total</b>	<b>1299.43</b>

4. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) all members of the Resolution Applicant, i.e., Vinay Goel and Consortium of Members have submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 77.91% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.

5. The list of financial creditors of the CD, NIBULA PRINT & PACK PVT LTD being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	Dewan Housing Finance Corporation (DHFL)	46.88	ASSENT
2.	Reliance Commercial Finance Limited	31.03	ASSENT
3.	Housing Development Finance Corporation (HDFC) Bank	20.74	DISSENT
4.	NeoGrowth	01.35	DISSENT
		100	PASSED with 77.91%

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

*Ashok*  


7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. l						
Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	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	0	0	0	0
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan, HDFC Bank	282.03	282.03	58.3	20.74
		(ii) who voted in favour of the resolution plan, DHFL	637.49	637.49	570	89.4
		& RCFL	421.88	421.88	202	38.4
		Total[(a) + (b)]	1341	1341	830.3	61.92
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan, Neo Growth.	18.32	18.32	1.28	7
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	18.32	18.32	1.28	7
3	Operational Creditors	(a) Related Party of Corporate Debtor	0	0	0	0
		(b) Other than (a) above:				
		(i) Government	116.60*	22.27*	1.11	5
		(ii) Workmen	0	0	0	0
		(iii) Employees (EPF & ESI)	11.72**	8.88**	8.88	100
		(iv) OCs	419.39	419.39	21.01	



		<b>Total[(a) + (b)]</b>	<b>547.71</b>	<b>450.15</b>	<b>30.99</b>	<b>6.88</b>
4	Other debts and dues	CIRP Costs	50	50	50	100
5.	Contingency Fund				30.01	
Grand Total			<b>1829.11 +* +**=1957.43</b>	<b>1829.11 + * +**=1860.26</b>	<b>942.59</b>	<b>52.09</b>

Figures **In Bold Font** are claims admitted as on 07/03/2022, Pursuant to directions given by this Hon'ble NCLT vide Orders dated: 08/02/2021, for enquiring and admitting the Claims from EPF & ESI Departments & vide Order dated 09/07/2021 for admitting Claim of Comm. Tax. Dept. i.e. of Government.

7A. Amounts provided for payment to FCs and the value of security held by the FCs are summarized as under:

Amount offered to FCs / LV of security:

DHFL: Rs. 570 Lakhs / Rs. 590 Lakhs (0.97 times the value of security)

RCFL: Rs. 202 Lakhs / Rs. 137 Lakhs (1.47 times the value of security)

HDFC: Rs. 58.3 Lakhs / Rs. 20 Lakhs (2.9 times the value of security)

Neo: Rs. 1.28 Lakhs / Rs. Nil ("n" times the value of security)

Clearly, the CoC decision in respect of distribution takes into consideration the value of security interest, in compliance with Sec. 30(4), and is the most appropriate basis therefore and in harmonization with the Sec. 30(2).

HDFC had, in any case, valued the security interest held by it at Zero in the Form of Claim when filed by it, and clearly HDFC cannot raise objections on the distribution as provided in the Resolution Plan.

7B. CIRP costs are provided for payment by RA on 100% of actual amount and Rs. 2 lakhs provision is made towards recovery process by RP against missing machines, stocks, etc. (page no. 238 of the IA no. 1512/2019):

7C. Period of payment is given at page no. 218 & 219 of the IA no. 1512/2019 as follows:

Category	Particulars	Admit Amount	Total Proposed Amount in cash/kind	Within 30 days	Within 120 days	Within 180 days	Within 240 days	Proposed amount under minimum guarantee/assurance payable within 240 days upon providing security/right of claim in favour of RA/CD
Top Priority	CIRP Cost	50.00	50.00	50.00				
Secured Debt (as per our understanding)								
Category 1	DHFL	637.49	570.00	162.00	114	114	180.00	
Category 2	RCFL	421.88	202.00	46.0	32.40	32.40	51.20	1# 40.00
Category 2	HDFC	282.03	58.30	16.60	11.65	11.65	18.40	
Unsecured Debt								
	Neo Growth	18.32	1.28	1.28			0.00	-
	Operational Creditors	419.39	21.01	21.01			-	-
	Contingencies fund		40.00	40.00			-	-
	<b>Total</b>	<b>1829.11</b>	<b>942.59</b>	<b>336.90</b>	<b>158.06</b>	<b>158.06</b>	<b>249.56</b>	<b>90.00</b>

*nk. & ASHUTOSH LUNI*

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1. I.P. Singh	Equity	596596	Nil	87.09	Nil
2. Manju Singh	Equity	88404	Nil	12.91	Nil

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)*	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Clause 1, P212-13	Yes
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?	Filed separately	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Filed separately	Yes
Section 30(2)	Whether the Resolution Plan- (a). provides for the payment of insolvency resolution process costs? (b). provides for the payment to the operational creditors? (c). provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d). provides for the management of the affairs of the corporate debtor? (e). provides for the implementation and supervision of the resolution plan? (f). contravenes any of the provisions of the law for the time being in force?"	clause 9b, P-217 9b P-238 10, P-223 10(I) No	Yes Yes Yes Yes Yes No
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Yes, P-246 Yes, P-246	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Yes, P-246	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	Yes	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Yes (P-219)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 9b, P-217, Revised at P-238	Yes

IA. N

IA no. 1522 of 2019 in IB-1138/ND/2018 K.J. Packwells Pvt. Ltd. vs INDUJA PRINT & PACK Pvt. Ltd

Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.  (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	N/a, P-225, last para.	Yes.
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Clause 9b, P-219  10, P-223  10(I)	Yes
38(3)	Whether the resolution plan demonstrates 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? (e) the resolution applicant has the capability to implement the resolution plan?	Clause (P-214) 10(VII) 10(I)  10(VIII)  Clause 1	4Yes  Yes Yes Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes, App. Filed at IA no. 366/2019	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Yes, Recd. PG for Rs.50Lakhs, expiring in Dec.2023	Yes

\*Kindly see page 78 & 119 in IA no. 1512/2019 on the Criteria of eligibility.

9A: (i) The matter of funds proposed to be brought by SRA and their utilization is as follows(See Page No. 216 in IA no. 1512/2019):

**Proposed fund in following manner**

(Rs.)					
S.No.	Type of Structuring	No. of Equity Shares	Equity Share Capital	% of Holding	Amount (Rs/Lakh)
1	Equity of 50000 @10/- each (from members of Consortium of RA and their related parties as per MOU)	5,00,000	50,00,000	100.00%	50.00
2	Interest free Preference Shares, Debentures (convertible or non-convertible) unsecured Loan or any other instrument by consortium members				515.00

IA. No.  
IA no.



