

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

I.A.-3389/ 2023
IN
C.P(IB) – 943(PB)/2020

IN THE MATTER OF:

SREI Infrastructure Finance Limited.

... Financial Creditor

Versus

**Worlds Window Infrastructure &
Logistics Private Limited**

... Corporate Debtor

AND IN THE MATTER OF IA. NO. 3389/2023:

Manish Agarwal

Resolution Professional

Worlds Window Infrastructure & Logistics Pvt. Ltd.

307, Prakash Deep Building, Tolstoy Marg,

Connaught Place, New Delhi- 110001

... Applicant/RP

Order Delivered on: 29.04.2024

UNDER SECTION: 30(6) of IBC, 2016

CORAM:

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

SH. SUBRATA KUMAR DASH HON'BLE MEMBER (T)

PRESENT:

For RP : Sh. Abhishek Anand, Adv

ORDER

The present IA No. 3389 of 2023 has been preferred by Manish Agarwal, Resolution Professional of M/s Worlds Window Infrastructure & Logistics Pvt. Ltd. (hereinafter referred to as, the '**Applicant/RP**') under Section 30(6) of IBC, 2016, seeking the following reliefs:

- “a) Allow the present Application;*
- b) Pass an order under sub-section (1) of Section 31(1) of the Code for approval of the Resolution Plan of the RKG Fund I, a scheme of RKG Trust Management as approved by the committee of creditors of Corporate Debtor by 81% voting share under sub-section (4) of section 30 of the IBC as the Resolution Plan meets the requirement of sub-section (2) of section 30 of the IBC;*
- c) Pass such other further order(s) as may be deemed fit and proper in the facts and circumstances of the case.”*

2. To put the facts concisely, the underlying main Petition CP (IB)-943/(PB)/2020 was filed by SREI Infrastructure Finance Limited against the Corporate Debtor namely, Worlds Window Infrastructure & Logistics Private Limited under Section 7 of IBC, 2016, which was admitted vide Order dated 07.03.2022 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. Manish Agarwal.

2.1 On 28.04.2023, this Hon'ble Adjudicating Authority allowed IA No. 2362 of 2023 and passed an order extending the CIRP period from 18.04.2023 to 01.06.2023.

2.2 It is stated in the Application that after the initiation of CIRP against the Corporate Debtor by an Order dated 07.03.2022, Mr. Navjit Singh was appointed as the Interim Resolution Professional. As Mr. Singh unfortunately expired on 12.05.2022, an application was moved before this Authority for a change of Resolution Professional. Accordingly, the Order dated 30.05.2022 was passed approving the appointment of the present RP, and the said Order was uploaded/received on 07.06.2022, 26 days after the sad demise of the preceding RP, and the Applicant herein took over his duties as the Resolution Professional of the Corporate Debtor.

2.3 The valuation of the Corporate Debtor was conducted by RP and the values are as under:

S.no.	Assets	Average Fair Value	Average Liquidation Value
1.	Land and Building	Valuer 1 – 22,00,00,000/- Valuer 2 – 20,89,85,508/- Average – 21,44,92,754/-	Valuer 1 – 16,00,00,000/- Valuer 2 – 14,62,89,855/- Average – 15,31,44,927/-
2.	Plant and Machinery	Valuer 1 – 30,06,56,886 Valuer 2 – 19,96,53,570/- Average = 25,01,55,228/-	Valuer 1 – 18,03,94,131 Valuer 2 – 15,97,22,856 Average = 17,00,58,493/-
3.	Securities and Financial Assets	Valuer 1 – 1,08,40,000/- Valuer 2 – 1,06,01,000/- Average = 1,07,20,500/-	Valuer 1 – 89,92,000/- Valuer 2 – 98,61,500/- Average = 94,26,750/-
	TOTAL	47,53,68,482	33,26,30,170/-

