

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

I.A/5191/ND/2023

IN

CP IB-771/PB/2018

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

IN THE MATTER OF

CAPRI GLOBAL CAPITAL LIMITED

... APPLICANT/ FINANCIAL CREDITOR

Versus

VALUE INFRATECH INDIA PRIVATE LIMITED

... CORPORATE DEBTOR

AND

IN THE MATTER OF I.A. 5191/ND/2023:

GAURAV KATIYAR

RESOLUTION PROFESSIONAL OF
M/s. VALUE INFRATECH PRIVATE LIMITED
HAVING OFFICE AT
D-32, EAST OF KAILASH, NEW DELHI-110065

... APPLICANT

Order Delivered on: 14.11.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Respondent	;	Mr. Sanjay Kr. Singh
For the Home Buyers	;	Mr. Mayank Mittal, Adv.
For the SRA	;	Mr. Arpit Singh Arora, Adv.
For the Paridhi	;	Mr. Kunal Godhwani, Adv.
Finvest Pvt. Ltd		
For the RP	;	Mr. Rishabh Jain, Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The Present application i.e., I.A/5191/2023 has been filed under Section 30(6) read with section 31(1) of the Insolvency and 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') on behalf of Mr. Gaurav Katiyar, Resolution Professional ('Applicant') of M/s Value Infratech India Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by Consortium of Floral Realcon Private Limited and Mr. Sandeep Batra ('Successful Resolution Applicant') and approved by the Committee of Creditor ('CoC') in its 15th meeting through e-voting on 20.09.2023 with 100% votes in favour.

2. Facts as averred by the Applicant in I.A./5191/ND/2023

- a) The Applicant submits that the Corporate Insolvency Resolution Process was initiated against M/s Value Infratech India Private Limited ('Corporate Debtor') by this Adjudicating Authority vide order dated 03.01.2020 in C.P IB-771/PB/2018, an application filed by Capri Global Capital Limited under Section 7 of the Code and Mr. Sanjay Kumar Singh was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor. Mr. Sanjay Kumar Singh having IBBI registration no. IBBI/IPA-002/IP-N00188/2017-18/10505 was later appointed as Resolution Professional in 1st CoC Meeting held on 31.01.2020 which was later confirmed by this Adjudicating Authority on 19.02.2020.
- b) Mr. Vineet Agarwal was appointed as Authorized Representative for the class of creditors in terms of Regulation 16A (2) of the IBBI (CIRP) Regulations, 2016. The appointment of Mr. Vineet Agarwal as Authorized Representative was allowed by this Adjudicating Authority vide order dated 27.11.2020 in I.A. No. 1898/2020.
- c) Liquidation Proceedings were initiated against the Corporate Debtor by this Adjudicating Authority vide order dated 04.01.2021. Subsequently, an appeal bearing Company Appeal (AT) (Ins) No. 112 of 2021 was filed by real estate allottees against the liquidation order dated 04.01.2021 which was allowed by the Hon'ble Appellate Tribunal vide its order dated 29.11.2021. Civil Appeal No-

1829/2022 filed before the Hon'ble Supreme Court of India against the Hon'ble Appellate Tribunal was dismissed on 28.03.2022.

- d) Pursuant to directions of Hon'ble NCLAT for Change of IRP, the Homebuyers filed fresh I.A. No. 2287/2022 which was later allowed by this Adjudicating Authority vide order dated 23.05.2022 and the Applicant was appointed as IRP of the Corporate Debtor.
- e) The Applicant has issued public notice on 04.06.2022 which was published in Financial Express in English & in Jansatta in Hindi – Delhi NCR edition. Pursuant to the same the Applicant received various claims from the Financial Creditors and Financial Creditors in Class. The list of claims received by the Resolution Professional is extracted below:

Particulars	Amount claimed	Amount admitted	Voting %
Secured Financial Creditors (Bank & FIs)*	3,053,201,482	273,875,051	68.21%
Unsecured Financial Creditors (Creditors in Class) – Allottees	177,796,454	127,618,739	31.79%
Other Creditors	183,520,547	0	0.00%
Total	3,414,518,483	401,493,790	100.00%