3	Internal Source and working capital from companies/Firm of members				340.00
4	Proposed loan from Banks				390.00
<b>Total:</b>					<b>1295.00</b>

**(ii) Proposed use of fund under Resolution Plan**

S. No.	Type of Structuring	Amount in Rs. (Lakh)
1	Settlement of Debts of CD (till approval of plan by AA)	952.00
	Contingency towards unknown liability (yet not claimed)	40.00
2	Working Capital	138.00
3	Capex	165.00
4	<b>Total:</b>	<b>1295.00</b>

(ii) The Monitoring Committee shall supervise and implement the R-Plan (See clause 10(I) at page no. 223 of IA 1512/2019), salient features whereof are as follows:

**Appointment of a Monitoring Agency**

It is proposed that Monitoring agency comprising of Mr. Ashok Kriplani the Resolution Professional, one representative of the RA and one representative of the COC will be appointed as the Monitoring Agency for supervision and monitoring of implementation of Resolution Plan. The Monitoring Agency shall monitor and provide regular updates to the Resolution Applicant and financial creditors till all the approvals necessary for implementation of the plan are in place.

The fee for Mr. Ashok Kriplani as member of monitoring agency would be INR Fifty Thousand per month. However, no fee will be paid to the other member nominated by the RA/COC.

10. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	(11/12/2018) T	(17/12/2018) Received the Admission Order late.
Regulation 6(1)	Publication of Public Announcement	(14/12/2018) T+3	(17/12/2018) T+6
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	(25/12/2018) T+14	31/12/2018 T+20
Regulation 13(1)	Verification of Claims	(01/01/2019) T+21	(07/01/2019) T+27
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	N/A	N/A
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	(03/01/2019) T+23	(09/01/2019) T+29
Section 22(1) and regulation 17(2)	First Meeting of the CoC	(10/01/2019) T+30	(15/01/2019) T+35
Regulation 35A	Determination of fraudulent and other	(05/04/2019)	(27/02/2019) T+28

IA. No. 1512 of 2019, IA No. 1684 of 2019,

IA no. 1522 of 2019 in IB-1138/ND /2018 R.J. Packwells Pvt. Ltd. Vs Nibula Print & Pack Pvt. Ltd

	transactions	T+115	
Regulation 27	Appointment of two Registered Valuers	(27/01/2019) T+47	(14/02/2019) T+65
18/Regulation 36 (1)	Submission of Information Memorandum to CoC	(03/02/2019) T+54	(08/03/2019) T+87
Regulation 36A	Invitation of EoI	(24/02/2019) T+75	(03/04/2019) T+113
	Publication of Form G	(24/02/2019) T+75	(03/04/2019) T+ 113
	Provisional List of Resolution Applicants	(21/03/2019) T+100	(30/04/2019) T+140
	Final List of Resolution Applicants	(05/04/2019) T+115	(16/05/2019) T+156
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	(26/03/2019) T+105	(06/05/2019) T+146
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	(25/05/2019) T+165	(11/11/2019) T+328
Section 31(1)	Approval of Resolution Plan	(09/06/2019) T=180	Pending

11. The time frame proposed for obtaining relevant approvals is as under:

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1	Appointment of Directors of RA & changes in MOA/AOA	Company Act	MCA/NCLT.	Within 7-30 days
2	Restoration of Electricity & Water Connection		Electricity Body, Noida Authority and NCLT	Within 30 days
3	Release of Charge in favour of RA	Companies Act and State (Revenue Authority)	Noida Authority and RoC	Within 8 month
4.	Regularization of Statutory Matters	Respective law viz excise, vat, GST	Respective Authority / Statutory body	Within 3 month

12. The Resolution Plan is not subject to any contingency except that R-Plan contains provision for Contingency funds of Rs.30.01Lakhs.

13. Following are the key deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	EOI date extended from 17/04/19 to 01/05/2019	R40A	To allow participation of other PRAs.	Informed COC in 5 <sup>th</sup> to 7 <sup>th</sup> COC Meetings
2	In Time Lines, R-Plan was extended from 01/06/19 to 04/06/19	R40A	Due to extension in date of EOI	Informed COC in 5 <sup>th</sup> to 7 <sup>th</sup> COC Meetings

IA. No.  
IA no.





14. The Resolution Plan was filed **three** days before the expiry of the period of CIRP provided in section 12 of the Code.

14A. Whether the resolution professional has, in accordance with regulation 35A,-  
 (a) applied to the Adjudicating Authority on or before the one hundred and thirty-fifth day of the insolvency commencement date: Yes (b) filed  
 Form CIRP 8 with the Board on or before the one hundred and fortieth day of the insolvency commencement date: No

15. Provide details of section 66 or avoidance application filed / pending:

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	N/a		
2	Undervalued transactions under section 45	N/a		
3	Extortionate credit transactions under section 50	N/a		
4	Fraudulent transactions under section 66 (Short Notes are given below):	14/03/2019	Pending	N/a

Short Notes to explain the above:

a. Following are the items with Value misappropriated by the SDs of the CD:

Particulars	Amount
Machines Misappropriated	INR 4.3 Crore
Misappropriation of Stocks	INR 3.86 Crore
Misappropriation of Vehicles	INR 45 Lakhs
<b>Total</b>	<b>INR 8.61 Crore</b>

b. The following Table Shows the List of Missing Machines and their value, supported with documents filed at page nos. of Convenience Compilation filed in IA no/366/2019:

S. No.	Missing Machines with Model, at page nos.	Value in Rs.	Invoice/Loans docs. at page no.
1.	Duplex Slitter Rewinder Machine.	41,30,000	145
2.	Heidelberg 6 Color Offset Machine.	1,84,08,000	149
3.	Heidelberg 2 Color Offset Machine.	47,20,000	151
4.	Shrijee Web Offset 4 High Tower / Web Offset.	95,25,000	165
5.	Web offset Printing machine / Web offset Printing machine.	62,83,000	168
	<b>Total</b>	<b>4.30 Cr.</b>	

c. On Value of Stocks as per last Balance Sheet:

AR of the SD of CD's undertook to provide Tally data within 3-4 days to justify the data on movement of stocks, at page Nos. 55 to 56 of the Convenience Compilation which the AR or the SDs themselves never provided. It is therefore, a clear case of misappropriation of stocks worth Rs. 3.86 Crs, committed by the SDs of the CD.

d. The SDs of the CD returned back only one LCV owned by the CD worth Rs. 5 Lakhs. See Para no. 9 in the w/s filed in IA 366/2019. Thus, there is misappropriation of Rs. 45 Lakhs committed by the SDs of the CD.

IA. No.  
IA no.