2.4 The details of the meetings of the CoC conducted by the RP along with the Resolutions approved therein are as under:

Particulars	Date of Meeting	Main Agenda of discussion	Important decisions ratified
1st CoC Meeting	14.02.2022	Confirmation of IRP to RP	The CoC passed a Resolution for confirmation of IRP as the RP
2nd CoC Meeting	02.08.20.2022	Publishing to Expression of Interest	
3rd CoC Meeting	14.09.2022	Extension of CIRP	The CoC passed a Resolution for publication of Form G and extended CIRP by 90 days
4th CoC Meeting	16.11.2022	New Claims received by RP and presentation of final PRAs	
5th CoC Meeting	25.11.2022	Discuss PRAs request to extend time to submit Resolution Plan	
6th CoC Meeting	28.12.2022	Extension of CIRP and deliberations on Resolution Plan	
9th CoC Meeting	23.04.2023	Deliberations on Resolution Plan	The CoC passed a Resolution for extension of CIRP
10th CoC Meeting	11.05.2023	Voting on Resolution Plan by CoC	CoC passed Resolution for approval of Resolution Plan by RKG Fund I

2.5 During the course of CIRP, on 26.04.2023, SREI Infrastructure Finance Limited submitted its revised claim, as after auction of 49% pledge shares of Sanjivik Terminals (Associate Company) of Corporate Debtor, which was invoked by SREI before the initiation of Corporate Insolvency resolution Process and subsequently auctioned. After deduction of auction receipt from claim amount of SREI, the modified claim came to INR 1,380,940,952.00. Accordingly, the voting percentages of financial creditors were modified as under:

<i>S. No.</i>	<i>Name of the Creditor</i>	<i>Voting Rights (%)</i>	<i>Votes in favour (%)</i>	<i>Votes against (%)</i>
1.	<i>SREI Infrastructure Finance Limited</i>	<i>79.57</i>	<i>79.57</i>	<i>-</i>
2.	<i>Prudent Arc Private Limited</i>	<i>1.54</i>	<i>1.54</i>	<i>-</i>
3.	<i>HDFC Bank</i>	<i>11.65</i>	<i>-</i>	<i>11.65</i>
4.	<i>Hero Fincorp Ltd.</i>	<i>6.12</i>	<i>-</i>	<i>6.12</i>
5.	<i>Yes Bank</i>	<i>1.12</i>	<i>-</i>	<i>-</i>

3. The RP has placed on record the minutes of the 10th CoC meeting where the Resolution Plan submitted by RKG Fund I (**hereinafter referred to as “SRA/ Successful Resolution Applicant”**) was approved by the CoC. The E-voting sheet as provided by the Applicant reads thus:

TO APPROVE THE PROPOSED RESOLUTION PLAN FOR RS. 45.00 CRORE . "Resolved that the Resolution Plan offered by M/s RKG Fund I, for Rs 45.00 Crore be and is hereby approved."

Sr No	Username	Voter Name	Weightage	IP Address	Time of voting	Approve	Reject	Abstain	Total
1	arjit.pratapsingh@herofincorp.com	Hero Fincorp Ltd.	612	47.31.140.38	2023-05-25 18:35:45	0	612	0	612
2	ajk@prudentarc.com	Prudent ARC	154	122.162.151.68	2023-05-25 13:01:44	154	0	0	154
3	sumit.sharma@srei.com	SREI Infrastructure Finance Limited	7957	65.0.199.88	2023-05-25 13:47:44	7957	0	0	7957
4	neeraj.mahajan@hdfcbank.com	HDFC Bank	1165	182.69.179.206	2023-05-29 17:28:17	0	1165	0	1165
Total Count						8111	1777	0	9888

NOT VOTED

1	Shrayansh.rastogi@yesbank.in	Yes Bank	112			0	0	0	0
2	pratik.ghorpade@jcfarc.com	J. C. Flowers Asset Reconstruction F112				0	0	0	0

4. Vide Order dated 28.04.2023, this Adjudicating Authority extended the CIRP period till 01.06.2023. The Resolution Plan was approved by CoC during the extended CIRP period and the application for approval of the Resolution Plan was filed on 01.06.2023 itself.

5. The key features of the Resolution plan along with the financial proposal as provided by the RP in the Application reads thus:

IA. No. 3389/2023 in (IB)-943/(PB)/2020

SREI Infrastructure Finance Ltd. Vs Worlds Window Infrastructure & Logistics Private Limited.