- f) The Applicant called and convened third CoC Meeting on 01.07.2022, however, the business could not be transacted due to absence of Mr. Vineet Kumar Agarwal, the Authorized Representative of Real Estate Allottees. The AR asserted that he is no more an Authorized Representative as the previous CoC was quashed. In the fourth CoC Meeting convened on 05.09.2022, it was decided to appoint another Authorized Representative of the Real Estate Allottees. Thus, Mr. Vijay Kishore Saxena was appointed as Authorized Representative of Real Estate Allottees of the Corporate Debtor which was later confirmed by this Adjudicating Authority vide order dated 13.03.2023.
- g) The Applicant proceeded to publish Form-G for inviting Expression of Interest from prospective resolution applicant. Pursuant to FORM G, the Applicant has received Expression of Interest from 6 PRAs. Further, on 23.05.2023, amended FORM G was published by the Applicant and 11 EOIs were received. The Provisional List was issued on 09.06.2023 and the Final List of PRAs was issued on 23.06.2023. The last date for submission of Resolution Plans was 15.07.2023.

Pursuant to RFRP and Information Memorandum, the Resolution Professional received total 5 Resolution Plans.

- h) In the 11th Committee of Creditors (CoC) meeting held on 20.07.2023, the Resolution Professional presented the Resolution Plans submitted by five Prospective Resolution Applicants (PRAs) before the CoC members. Further, during the 12th CoC meeting on 26th July 2023, it was noted that there is a need to ask PRAs to enhance their financial proposal. Various opportunities were given by the CoC Members to the PRAs on 26.07.2023, 27.07.2023, 01.08.2023 and 03.08.2023 to revise their resolution plan value and accordingly PRAs have time to time revised their financial proposals. However, one of the PRAs i.e., M/s Nandi Infratech Pvt. Ltd. has withdrawn its Resolution Plan vide email dated 31.07.2023.
- i) In the 14th CoC Meeting held on 17.08.2023 and further adjourned to 23.08.2023, two of the PRAs, M/s Statcon Electronic India Pvt. Ltd. And M/s Tech Mech International Pvt. Ltd. submits before the CoC Members their inability to further change/amend their Resolution Plan. However, M/s One City Infrastructure Pvt. Ltd. And M/s. Consortium led by Floral Realcon Private Limited stated that they may consider the further negotiation with CoC Members.
- j) The CoC Members in their 15th Meeting resolved not to grant any further opportunities to M/s Statcon Electronic India Pvt. Ltd. and M/s Tech Mech International Pvt. Ltd, as their Resolution Plans were found non-compliant in terms of Section 30(2)(e) of I & B Code, 2016. However, further negotiations took place with M/s One City Infrastructure Pvt. Ltd. and M/s. Consortium led by Floral Realcon Private Limited and both these PRAs were directed to submit an Addendum to their Resolution Plans by 14.09.2023. The CoC in its meeting held on 15.09.2023 decided to put the Resolution Plans submitted by M/s One City Infrastructure Pvt. Ltd. And M/s. Consortium led by Floral Realcon Private Limited on e-voting. Thus, the CoC in its commercial wisdom in its 15th meeting approved the Resolution Plan submitted by the consortium of Floral Realcon Private Limited & Mr. Sandeep Batra along with addendum dated 14.09.2023 with 100% majority in terms of section 30(4).

3. We have heard the submissions made by the Ld. Counsel for the Applicant and have carefully gone through the documents produced on record.
4. The salient features of the resolution plan submitted by Consortium of Floral Realcon Private Limited and Mr. Sandeep Batra ('Successful Resolution Applicant') and approved by the Committee of Creditor ('CoC') in its 15th meeting with 100% voting in favour, are as follows: -

- a) The amount proposed to be paid towards the Corporate Insolvency Resolution of the Corporate Debtor pursuant to the implementation of the proposed Resolution Plan is as under:

(Amount in INR)					
Sr. No.	Category of Stakeholders	Amount Claimed	Amount Admitted	Proposed Amount by RA	%age of Amount Admitted
1.	CIRP Cost	46,96,460	46,96,460	46,96,460	100%
2.	Secured Financial Creditors - M/s. Paridhi Finvest Private Limited	3,05,32,01,482	27,38,75,051	17,25,00,000	62.98%
3.	Unsecured Financial Creditors - Home Buyers	17,77,96,454	12,76,18,739	5,50,00,000	43.10%
4.	Operational Creditors	0	0	0	NIL
5.	Operational Creditors - Statutory Dues	0	0	0	NIL
6.	Employees and Workmen	0	0	0	NIL
7.	Other Debts and Dues known/unknown	18,35,20,547	0	0	NIL
	Total	3,41,92,14,943	40,61,90,250	23,21,96,460	

- b) The average fair value and liquidation value of the Corporate Debtor is INR 33,69,05,000.00 and INR 28,59,77,500.00 Crores, respectively.
- c) In view of Section 31 of the Code, this Adjudicating Authority before approving the Resolution Plan is required to examine whether the Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred to under Section 30 (2) of the Code.

Section 30 (2) is quoted below: -

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

(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;

(b) provides for the payment of debts of operational creditors in such

manner as may be specified by the Board which shall not be less than-

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

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

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

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

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

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

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

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

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

(d) The implementation and supervision of the Resolution Plan;
(e) does not contravene any of the provisions of the law for the time being in force
(f) conforms to such other requirements as may be specified by the Board.

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

- d) The Resolution Applicant provides for total corpus of Rs. 23.22 Crores through a mix of equity/unsecured loan/secured loan/debentures for the resolution of Corporate Debtor. The said payout composed of payment of CIRP Cost, payment to secured financial creditors, unsecured financial creditors and the unpaid stamp duty. The RA proposed Rs. 17.25 Crores for the admitted claim of Rs. 27.39 Crores to the secured financial Creditor and Rs. 5.5 Crores for the admitted claim of 12.76 Crores for the Class of Creditors, said amount will be utilized for refunds to the homebuyers proportionately as per their admitted claim.
- e) The sources of funds for the resolution of Corporate Debtor has been provided by the Resolution Applicant. In this regard, the extract of Para 1.1 at Page No. 266 is reproduced below:

“Capital structure proposed by resolution applicant for proposed acquisition shall be mix of debt/ Debentures (secured or unsecured), equity as well as quasi equity. The Consortium of Resolution applicant enjoy excellent banking relationship with many financial institutions. As per the implementation schedule the resolution applicant proposes to infuse and entire amount within T+90 Days.

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a) *Rs 23.22 Crores of equity /Unsecured/ secured loan in corporate debtor within 90 days from transfer date”*

- f) That the final resolution plan and its addendum submitted by Consortium of Floral Realcon Private Limited and Mr. Sandeep Batra 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 Part B, Clause 2(d) Page-37
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- (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	There is no Operational Creditors. With regard to Financial Creditors: Page No. 38-40
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	YES Chapter 4 Page-22-24

30(2)(d)	the implementation and supervision of the resolution plan;	YES Part C, Chapter 1 & 2, Page No. 50-53
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	YES Chapter- 7 Clause 7.1 Sub-Clause 7.1.2 Page-26

g) That the Resolution Applicant has provided the indicative timeline of events for implementation of the Resolution Plan at Page No. 36, which is reproduced as under: -

Activity	Timeline (days)
Approval by NCLT – Effective Date	T
Infusion of Promoter’s Contribution	T+90
Payment of CIRP Costs, Operational Creditors, Government Dues, Employees and Workmen Dues	T+90
Payment to Financial Creditors	T+90
Payment to Unsecured Financial Creditors – Real Estate Allottees	T+90
Intimation to all Creditors, existing shareholders and other stakeholders of the Corporate Debtor	T+90
Intimation to the SEBI, Competition Commission of India, RBI, Tax authorities, RERA and various other statutory authorities (as applicable)	T+90
Management of Corporate Debtor: (i) Formation of a professionally managed Board of the Corporate Debtor; (ii) Appointment of professionally qualified key managerial employees of the Corporate Debtor; (iii) Formation of the committees	T+30

h) Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not	(a) Not applicable as there is no Operational Creditor. (b) Resolution Plan approved with 100%

	vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]	voting, thus, Clause (b) not applicable.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]	YES The Resolution Plan has been prepared considering the applicable provisions of IBC Code and taking care of interest of all the stakeholders. Details- Part B, Chapter 1, Clause 1.3, Page No. 36
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	YES Part B Clause 2(c) Page 37
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	YES Part C, Chapter 1, Clause 1.1 & 1.2
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	YES Chapter 4 Page-22-24
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	YES Part C, Chapter 1 & 2, Page No. 50-53
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading	No Application under Section 43, 45, 49, 50 & 66 was filed by the

	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.	Resolution Professional.
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	YES Chapter- 7, Clause 7.1, Sub-Clause 7.1.3, Point No. (i) Page 27
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	YES Chapter- 7, Clause 7.1, Sub-Clause 7.1.3, Point No. (ii) Page 27
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	YES Part C, Chapter- 1, Clause 1.2, Page 50-51
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	YES Chapter- 7, Clause 7.1, Sub-Clause 7.1.3, Point No. (iv) Page 28-29
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	Part A, Chapter- 2 & 3 Page 16-21, Chapter - 5, Page 25-26

i) The Applicant along with the present application has attached a copy of affidavit under Section 29A of the Insolvency and Bankruptcy Code, 2016.

5. In view of the Final Resolution Plan and its addendum submitted by the Successful Resolution Applicant along with the mandatory compliances filed by the Applicant herein, we are of the view that the mandatory requirements as laid down under Section 30(2) of the Code are complied with.

6. In respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the Applicant has filed a compliance certificate in Form-H annexed as Annexure 19 at Page 308-317 of the application, 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 eligible under the provisions of Section 29A of the Code, 2016.
7. On perusal of documents provided with the Application and the facts asserted by the Resolution Professional, it is noted that the Resolution Plan approved by the Committee of Creditors (CoC) with a 100% majority vote, submitted by the Consortium of Floral Realcon Private Limited and Mr. Sandeep Batra, falls below the Liquidation Value, in terms of Regulation 35 of the CIRP Regulations, 2016. Specifically, the Liquidation Value of the Corporate Debtor (CD) stands at Rs. 28.59 crore, while the Resolution Plan amounts to Rs. 23.22 crore. The plan proposes Rs. 5.5 crore for the Homebuyers/Class of Creditors, despite the liquidation value for the homebuyers being Rs. 74 lakh. The CoC, exercising its commercial wisdom, approved the plan after considering all relevant facts and circumstances of the case. The Supreme Court in the matter of **Maharashtra Seamless Ltd. v. Padmanabhan Vekentesh (2020) 11 SCC 467** observed that I & B Code, 2016 does not mandates for Resolution Plans to match the liquidation value of the Corporate Debtor calculated in the manner provided under Regulation 35 of the CIRP Regulations, 2016. The relevant extract of the aforesaid precedent is reproduced below:

“28. No provision in the Code or Regulations has been brought to our notice under which the bid of any resolution applicant has to match liquidation value arrived at in the manner provided in Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in Essar Steel4 . We have quoted above the relevant passages from this judgment.

29. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the

statutory mandate on the adjudicating authority under Section 31 (1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the adjudicating authority in approving the resolution plan.

30. The appellate authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the adjudicating authority has to be satisfied that the requirement of sub-section (2) of Section 30 of the Code has been complied with. The proviso to Section 31 (1) of the Code stipulates the other point on which an adjudicating authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the adjudicating authority in limited judicial review has been laid down in Essar Steel, the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the appellate authority ought to have interfered with the order of the adjudicating authority in directing the successful resolution applicant to enhance their fund inflow upfront.”

In the present case, although the value of the Resolution Plan submitted by the Successful Resolution Applicant (SRA) is below the liquidation value, the Committee of Creditors (CoC) has thoroughly examined this issue and made a commercial decision in approving the plan. Therefore, there appears to be no impediment to approving the Resolution Plan submitted by the Consortium of Floral Realcon Private Limited and Mr. Sandeep Batra.