*Abhishek*  


Explanatory Notes:

1. Distribution on recovery of Misappropriated amount: Page No. 220 in the last para of S.No. 2 in IA No. 1512/20219 which is as follows:  
Despite that PRA proposed that he will do all the possible efforts for recovery with cooperation of FCs/RP and proposed 55% share of recovery, subject to recovery, against missing machine financed by RCFL and missing stock to HDFC respectively which is fair. Where the recovery is subject matter of incurring expenses via police complaint, insurance claim, legal recovery against promoter/ director on account of misappropriation. The recovered amount, if any shall be distributed to RCFL and HDFC as proposed in payment plan of debt, shall be made after deducting cost of recovery including success rate, if any considered by COC to Resolution Professional.
2. R-Plan further Incorporates at P-218 of IA no. 1512/2019, that:  
"3. PRA shall make provision of Rs. 2 lakh towards out of pocket expenses for Resolution Professional for such recovery. It is noted that Two lakh is maximum cap allowed to Resolution Professional towards expenses for such recovery which shall be deductible from success fee in case of recovery is more than Rs. 3 crores."
3. Resolution voted in the 15<sup>th</sup> COC Meeting/Voting on its execution is as follows:  
"Resolved that the RP shall get 10% as the fees + GST out of the realisation of misappropriated assets of the CD plus any money so realised provided minimum recovery from misappropriated assets is Rs.3Cr. and the net amount to be distributed amongst the creditors shall be as per the Resolution Plan and that the RA shall contribute maximum of Rs.2Lakhs towards expenses for contesting the abovesaid applications U/Ss 14, 66 & 19 IBC, 2016 which Sh. Ashok Kriplani shall contest."
4. That, further, the RP realized Rs. 26.08 Lakhs after filing an application before the Hon'ble NCLT against the SDs of the CD for violation of S14 of the IBC, 2016, by withdrawing the amount from ICICI bank after the commencement of the CIRP of the CD,

15A. The committee has approved a plan providing for contribution under regulation 39B as under:  
Agenda no. 6 as per Regulations was Noted by the COC in the 12<sup>th</sup> COC Meeting.

15B. The committee has recommended under regulation 39C as under:  
a. Sale of corporate debtor as a going concern: **Yes**  
b. Sale of business of corporate debtor as a going concern: **N/A**  
Available in Agenda No. 7, 13<sup>th</sup> COC Meeting, duly  
Approved.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D.] Agenda no. 6 as per Regulations was Noted by the COC in the 12<sup>th</sup> COC Meeting.

I ASHOK KRIPLANI hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

  
  
(Signature)

Name of the Resolution Professional: ASHOK KRIPLANI  
IP Registration No: IBBI/IPA-003/IP-N00009/2016-17/10071  
Address as registered with the Board: 10/18 1st Floor, Old Rajinder Nagar, New Delhi 110060  
Email id as registered with the Board: ashok.kriplani1956@gmail.com

Date: 03/10/2023  
Place: NEW DELHI

10. As per the Form 'H' (ibid) filed by the Applicant, the Fair Market Value of the Corporate Debtor is Rs.10.315 Crore and the Liquidation Value of the Corporate Debtor is Rs. 8.03 Crore. The total amount provided for distribution to various stakeholders under the CoC - approved Resolution Plan is Rs. 9.42 Crore.

11. The Applicant/RP has filed the Affidavit of all the Consortium members stating that they are not barred under Section 29A of IBC, 2016 to submit the Resolution Plan. One of such Affidavits filed by one Mr.Vinay Goel reads thus:


INDIA NON JUDICIAL Government of Uttar Pradesh e-Stamp		वैशाली नानापाल (सामान्य-407) कोड सं- विद्युत सीमा-1000
Certificate No.	: IN-UP47777135189983V	1 100
Certificate Issued Date	: 28-Feb-2023 07:34 PM	
Account Reference	: NEWIMPACC (SV)/ up14079204/ GHAZIABAD SADAR/ UP-GZB	
Unique Doc. Reference	: SUBIN-UPUP1407920489548113513875V	
Purchased by	: VINAY GOEL	
Description of Document	: Article 4 Affidavit	
Property Description	: Not Applicable	
Consideration Price (Rs.)	:	
First Party	: VINAY GOEL	
Second Party	: Not Applicable	
Stamp Duty Paid By	: VINAY GOEL	
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)	

Please write or type below this line  
**AFFIDAVIT**

I Vinay Goel S/O Shri Prem Chand Goel age 53 years, R/O Windsor Park Appartt. Flat No.GH-062,Vaibhav Khand Indirapuram Ghaziabad. (U.P.) hereby declare and confirm that I am a member of the Vinay Goel & Consortium of Members, the Successful Resolution Applicant in the matter of M/s Nibula Print and Pack Pvt. Limited, a company undergoing Corporate Insolvency Resolution Process. I further declare and confirm that I understand the importance of Section 29A of IBC, 2016 and the meaning of the term 'connected persons' as set out therein and that I am not ineligible u/s29A of IBC, 2016:

I Vinay Goel further do hereby solemnly affirm and state that :-

- That I am not an undercharged insolvent;
- That I am not a Willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulations Act, 1949.



- c) That I do not have an account classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of Corporate insolvency resolution process of the corporate debtor and who has failed to make the payment of all overdue amounts with interest thereon and charges relating to non-performing asset before submission of the resolution plan .
- d) That I am not convicted for any offence punishable with imprisonment for two years or more.
- e) That I am not disqualified to act as director under the Companies Act, 2013;
- f) That I am not prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- g) That I am not a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction , extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;
- h) That I have not executed an enforceable guarantee in favour of a creditor, in respect of a corporate debtor against which an application for insolvency resolution made by has been admitted under this code;
- i) That I am not subject to any disability, corresponding to clauses (a) to (h) of S29A of IBC, 2016, under any law in a jurisdiction outside India.?"
- j) That I do not have a connected person not eligible under clauses (a) to (i) of S29A of IBC, 2016.

*[Signature]*  
DEPONENT

**VERIFICATION**

I the above named deponent do hereby verify that the statements made in paragraphs a) to j) of the above affidavit herein are true to best of my knowledge and belief and nothing has been concealed therefrom.

Verified at Ghaziabad. on this 28.02.2023

*[Signature]*  
DEPONENT



*[Signature]*  
ATTESTED  
**RAMPAL SINGH**  
Advocate  
Notary Ghaziabad (U.P.)  
Reg. No-10720  
Exp. Date 25-11-24

**28 FEB 2023**

12. The Applicant/RP has also filed on record, the proof of the Performance Bank Guarantee (PBG) issued by HDFC Bank in favour of the SRA. The said PBG can be claimed till December 2024 and reads thus:



Annexure A-2

10

G 2 & 3, Windsor Park,  
5 Vaibhav Khand, Indirapuram  
Ghaziabad - 201 014. (UP)  
Phone Banking : 011-61606

Date 09-December-2022 BG Confirmation NO. GTEE 0590 09122022 007669

To,  
NIBULA PRINT AND PACK PVT. LTD  
MR. ASHOK KRIPLANI, RESOLUTION  
PROFESSIONAL OF NIBULA PRINT AND  
PACK PVT. LTD, 17/13, GROUND FLOOR  
OLD RAJINDER NAGAR

OUR BG NO.	:	088GT02223430002
DATE OF ISSUE	:	09-DEC-2022
APPLICANT	:	R J PACKWELLS PRIVATE LIMITED
GUARANTEE AMOUNT	:	INR35,00,000.00
AMOUNT IN WORDS	:	RUPEES THIRTY FIVE LAKH ONLY
EXPIRY DATE	:	08-DEC-2023
EXPIRY PLACE	:	GHAZIABAD
CLAIM DATE	:	07-DEC-2024

DEAR SIR,

PLEASE FIND ENCLOSED THE CAPTIONED GUARANTEE DULY ISSUED BY US.