5.1 **Role of the Resolution Applicant and PAL:**

The responsibility of RKG Fund I is to infuse an upfront amount of INR 5,00,00,000 (Indian Rupees Five Crore only) ("**Upfront Amount**") into the Corporate Debtor by way of equity and debt directly or through its affiliates/ nominees/ associates/ holding company/SPC/SPV and to become a shareholder of the Corporate Debtor in accordance with the Companies Act, 2013 and other Applicable Laws. Pursuant to becoming the sole shareholder on the Closing Date post the process of Capital Reduction (as detailed in Annexure V of the Resolution Plan), RKG FUND 1 (and/or its affiliates/ nominees/ associates/ holding company/SPC/SPV) shall (i) have acquired the control over the Corporate Debtor, along with ownership over all the Assets of the Corporate Debtor and put in place a competent team of professionals to manage the Corporate Debtor and consequently the Corporate Debtor shall act as a professional company managed by a world class board. RKG Fund I shall arrange the Upfront Amounts from out of the committed funds and/or contributions made by its investors.

5.2 The role of Prudent ARC Limited ("**PAL**") shall be limited to acquiring the amount of INR 1,735,413,839.65 (Indian Rupees One Hundred and Seventy Three Crore Fifty Four Lakh Thirteen Thousand Eight Hundred and Thirty Nine Paise Sixty Five only), being the admitted claim amount of the secured Financial Creditors ("**Assigned Debt**"), either by itself or through a trust, on an 'as is, where is' basis, along with all security, guarantees, pledge, undertaking and/ or encumbrances or any other security interest/ encumbrance created/provided by the Corporate Debtor and/or its

subsidiaries, or any third parties in respect of such debts of the secured Financial Creditors, including those security interests which may not appear in the Information Memorandum or balance sheet of the Corporate Debtor and including, but not limited to security interest as detailed in Part A of Annexure VI ("**Assigned Security Interest**") upon payment of the Assignment Consideration in terms of the Resolution Plan in compliance with SARFAESI Act and the rules, regulations and guidelines made thereunder and other Applicable Laws.

5.3 In terms of the Order dated 05.07.2023 directing the RP to file a proper Form H in compliance with the IBBI Regulations, the Applicant filed Revised Form H on 08.08.2023 which is extracted below:

(Amount in Rs. lakh)						
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)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	0	0	0	0
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	(i) Rs. 327714845.30	(i) Rs. 327714845.30	Rs.165,082,245.11	50.37%
	(ii) who voted in favour of the resolution plan	(ii) 1407698994.35 Rs.	(ii) 1407698994.35 Rs.	Rs. 244,917,754.89	17.40%	

		Total[(a) + (b)]	Rs. 1735413839.65	Rs. 1735413839.65	410000000.00	23.63%
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:	0	0	0	0
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]				
3	Operational Creditors	(a) Related Party of Corporate Debtor	0	0	0	0
		(b) Other than (a) above:				
		(i) Government (ii) Workmen (iii) Employees	(i)Rs. 5939194.00 (ii)&(iii)Rs. 1595110.60	(i)Rs. 5939194.00 (ii)&(iii)Rs. 1551545.60	(ii)&(iii) Rs. 1551545.60/-	100%
		(iv) Other than Workman & Employee	(iv)Rs. 14377479662.28	(iv)Rs. 36947542.83	(i)&(iv) Rs.200000/-	
		Total[(a) + (b)]	14385013966.88	44438282.43	1751545.60	
4	Other debts and dues		2109959.63	1331333.48	0.00	
Grand Total			16122537766.16	1781183455.56	411751545.60.00	

5.4 Treatment of existing shareholders: As per Clause 3.7 of Part II of the Resolution Plan, all present and future claims, dues, liabilities, amounts, arrears, dues, dividend or obligation owed or payable by the Corporate Debtor

to any person who holds shares of Corporate Debtor prior to NCLT Approval Date, whether admitted or not, asserted or un-asserted, crystallized or un-crystallized, whether or not set out in Information Memorandum or balance sheet shall stand converted into equity shares of the Corporate Debtor and be subject to Capital Reduction as provided in Annexure V of the Resolution Plan, at NIL consideration and all consequential liabilities, if any, shall stand extinguished and be considered as not payable by the Corporate Debtor by virtue of the order of the NCLT approving the Resolution Plan.