8. Further in the matter of Mr. Ramesh Kesavan vs. CA Jasin Jose and Anr., Company Appeal (AT)(Ins.) No. 422/2023, the Hon’ble NCLAT vide its order dated 10.01.2024 held that:

“9. In the instant case, the approval of the Resolution Plan below the Liquidation value is within the commercial wisdom of the CoC as the Code does not expressly bar that the Resolution Plan value should be over and above the Liquidation value. Hence, there is no material

irregularity. As regarding the contention of the Learned Counsel for the Appellant that the Operational Creditor Kerala Ayurvedic Limited was getting an amount lower than the Liquidation value and hence the Plan is discriminatory is untenable, keeping in view that the very same Operational Creditor had voluntarily agreed to accept an amount lower than the Liquidation value. We are of the considered view that the ratio of 'Kalparaj Dharamshi (Supra)' is squarely applicable to the facts of this case as the Resolution Plan is approved by a 100 % voting share of the CoC and there is no material irregularity on the face of record and we are satisfied that the Resolution Plan conforms to the requirement set out in sub-section (2) of Section 30 of the Code. As regarding the contention of the Learned Counsel for the Appellant about avoidance transactions, the Hon'ble Delhi High Court in 'TATA Steel BSL v. Venus Recruiters Pvt. Ltd.' has held that there is no bar to proceed against the concerned Resolution Applicants before other Fora/Courts in cases of avoidance transactions. Therefore, even on this ground we do not find any C.A. (AT) (CH) (Ins) No. 422/2023 Page 13 of 14 material irregularity in the approval of the Resolution Plan as provided for under the Code. "

9. The applicant has prayed for number of waivers, reliefs and concessions in the Resolution Plan as mentioned in Part D, Page 60-64 of the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, we direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:

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

"25. Duties of resolution professional –

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

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

(a).....

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

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

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

In the light of the decision of the Hon’ble Supreme Court in the **Embassy Property Development Private Limited (Supra)**, as to the relief and concessions sought in the Resolution Plan, it is clarified that this Adjudicating Authority is not inclined towards granting any such relief prayed for except for what is provided in the Code itself. However, the Successful Resolution Applicant may approach and file the necessary application before the necessary forum/authority in order to avail the necessary relief and concessions, in accordance with respective laws.

10. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is not sitting on an appeal against the decision of the Committee of Creditors and this Adjudicating Authority is duty bound to follow the judgment of the Hon’ble Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follows: -

“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.”

11. Further, the Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019**, vide its judgment 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.”

12. Further, the Hon'ble Supreme Court in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited, (2022) 1 SCC 401** has held as under:

'273.1. The adjudicating authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 38(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the Committee of Creditors. If, within its limited jurisdiction, the adjudicating authority finds any shortcoming in the resolution plan vis-a-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by the Code and exposted by this Court.'
(emphasis supplied)

The above view of the Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited (Supra)** is reaffirmed by the Hon'ble Supreme Court in its recent decision dated 21.11.2023 in the case of **Ramkrishna Forgings Limited Vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr., 2022 SCC OnLine SC 2142.**

13. Thus, from the judgments 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.
14. In view of the above discussion, this Adjudicating Authority is satisfied that the Resolution Plan as filed and explained by the SRA meets the requirement of Section 30(2) of IBC.
15. Therefore, in our considered view, there is no impediment to giving approval to the instant Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of the corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, Successful Resolution Applicant and other stakeholders involved. In view of the above, **I.A.**

5191/ND/2023 stands allowed.

16. 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.
17. 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 in such law.
18. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded in its database in terms of Section 31(3) (b) of the Code. The Resolution Professional is further directed to hand over all the records, premises, and properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
19. The approved Resolution Plan shall become effective from the date of passing of this order. The Approved Resolution Plan shall be a part of this order, subject to our observations regarding concessions, reliefs and waivers sought therein.
20. The Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.

In view of the above, the **I.A./5191/ND/2023 stands approved** in terms of the aforesaid discussion and is accordingly disposed of.

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

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)