THE ORIGINAL GUARANTEE ATTACHED IS TO BE RETURNED TO US ALONG WITH BENEFICIARY DISCHARGE LETTER WITHIN 15 DAYS FROM THE DATE IT CEASES TO BE IN FORCE OR AS SOON AS THE PURPOSE FOR WHICH IT HAS BEEN ISSUED IS FULFILLED, WHICHEVER IS EARLIER.

WE CONFIRM THAT THE SIGNATORIES WHO HAVE SIGNED THE SUBJECT GUARANTEE / EXTENSION AS STATED BELOW HAVE THE REQUISITE POWERS TO SIGN ON BEHALF OF THE BANK.

1. Mr./Ms.

Designation

PA / Auth Sig. No

*HIT MALHO*

HIT MALHO

Emp. Code: R2471

Branch Manager

2. Mr./Ms.

Designation

PA / Auth Sig. No

*Atish Jain*

Atish Jain

Emp. Code: 2028

Backup Branch Manager

FURTHER CONFIRMATION OF THIS GUARANTEE IF DESIRED, SHOULD BE OBTAINED FROM THE ABOVE MENTIONED BRANCH.

THIS LETTER FORMS AN INTEGRAL PART OF THE GUARANTEE.

FOR HDFC BANK LTD.

AUTHORISED SIGNATORY/S



XXX

XXX

XXX

XXX

IA. No. 1512 of 2019, IA No. 1684 of 2019,

IA no. 1522 of 2019 in IB-1138/ND /2018 R.J. Packwells Pvt. Ltd. Vs Nibula Print & Pack Pvt. Ltd



We understand your world

Date 07-December-2022

BG Confirmation NO. GTEB 0922 07122022 008012

HDFC Bank Ltd, 1  
Plot No2, Local Shopping Co  
Near Max Balaji Hospital,  
Mandawali, Fazalpur,  
Patparganj, New Delhi - 1100

To,  
NIBULA PRINT AND PACK PVT LTD  
17/13,GROUND FLOOR,OLD RAJINDER  
NAGAR,NEW DELHI-110060

OUR BG NO. : 027GT02223410008  
DATE OF ISSUE : 07-DEC-2022  
APPLICANT : SANDEEP KUMAR MITTAL  
GUARANTEE AMOUNT : INR15,00,000.00  
AMOUNT IN WORDS : RUPEES FIFTEEN LAKH ONLY  
EXPIRY DATE : 23-DEC-2023  
EXPIRY PLACE : NEW DELHI  
CLAIM DATE : 22-DEC-2024

DEAR SIR,

PLEASE FIND ENCLOSED THE CAPTIONED GUARANTEE DULY ISSUED BY US.

THE ORIGINAL GUARANTEE ATTACHED IS TO BE RETURNED TO US ALONG WITH  
BENEFICIARY DISCHARGE LETTER WITHIN 15 DAYS FROM  
THE DATE IT CEASES TO BE IN FORCE OR AS SOON AS THE PURPOSE FOR WHICH IT  
HAS BEEN ISSUED IS FULFILLED ,WHICHEVER IS EARLIER.

WE CONFIRM THAT THE SIGNATORIES WHO HAVE SIGNED THE SUBJECT  
GUARANTEE / EXTENSION AS STATED BELOW HAVE THE REQUISITE POWERS TO SIGN  
ON BEHALF OF THE BANK.

1. Mr./Ms.	2. Mr./Ms.
Designation	Designation
PA / Auth Sig. No	PA / Auth Sig. No

FURTHER CONFIRMATION OF THIS GUARANTEE IF DESIRED, SHOULD BE  
FROM THE ABOVE MENTIONED BRANCH.

THIS LETTER FORMS AN INTEGRAL PART OF THE GUARANTEE.

**SHUBHAM GARG**  
FOR HDFC BANK LTD Senior Manager  
Emp. Code: S42992  
HDFC BANK LTD. (0922)

AUTHORISED SIGNATORY/3

*MKS*  
**HDFC BANK LTD.**  
Name MURARI SINGH  
Branch Manager  
Emp Code M4957  
Branch Code: 0922

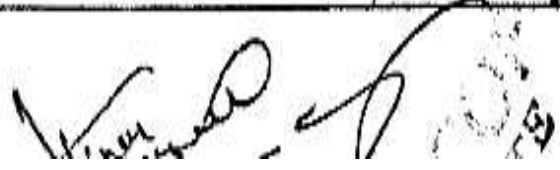
*Rajiv Sharma*  
**RAJIV SHARMA**  
Branch Manager  
Emp. Code: R1634  
HDFC BANK LTD.  
I.P. Extension Branch - 0922

13. As regards the sources of funds of SRA, the Applicant has stated the following on Page 226 of the Application:

source of funds is already given in the resolution plan.

source of funds as proposed under resolution plans is as under:

S.No	Source	Amount (Rs. In Lakh)
1	Equity from Consortium Members, Directors & Relative of consortium members/Directors.	50.00
2	From Long term loan / Internal sources of the Resolution Applicant/ Consortium of Members/ their firm	515.00
3	Working capital sources thru existing firm/ companies and internal accrual generate from Nibula Plant	340.00
4	Loan against machinery and work capital	390.00
	Total	1295.00



14. As regards the Implementation Schedule, the Applicant has provided the same at Page 219 of the Application, which reads thus:

Category	Particulars	Admit Amount	Total Proposed Amount in Cash / Kind	within 30	within 120 days	within 180 days	within 240 days	Proposed amount under Minimum guarantee / assurance payable within 240 days upon providing security/right of claim in favour of RA/CD
Top Priority	CIRP Cost	50.00	50.00	50.00				
Secured Debt ( as per our understanding )								
Category 1	DHFL	637.49	570.00	162.0	114.00	114	179.99	-
Category 2	RCFL	421.88	202.00	46.0	32.40	32.4	51.16	1# 40.00
Category 2	HDFC	282.03	108.30	16.6	11.66	11.66	18.41	2# 50.00
Unsecured Debt								
	Neo Growth	18.32	1.28	1.28			0.00	-
	Operational Creditors	419.39	21.01	21.01			-	-
	Contingencies fund		40.00	40.00			-	-
	<b>Total</b>	<b>1829.11</b>	<b>992.59</b>	<b>336.90</b>	<b>158.06</b>	<b>158.06</b>	<b>249.56</b>	<b>90.00</b>



15. For supervision of implementation of the plan / constitution of Monitoring Committee, the following is stated under the Resolution Plan:

**10. MANAGEMENT OF THE COMPANY**

The Company shall continue as a going concern and operate in its normal course of business upon implementation of the Proposed Resolution Plan. The management of affairs of the Company after approval of the plan would be done as follows:

**I Appointment of a Monitoring Agency**

It is proposed that Monitoring agency comprising of Mr. Ashok Kriplani the Resolution Professional, one representative of the RA and one representative of the COC will be appointed as the Monitoring Agency for supervision and monitoring of implementation of Resolution Plan. The Monitoring Agency shall monitor and provide regular updates to the Resolution Applicant and financial creditors till all the approvals necessary for implementation of the plan are in place.