5.5 **Monitoring Agency:**

The Resolution Plan provides that on and from the NCLT Approval Date, and until the Closing Date, a monitoring agency ("Monitoring Agency") shall be appointed by virtue of the order of the NCLT for managing the affairs of the Corporate Debtor comprising of:

- (a) One nominee of RKG Fund I,
- (b) the Insolvency Professional or its nominee; and
- (c) One representative of Members of COC.

6. The Resolution Plan states that the Resolution Applicant shall implement the Resolution Plan with the assistance of the Monitoring Agency, which shall supervise the implementation of the Resolution Plan, in accordance with its terms, and shall act under the supervision of the NCLT. The powers of the Monitoring Agency are detailed in Clause 5.1(A) of Part II of the Resolution Plan. Any costs and expenses incurred by the Monitoring Agency towards the steps taken for implementation of the Resolution Plan

shall be paid, at the first instance out of (a) the available cash and cash equivalents in the Corporate Debtor; (b) in the event of insufficiency in the cash and cash equivalents, then such payments shall be borne by the Resolution Applicant

The detailed steps involved in the implementation of the Successful Resolution Plan are as follows:

Steps	Activity	Indicative Timeline
1.	NCLT Approval Date	X
2.	Infusion of Upfront Amount by the Resolution Applicant into the Corporate Debtor by way of subscription of equity shares/debt or any other suitable instrument or through any suitable mode) of the Corporate Debtor	Closing Date
3.	Capital restructuring: (a) Cancellation of equity and preference shareholding of erstwhile shareholders (b) Issuance of fresh equity shares to the Resolution Applicant as envisaged under the Resolution Plan	Closing Date Closing Date
4.	Payment of Unpaid CIRP Costs, if any	Closing Date
5.	Payment to Operational Creditors (Workmen and Employees)	Closing Date
6.	Payment to Operational Creditors (Other than Workmen and employees)	Closing Date
7.	Payment to Dissenting Financial Creditors	Closing Date
8.	Execution of Assignment Deed and payment of the Assignment Consideration to Assenting Financial Creditors	Closing Date
9.	Reconstitution of Board of Directors: (a) Automatic Vacation of Office by the existing directors (b) Automatic appointment of directors nominated by the Resolution Applicant	Closing Date Closing Date
10.	Financial Creditors to handover facility documents, title documents and charge modification/satisfaction forms for modification/satisfaction of security	Closing Date

7. Timelines for Payment:

It is submitted that as per Section 26 of Part II of the Resolution Plan, the timeline for implementation of the Resolution Plan is provided therein. The following definitions are imperative for understanding of the timelines:

- (a) "**NCLT Approval Date**" means the date of receipt of the certified copy of NCLT Approval Order.
- (b) "**Closing Date**" is the date identified by the Resolution Applicant, which shall be no later than 60 (sixty) days from the date on which the Conditions Precedent contained in Clause 6 of Part II of the Resolution Plan (i.e., occurrence of the NCLT Approval Date and receipt of the certified copy of the NCLT Approval Order) is satisfied, subject to there being no stay on the implementation of the Resolution Plan.

8. It is further submitted that the infusion of Upfront Amount and Capital Reduction shall take place as follows:

- a) As may be required, the authorised share capital of the Corporate Debtor shall stand increased by such amount as may be required for the issuance of securities pursuant to step (b) below, and accordingly, the articles of association and/or memorandum of association of the Corporate Debtor shall stand altered as required for such increase.
- b) The Corporate Debtor shall issue and allot 1,000,000 equity shares with face value of INR 10 each aggregating to INR 1,00,00,000 (Indian Rupees One Crore Only) and inter corporate debt aggregating to INR 4,00,00,000 (Indian Rupees Four Crores Only) to the Resolution Applicant, in consideration of the Upfront Amount.

- c) All compulsorily and optionally convertible securities and/or instruments convertible into equity shares and all preference shares of the Corporate Debtor held by any Person, shall stand converted into equity shares of the Corporate Debtor in accordance with Applicable Law.
- d) The existing pre-CIRP shareholding (including equity share capital and the preference share capital of the Corporate Debtor on the Insolvency Commencement Date) of the promoters / promoter group and all other existing shareholders in the Corporate Debtor of INR 13,70,12,990/- (Rupees Thirteen Crore Seventy Lakhs Twelve Thousand Nine Hundred Ninety Only), along with the balance amount of claims converted into equity shares in terms of, but not limited to, Clauses 3.3 (1)(d), 3.3(ii)(A)(d), (e) and (f), 3.3(ii)(B)(c), (e) and (f), 3.4(b), 3.5(c), 3.6(a), (b) and (c) and 3.7(a) of the Resolution Plan, shall stand extinguished/ cancelled at NIL consideration ("**Capital Reduction**"). It is clarified that the Capital Reduction will not include reduction of the equity shares allotted to the Resolution Applicant / Investor Company, as provided in (b) above.
- e) The Capital Reduction shall be effected as an integral part of the implementation of the Resolution Plan in pursuance to the NCLT Approval Order without any further act, deed or instrument. The approval of the Resolution Plan by the NCLT shall be deemed to be due compliance of all provisions of Applicable Law in this regard.
- f) Upon the Capital Reduction, on the Closing Date, the physical share certificates, if any, held by the existing promoter group and all shareholders, in the Corporate Debtor (other than those share certificates, if any, held by the Resolution Applicant and/or its nominee) shall stand cancelled without any further action or deed.
- g) The approval of the Resolution Plan by the Hon'ble Tribunal shall be deemed to have waived all the procedural requirements in terms of

Sections 14 and 18 of the Companies Act, 2013, the Companies (Incorporation) Rules, 2014 and other Applicable Laws for such conversion.

- h) The Capital Reduction shall not require the consents of any of the creditors of the Corporate Debtor or approval of any of the shareholders of the Corporate Debtor, or any other person having security interest over such shares and the approval of the NCLT (pursuant to Section 31 of the Code) to the Resolution Plan shall constitute approval of the reduction of share capital and shall be binding on the Corporate Debtor and its stakeholders (including its creditors and shareholders).
 - i) The reduction in the share capital of the Corporate Debtor as envisaged under the Resolution Plan (other than the equity share capital proposed to be allotted to the Resolution Applicant in terms of para (a) of Annexure V) shall be suitably recorded as per applicable law.
 - j) The Resolution Applicant retains the right to cause a merger/ restructuring/ arrangement between the Corporate Debtor and the SPV, on a subsequent date.
9. The other compliances filed along with the Resolution Plan are as under:

9.1 The Compliance Affidavit of Section 29A reads thus:

APPENDIX - 10

I, Jaseel Paloth, S/o Md. Abdurahiman Paloth, aged 32 years, Authorised Signatory of RKG Fund I, a scheme of RKG Trust, (**Resolution Applicant**) having its registered office at C-4/9, Ground Floor, Vasant Vihar, New Delhi – 110057, do solemnly affirm and declare on oath as under:-

1. I understand that an insolvency resolution process has been initiated against **WORLDS WINDOW INFRASTRUCTURE AND LOGISTICS PRIVATE LIMITED (Corporate Debtor)** vide order dated 07.03.2022 (**Admission Order**) passed by National Company Law Tribunal, Principal Bench New Delhi (**Adjudicating Authority**) in an application filed by **SREI Infrastructure Finance Limited**, Financial creditor against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (amended up to date) (**IBC**).
2. I state that the present affidavit is sworn by me on behalf of the Resolution Applicant, in compliance of section 29A of the IBC.
3. I on behalf of the Resolution Applicant and any other person acting jointly or in concert with the Resolution Applicant hereby confirm that:
 - (i) The Resolution Applicant and any connected person as per the Explanation I provided under section 29A of the IBC is not an undischarged insolvent; or
 - (ii) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC, is not identified as a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;or
 - (iii) At the time of submission of the Resolution Plan, the account of the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC or an account of the corporate debtor under the management or control of such person of whom such person is a promoter, IBC is not classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or guidelines of a financial sector regulator issued under any other law at the time being enforce and at least a period of one year or more has lapsed from the date of such classification till the date of commencement of corporate insolvency resolution process of the corporate debtor and that I have not failed to make the payment of all overdue amounts with interest thereon and charges relating to non-performing asset before submission of Resolution Plan;or
 - (iv) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been convicted for any offence punishable with imprisonment for 2 years or more under any Act specified in the Twelfth Schedule or for seven years or more under any law for the time being in force or a period of two years has expired from the date of release of such imprisonment; or
 - (v) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been disqualified to act as a director under the Companies Act 2013;or