The fee for Mr. Ashok Kriplani as member of monitoring agency would be INR Fifty Thousand per month. However, no fee will be paid to the other member nominated by the RA/COC.

Resolution Applicant/ company shall pay fees of the monitoring agency in priority to all other liabilities. It is clarified that in the event the Company is liquidated, the fees of the Monitoring Agency shall form part of the liquidation process costs and shall have priority in terms of the payment under the waterfall mechanism stipulated under the Code. The tenure of the monitoring agency shall continue till each of the following are complete.

- a. Formation of new board of directors
- b. Cancellation of existing issued shares and Allotment of new equity to resolution Applicant.
- c. Payments to financial creditors, operational and other creditors in terms of the resolution plan.

16. On perusal of the plan, it is noticed that the SRA has not sought any relief and concession under the plan.

**IA-1684 of 2019**

17. However, before proceeding ahead in the matter, we would like to deal with the objections to the approval of Resolution Plan raised by Dissenting Financial Creditor HDFC Bank by filing IA-1684 of 2019. The HDFC Bank has saliently espoused the following:

17.1 The Resolution Plan is defective in terms of Section 30 (2) (b) of IBC, as per which the dissenting Financial Creditor shall be paid in priority. It is contended by the HDFC Bank that as per Section 30(2)(b) of the Code, the dissenting Financial Creditor, the Applicant herein, must be paid a minimum of Rs. 1.61 Crore as against the amount of Rs. 58.30 Lakhs being paid under the Resolution Plan. The Insolvency and Bankruptcy Board of India vide notification no. IBBI/2019- 20/GN/REG052 dated 27.11.2019 amended the principal Regulation 38(1) of CIRP Regulations, 2016, whereby the priority of payment amongst creditors has changed. As per the original regulation 38(1), only the Operational Creditor was given priority in payment over Financial Creditors. However, after the amendment, both Operational Creditors and the Dissenting Financial Creditor must be paid in priority over the Financial Creditors, who voted in favour of the plan. Thus, as per the amendment, the Applicant, being a dissenting financial creditor, is entitled to be paid in priority. The HDFC bank has further argued that the Resolution Plan has not attained finality yet, therefore, the provisions of the amended Regulation 38(1) will have a retrospective effect on it and this is in accordance with the press release dated 17.07.2019 of the IBBI.

17.2 As per the Resolution Plan, it is evident that the dissenting Financial Creditor, the Applicant herein, is entitled to the liquidation value, in terms of Section 53(1) in the event of liquidation. The gross realizable liquidation value of the Corporate Debtor is estimated to be Rs. 835 lakhs and the value of the Applicant therefrom is stated to be Rs. 35 lakhs in the amended Resolution Plan of 04.11.2019 which is calculated in a baseless manner. The amount

admitted by the Resolution Professional is Rs. 1.61 crore and the calculation undertaken by the applicant amounts to a sum of Rs. 1.65 crore. Therefore, any amount lower than Rs. 1.65 crore is inconsistent with Section 30(2) (b) read with Section 53 of the Code. Reliance is placed by the applicant on the judgment passed by the Hon'ble Apex Court in **M/s Vistra ITCL (India) Ltd & Ors. versus Mr. Dinkar Venkatasubramanian & Anr., Civil Appeal No. 3606 of 2020.**

17.3 The words provided in Section 53(1)(b) are 'debts owed to a secured creditor', which signifies the whole debt of a secured creditor, i.e., the equal proportion of the whole of the debt must be treated as the liquidation value for Section 30(2) (b), and the Applicant must be paid accordingly.

17.4 The RP vide its additional affidavit dated 04.12.2019 has clearly stated that if the distribution is made in terms of section 30(2)(b) and section 53 of the IB Code 2016, then HDFC Bank is entitled to an amount of Rs. 1.61 crore. It is further stated that if the amount of Rs. 1.61 Crore is paid to the HDFC Bank, then other creditors would not agree to approve the resolution plan.

17.5 In the liquidation proceedings, the creditors having security interest has two options - either to realize its security or to relinquish its security interest in the general pool of the assets of the Corporate Debtor. In the event of relinquishment, the priority under Section 53(1)(b) is available to the secured creditor, which will rank it equally to workman's dues and if the secured creditor proceeds to realize the security interest, the priority drops to Section 53(1)(e). Considering such a clear and unambiguous position, there is

no necessity to read into the provisions of the Code and impute something that is not available.

17.6 Thus, it cannot be stated that if the secured creditor relinquishes its security interest, in that event, the priority of the secured creditor is available only to the extent of its security interest. The only restriction created under the amended IBC is that the dues of the workman shall rank equally with that of the secured creditor. Hence, to restrict the right of the secured creditor to the extent of the security interest would mean reading in to the provisions of Section 53, and what the legislature never intended to do. Reliance is placed on the judgment passed by the Hon'ble NCLAT in **Technology Development Board versus Mr. Anil Goel and Ors. CA (AT) (INS) No. 731 of 2020.**

17.7 The Applicant was categorized and discriminated between similarly situated secured Financial Creditors, which is illegal, in view of the decision of the Hon'ble Supreme Court dated 15.11.2019 in **Committee of Creditors of Essar Steel India Limited, Authorised Signatory v Satish Kumar Gupta & Ors.** The Hon'ble Court held that discrimination amongst similarly situated creditors is not permissible. This was affirmed in **India Resurgence Arc Private Limited v M/s Amit Metaliks Limited & Anr.**, wherein the Hon'ble Court relied on the findings of Essar that the concept of equitable treatment of the creditors within the same class. The Court further held that a dissenting financial creditor would be receiving the payment amount as per their entitlement. If they are entitled to some amount in liquidation value in terms of Sections 30 and 53 of the Code read with Regulation 38 of the CIRP Regulations, they would be provided such liquidation value proportionately.

18. The RP filed reply to the aforesaid objections, mainly stating thus:

18.1 The Applicant/objector HDFC Bank has incorrectly alleged that the Resolution Plan submitted by the Vinay Goel & Consortium Members is discriminatory in nature. The categorisation of the Creditors met out in the present case is based on the principle of "intelligible differentia", as laid down in Essar Steel.

18.2 The Applicant has been rightly termed as a secured Financial Creditor only to the extent of the value of the security interests held by it. The objective of the IBC, 2016 has been thereby protected and abided to while formulating the Resolution Plan. The said submission has also been upheld by Essar Steel.

18.3 The next contention raised by the Applicant is with respect to the applicability of amended Regulation 38(1) dated 27.11.2019 introduced vide notification no. IBBI/2019-20/GN/REG052. It is submitted that the said Regulation does not have a retrospective effect, and therefore, it is not applicable to the Resolution Plan that was already approved by the CoC in the 15th CoC meeting held on 08.11.2019.

18.4 Sec. 30(2) of IBC provides that dissenting FC is entitled to Liquidation value of security held by it, and when read with Sec. 30(4), it is clear that the COC has to exercise its commercial wisdom in the matter of distribution, and it has freedom to take decision keeping in view the fact and that the distribution to any FC is not lower than the Liquidation value of security held by the FC. the entitlement of the Dissenting Financial Creditor in the event of liquidation of the CD will result in worse outcome for the Applicant as the expected recovery

will be net of proportionate liquidation expenses and costs thereof out of a value of Rs. 20 Lakhs (LV) as opposed to Rs. 58.30 (RV) Lakhs offered in the present Resolution Plan.

19. We have heard the submissions of the Applicant/ objector HDFC Bank which is also a Dissenting Financial Creditor (DFC) and the RP and perused the documents placed on record by both the parties, including their Written Submissions. The HDFC Bank has objected to the Resolution Plan, inter alia, on the ground that the plan is in contradiction to Regulation 38(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, since the Dissenting Financial Creditor is not paid in priority over other creditors. Further, the proposed plan violates Section 30(2)(b), as the dissenting Financial Creditor HDFC Bank has been offered an amount, which is less than the amount to be paid to it in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor. The plan offers only Rs. 58.3 Lakhs against its claim of Rs. 282.03 Lakhs, whereas the minimum Liquidation value owed to the HDFC Bank is Rs. 1.61 Crore. Per Contra, the RP contended that the priority in payment to the Dissenting Financial Creditor was introduced vide amendment in Regulation 38(1) of (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which came into effect from 28.11.2019, whereas the Resolution Plan was approved by the CoC as back as on 09.11.2019. Hence, this provision cannot be made applicable retrospectively. With respect to entitlement of DFC, it has been contended by the RP that the Liquidation value of Security Interest

held by the HDFC Bank is Rs. 20 Lakhs only, against which it has been offered Rs. 58 Lakhs in the plan.

20. In view of the above, we would like to examine the rival contentions raised by both the parties. Before dealing with the issue of minimum entitlement of the HDFC Bank, we would like to dwell upon whether the proposed Resolution Plan violates Regulation 38(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In the wake, we refer to Regulation 38(1), which reads thus:

***“38. Mandatory contents of the resolution plan.***

*(1) The amount payable under a resolution plan –*

*(a) to the operational creditors shall be paid in priority over financial creditors; and*

*(b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.”*

Evidently, vide Regulation 38(1)(b), the Dissenting Financial Creditors are accorded the same priority as Operational Creditors for the amount payable under a Resolution Plan vide Notification No. IBBI/2019-20/GN/REG052, dated 27.11.2019. Now, the issue before us is whether the aforesaid amendment in Regulation was retrospective in nature. To buttress the plea that the Regulation 38(1)(b) is retrospective in nature, the HDFC Bank has relied upon the Press Release dated 17.07.2019 issued by MCA, which reads thus:

17<sup>th</sup> July, 2019.  
New Delhi

MINISTRY OF CORPORATE AFFAIRS

PRESS RELEASE

Insolvency and Bankruptcy Code (Amendment) Bill, 2019

1. The Union Cabinet today approved the proposal to introduce a Bill in the Parliament to carry out 08 amendments to the Insolvency and Bankruptcy Code, 2016. The amendments aim to fill critical gaps in the corporate insolvency resolution framework as enshrined in the Code, while simultaneously maximizing value from the Corporate Insolvency Resolution Process (CIRP).
2. The Government intends to ensure maximization of value of a corporate debtor as a going concern while simultaneously adhering to strict timelines.
3. The salient features of the amendments are:
  - a) Clarity on allowing comprehensive corporate restructuring schemes such as mergers, demergers, amalgamations etc as part of the resolution plan.
  - b) Greater emphasis on the need for time bound disposal at application stage.
  - c) A deadline for completion of CIRP within an overall limit of 330 days, including litigation and other judicial processes.
  - d) Votes of all financial creditors covered under section 21(6A) shall be cast in accordance with the decision approved by the highest voting share (more than 50%) of financial creditors on present and voting basis.
  - e) A specific provision that financial creditors who have not voted in favor of the resolution plan and operational creditors shall receive at least the amount that would have been received by them if the amount to be distributed under the resolution plan had been distributed in accordance with section 53 of the Code or the amount that would have been received if the liquidation value of the corporate debtor had been distributed in accordance with section 53 of the Code, whichever



is higher. This will have retrospective effect where the resolution plan has not attained finality or has been appealed against.

- f) Inclusion of commercial consideration in the manner of distribution proposed in resolution plan, within the powers of the Committee of Creditors.
- g) Clarity that the plan shall be binding on the all stakeholders including the Central Government, any State Government or local authority to whom a debt in respect of the payment of the dues may be owed.
- h) Clarity that the Committee of Creditors may take the decision to liquidate the corporate debtor, any time after constitution of the Committee of Creditors and before preparation of Information Memorandum.

5. The changes are expected to lead to timely admission of applications and timely completion of the Corporate Insolvency Resolution Process, greater clarity on permissibility of corporate restructuring schemes, manner of distribution of amounts amongst financial and operational creditors, clarity on rights and duties of authorized representatives of voters and applicability of the resolution plan on all statutory authorities.

6. Analysis of data available demonstrates that there are delays in admission of applications and spillage of CIRP cases well over the time limits presently laid down in the code. The amendments are expected to address the issue of sanctity of timelines for completion of the entire corporate insolvency resolution process and also maximize the outcomes envisioned in the Code.

7. The proposal is in line with the overall objective of the government to achieve the outcomes envisioned in the Insolvency and Bankruptcy Code and seeks to ensure speedier resolution of cases involving corporate debtors.

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21. From a perusal of the press release (ibid), it is observed that it was about the proposed IBC (Amendment) Bill, 2019 and not about any amendment in Regulation 38(1) of (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Further, in this press release, we find no mentioning of priority in payment to be given to a DFC with retrospective effect rather it was about the amount that would have been received by an OC or DFC if the liquidation value of the CD was distributed in accordance with Section 53 of the Code, which eventually got reflected in amendment in Section 30(2)(b) of IBC 2016 separately.

22. Nonetheless, in the interest of justice, we would like to visit the Notification No. IBBI/2019-20/GN/REG052, dated 27th November, 2019 (given effect from 28.11.2019) to examine whether Regulation 38(1) of (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was given any retrospective effect. The relevant excerpts of Gazette Notification read thus:

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**  
**NOTIFICATION**  
New Delhi, the 27th November, 2019

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2019.

No. IBBI/2019-20/GN/REG052.—In exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely: -

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2019.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the principal regulations), in regulation 26, sub-regulation (1A) shall be omitted.
3. In the principal regulations, after regulation 25, the following regulation shall be inserted, namely: -  
"25A. Voting by Authorised Representative.  
The authorised representative shall cast his vote in respect of each financial creditor or on behalf of all financial creditors he represents in accordance with the provisions of sub-section (3) or sub-section (3A) of section 25A, as the case may be."
4. In the principal regulations, in regulation 37, after clause (b), the following clause shall be inserted, namely: -  
"(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;"
5. In the principal regulations, in regulation 38, for sub-regulation (1), the following shall be substituted, namely: -  
"(1) The amount payable under a resolution plan -  
(a) to the operational creditors shall be paid in priority over financial creditors; and  
(b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan."
6. In the principal regulations, after regulation 40A, the following regulation shall be inserted, namely: -

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23. From the perusal of the Notification above, it is observed that there is no mention of the fact that the Amended Regulation was to be given retrospective effect. In the circumstances, we consider it worthwhile to refer to the Judgement of Hon'ble NCLAT in the matter of "**Facor Alloys Limited & Anr. Vs. Mr. Bhuvan Madan & Ors.**" in Company Appeal (AT) (insolvency) No. **340 of 2020 dated 25<sup>th</sup> November, 2020.**

*"41. It is pertinent to mention that voting on approved Resolution Plan took place on 13th November 2019, on which date only the Operational Creditors were to be paid in priority. The Amendment to Regulation 38(1) of CIRP Regulations mandates priority in payment to dissenting Financial Creditors. This amendment came into effect on 27th November 2019, i.e. post the approval of Resolution Plan by the erstwhile COC of the Corporate Debtor. Therefore, as on the date of approval of the Resolution Plan by the erstwhile COC, the only requirement under the provision of the Code qua the dissenting Financial Creditors was the payment of the minimum liquidation value, which is duly complied in the present Case.*

***42. It is settled position in Law that provisions in a Statute would operate prospectively unless the retrospective operation is expressly provided for. There being no clarification provided to that effect, the amended Regulation 38 cannot be said to have retrospective application."***

*(Emphasis placed)*

24. Further, in this context, we also consider it worthwhile to refer to another Judgement of Hon'ble NCLAT in the matter of **Madhusudan Tantia Vs Amit Choraria, Company Appeal (AT) (Insolvency) No. 557 of 2020** dated 12.10.2020 wherein the following was observed:

*"41. At this stage, this Tribunal worth recalls and recollects the decision of Hon'ble Supreme Court 'Atlas Cycles Industries Ltd.' V. 'State of Haryana' AIR (1977) Supreme Court p.121 wherein it is observed that the word 'Notification' is normally employed in the context of conditional legislation e.g. to bring into operation the enabling Act or to grant exemptions from its provisions or to extend its operation to the new persons or objects. **It is to be pointed out that just because a 'Notification' substitutes something in an earlier notification, the substitution cannot have retrospective operation.**"*

*(Emphasis placed)*

25. Since the substitution/addition made in Regulation 38(1) of (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 vide Notification No. IBBI/2019-20/GN/REG052, dated 27th November, 2019 does not expressly specify that it was retrospective in nature, **we do not find any merit in this contention raised by the HDFC Bank.** The proposed Resolution Plan being approved by CoC on 09.11.2019 i.e., prior to the notification dated 27th November, 2019 (ibid), we are of the considered view that the substituted/amended Regulation is not applicable in the present case and the proposed plan is not violative of Regulation 38(1) of (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. Now, we would like to examine another objection raised by the Applicant/HDFC Bank regarding its entitlement of amount in terms of Section 30(2) of IBC, 2016. As per the HDFC Bank, its minimum entitlement as Dissenting Financial Creditor (DFC) is computed by the RP at Rs. 1.61 Crore, which is based on the amount receivable by it under Section 53(1) of IBC by applying deeming fiction, if CD goes into the Liquidation. *Per Contra*, as per RP, the Liquidation value of DFC is Rs. 20 Lakhs only, which is the minimum Liquidation value of the Security Interest held by the HDFC Bank.

27. Normally, this Tribunal is not required to indulge itself in the exercise of computing the quantum of value receivable by a stakeholder, however, here it is a question of examining the methodology adopted by the RP in computing the entitlement of an amount receivable by a Dissenting Financial Creditor.

28. The minimum entitlement of a Dissenting Financial Creditor is mentioned in Section 30(2) of IBC, 2016, which reads thus:

**30. Submission of resolution plan. -**

(1) A resolution applicant may submit a resolution plan <sup>3</sup>[along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan -

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the <sup>4</sup>[payment] of other debts of the corporate debtor;

<sup>1</sup>[(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.

<sup>2</sup>*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.]

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

<sup>1</sup>[(4) The committee of creditors may approve a resolution plan by a vote of not less than <sup>2</sup>[sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, <sup>3</sup>[the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section]:

<sup>4</sup>[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the

29. Thus, as per Section 30(2)(b) of IBC 2016 (ibid), the amount payable to a Dissenting Financial Creditor is to be paid in accordance with Section 53(1) of IBC 2016 in the event of Liquidation of the Corporate Debtor. Although while calculating this, Liquidation of CD does not happen, however a deeming fiction is created in law that Corporate Debtor is in Liquidation and the amount payable to it is to be calculated in accordance with Section 53(1) of IBC 2016.

30. There might be some challenges in computing the exact amount, as during the Liquidation process, the proceeds from the sale of the liquidation assets are distributed, and such sale is carried down through e-auction or any other mode, however, during CIRP when Section 53(1) is applied as deeming fiction, neither there is any actual Liquidation of CD nor does any sale take place. Rather, the Average Liquidation value computed by the Registered valuers is deemed as the proceeds from the sale of Liquidation of CD.

31. Under the Liquidation proceedings, a Secured Creditor is vested with two options, Scenario-1: when he has the option to relinquish its Security Interest and take proceeds in terms of Section 53(1)(b)(ii); and Scenario-2: when it can enforce its Security Interest as per the mechanism stipulated under Section 52. The contents of Section 52 and 53 are reproduced below for an immediate reference:

## **52. Secured creditor in liquidation proceedings. -**

(1) A secured creditor in the liquidation proceedings may-



(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or

(b) realise its security interest in the manner specified in this section.

(2) Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either –

(a) by the records of such security interest maintained by an information utility; or

(b) by such other means as may be specified by the Board.

(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

(5) If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.

(6) The Adjudicating Authority, on the receipt of an application from a secured creditor under sub-section (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.

(7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall-

(a) account to the liquidator for such surplus; and

(b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

(9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of section 53.

**53. Distribution of assets. -**

(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely: -

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following:

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following: -

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

*Explanation.* - For the purpose of this section-

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are

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insufficient to meet the debts in full; and

(ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

32. Thus, it is observed that under both the scenarios, one thing is common that the Secured Creditor is entitled to only its claim amount. Even if it enforces its Security Interest under Section 52 and if there is any surplus

amount it has received, Secured Creditor is under obligation as per provision under Section 52(7) of IBC, 2016 to return the surplus amount to the Liquidator. In other words, if the value of security interest is higher than the claim amount, a Secured Creditor cannot enrich itself more than its entitlement. Further, in an alternate situation, while enforcing security interest, if it fails to realize its claim amount and any balance amount is left to be received, it is entitled to receive that amount under Section 53(e)(ii) of IBC, 2016.

33. In the context of CIRP, for the purpose of computing value receivable by a Dissenting Financial Creditor, the harmonious reading of Section 52(7) of IBC, 2016 and 53(e)(ii) indicates that value of Security Interest cannot be the criteria, rather it will be the value of claim, as per which the minimum entitlement of a Dissenting Financial Creditor is to be determined. Further, there could be situation where certain assets though considered while computing the Liquidation value of CD, but on which there is no security interest created of any creditor. If value of security interest is the sole criteria of computing the minimum entitlement of a DFC, then they will be deprived of getting benefits from the valuation of such assets no security interest is created.

34. In the instant case, the RP has provided the calculation of minimum entitlement of the HDFC Bank in terms of Section 30(2)(b) of IBC, 2016 if its claim is considered as criterion instead of the value of security interest. The calculation of RP reads thus:

**Note of Resolution Professional on Fresh RP**

U/s 30(2)(b)(ii) IBC, 2016, the distribution to the dissenting FC is not without difficulty, as follows:

1. It is to be seen whether S53 is to be applied in the CIRP in a conditional manner of application of S52, Or
2. Whether the S52 has no role in the CIRP.

Therefore, the RP has considered two scenario to present the same before the Ld.AA to decide as tabulated below:

Next it is to be further seen

- A. Thirdly, What will be the effect of S30(4) where the priority and value of security interest of a secured creditor is important.

Let, both of the above analysis of the RP may be decided by the Ld.AA.

FCs	% Holding	9.03Cr.is Available for Distribution	Distribution when security is relinquished (Seems to be the intention of the Legislature)	Distribution when Security is not relinquished	Remarks
DHFL	46.88(S)		$(9.03-0.50-0.21-1.61) \times 46.88/77.91 = 4.04\text{Cr.}^{****}$	5.7Cr. (Assumed at the present Level)	
RCFL	31.03(S)		=2.67Cr.	$9.03-0.50-0.21-1.61-5.7=0.97\text{Cr.}^{****}$	
HDFC	20.74(S)	Dissenting FC	$(8.48^*-0.50^{**}-0.21^{***}) \times 0.2074 = 1.61\text{Cr.}$	1.61cr. (Dissenting FC)	
NEO-GROWTH	01.35(U-S)		Nil	Nil	

\*  $8.03(\text{LV})+0.05(\text{Stocks, etc.})+0.40(\text{Machine})=8.48$  \*\* CIRP Costs \*\*\*To OCS \*\*\*\* Will not be Acceptable to DHFL,RCFL

**Assumptions and Observations:**

1. Since S30(4) talks about the priority and the value of security which is not defined anywhere else, so the RP has taken provisions of S30(2)(b)(ii) as it is, in literal meaning and has not applied the factor of value of security belonging to the dissenting FC, because S30(2) comes before S30(4).
2. Even the Hon'ble SC has not differentiated between the secured/unsecured creditors in a class in the CIRP or in the Liquidation in the case of Essar Steel decided on 15/11/2019 after the Amendments of 06/08/2019.
3. **If the provisions of value of security in S30(4) is applied on the dissenting FC, then the distribution by PRA is justified because value of security as on date on inspection and valuation of dissenting FC is found to be less than the distributed value being given to the dissenting FC which requires Judicial Adjudication.**

35. From a perusal of the abovesaid calculation placed by the RP, it is observed that in both the scenarios of Section 52 as well as Section 53 of IBC 2016, the minimum entitlement of the Dissenting Financial Creditor i.e., HDFC Bank comes to Rs 1.61 Crore.

36. However, the RP has treated Liquidation value of Security Interest while computing the minimum entitlement of DFC in terms of Section 30(2)(b) read with Section 53(1) of IBC, 2016 at Rs. 20 Lakhs. In our considered view, the RP has made a gross error while adopting this methodology while computing entitlement of DFC in terms of Section 30(2)(b) of IBC, 2016.

37. Since as per his own calculation of RP, the minimum entitlement of DFC as per Section 30(2)(b) read with Section 53(1) of IBC, 2016 (when security interest is relinquished) is Rs. 1.61 Crore, against which SRA in the Resolution Plan has provided Rs. 58 Lakhs only, we are of the considered view that the present Resolution Plan is violative of Section 30(2)(b) of IBC, 2016. **Hence, we have no option but to reject the Resolution Plan.**

38. **Accordingly, IA-1684/2019 stands allowed and IA-1512/2019 stands rejected.**

39. Further, in terms of provision under Section 33(b)(i) and the fact that the maximum permissible period of CIRP is over since long back, **we have no other option but to order Liquidation of the Corporate Debtor with immediate effect.**

40. Further in terms of provisions in Section 34(4)(a) of IBC, 2016, the current Resolution Professional Sh. Ashok Kriplani is replaced with another IP, who shall act and discharge duties as the Liquidator of the Corporate Debtor. Accordingly, from the list of the panel of IBBI, Mr. Shiv Nandan Sharma (having **Registration No.** IBBI/IPA-001/IP-P00384/2017-18/10641 and **e-mail id:** sharmasn@gmail.com) is appointed as the Liquidator of the Corporate Debtor, who shall take steps for Liquidation of CD in accordance with the law.

41. The Applicant/RP is directed to hand over the records to Mr. Shiv Nandan Sharma appointed as Liquidator within 3 days from today.

**IA-1522/2019**

43. The necessity of going into the merits of IA-1522/2019 is obviated in view of the objection raised by the Dissenting Financial Creditor in IA-1684/2019 having been sustained, IA-1512/2019 being rejected and Liquidation of the Corporate Debtor ordered.

44. **In view of the above, the IA-1522/2019 is dismissed, being infructuous.**

**Sd/-  
(L. N. GUPTA)  
MEMBER (T)**

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