- (vi) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been prohibited by the Securities and Exchange Board of India from trading in securities or assessing the securities markets; or
- (vii) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not indulged in preferential transaction or undervalued transaction or fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under the IBC; or
- (viii) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not executed a guarantee in favor of a creditor, in respect of a corporate debtor against *which an application for insolvency resolution made by such creditor* has been admitted under the IBC and no such guarantee has been invoked by the creditor or remains unpaid in full or part; or
- (ix) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC are not subject to any disability, corresponding to clauses mentioned above under any law in a jurisdiction outside India.
- (i) That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as required under Regulation 38(3) of the CIRP Regulations.
- (ii) That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as per the provisions of the CIRP and the rules and regulations framed thereunder to submit a resolution plan and that it shall provide all documents, representations and information as may be required by the RP or the COC to substantiate to the satisfaction of the RP and the COC that the Resolution Applicant is eligible under the IBC and the rules and regulations there under to submit a resolution plan in respect of Corporate Debtor.
- (iii) That the Resolution Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.
- (iv) That the Resolution Applicant understands that the COC and the RP may evaluate the resolution plan to be submitted by the Resolution Applicant or any other person acting jointly with it and such evaluation shall be on the basis of the confirmations, representations and warranties provided by the Resolution Applicant under this affidavit.
- (v) That the Resolution Applicant agrees that each member of the COC and the RP are entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility and assessing, agreeing and approving the resolution plan submitted by the Resolution Applicant.
- (vi) That in the event any of the above statements are found to be untrue or incorrect, then the Resolution Applicant unconditionally agrees to indemnify and hold harmless the RP and each member of the COC against any losses, claims or damages incurred by

the RP and / or the members of the COC on account of such ineligibility of the Resolution Applicant..

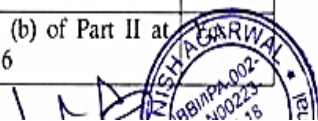

 (Deponent)


 RKG Fund-I

9.2 The details of compliances made under Section 30 of IBC, 2016 and IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are stated in the Revised Form-H which reads thus:

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?	Yes	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?	Yes	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes	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?]	(a) Clause 3.2 of Part II at Page No. 19 (b) Clause 3.3 of Part II at Page No- 19 (c) Clause 5 of Part II at Page No- 29 (d) Clause 5 of Part II at Page No- 29 (e) Clause 5.4 at Page No- 36	Yes
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?	(a) Yes (b) Yes	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	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?]	Clause 3.3 of Part II at Page No- 19	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 5.5 of Part II at Page No- 17	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed	Clause 5.5 (b) of Part II at Page No- 36	



	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?]		
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?	(a) Clause 5.2 of Part II at Page No- 35 (b) Clause 5 of Part II at Page No- 29 (c') Clause 5 of Part II at Page No- 29	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?	(a) Clause 2.9 and 2.10 of Part- I at page No- 12 and 13 (b) Yes it is feasible and viable (c') Clause 5 of Part II at Page No- 29 (d) Part V at Page No- 72-74 (e) Yes, as per the eligibility criteria the resolution applicant capable to implement the resolution Plan.	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No (to be filed under process)	No
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Rs. 5 Crore	Yes

9.3 It has been stated in Clause 3.3 of the plan that the payment made to Operational Creditors complies with Section 30(2)(b) of IBC, 2016 and Regulation 38(1) of IBBI of CIRP Regulations. The contents of the clause 3.3 reads thus:

3.3. Payments to Operational Creditors

As per Section 30(2)(b) of the Code, the Operational Creditors are required to be paid an amount which is not less than: (a) the amount to be paid to such creditors for their claims in the event of a liquidation of the Corporate Debtor under Section 53 of the IBC; or (b) the amount that would have been paid to such creditors, if the amount to be distributed under this Resolution Plan had been distributed in accordance with the order of priority in subsection (1) of Section 53 of the IBC; whichever is higher. Further, in terms of Regulation 38 (1) (b) of the CIRP Regulations, the Liquidation Value due to Operational Creditors is required to be paid in priority over the payments to Financial Creditors.

10. The details of Sources of Funds of SRA as provided under clause (h) of the plan reads thus:

h) **SOURCE OF FUNDS**

Means of Finance	Source of Funds	Rs. In Lacs
Equity/debt or any other suitable instrument or through any suitable mode by RKG Fund I and/or its nominees /affiliates /associates /SPV /SPC / Holding Company	Out of the committed funds and/or contributions made by its investors	500.00
Assignment Consideration to secured Financial Creditors by Prudent ARC Ltd	Own funds / Internal accruals of PAL	4000.00
Total		4500.00

11. The details of the implementation schedule of the plan is mentioned in clause 5.2 of the plan which reads thus:

“5.2. Term of the Resolution Plan and Implementation Schedule

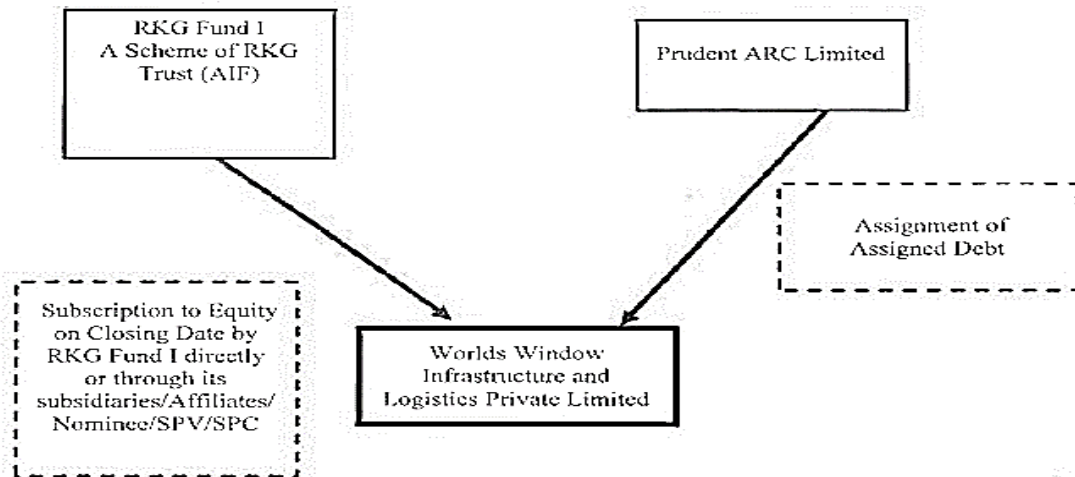
(a) *In terms of Section 31(1) of the Code, this Resolution Plan shall become binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom Government Dues are owed, guarantors and other stakeholders involved in this Resolution Plan on the NCLT Approval Date.*

(b) *The implementation of the Resolution Plan shall be subject to fulfilment of the Condition Precedent set out in clause 6 of this Resolution Plan. The detailed steps for the implementation of the Resolution Plan are set out in Annexure V. Upon the completion of the actions envisaged to be the Closing Date, the Resolution Plan shall stand implemented.”*

12. The structure of implementation as provided under the plan reads thus:

1. Structure of implementation

The following flow chart indicates the broad structure of how the Resolution Plan in respect of Worlds Window Infrastructure and Logistics Private Limited is intended to be implemented, in the event that the Resolution Plan submitted by the Resolution Applicant is approved by the NCLT. The Resolution Applicant retains its right to modify the acquisition structure, in its sole discretion, if the same is required for the effective implementation of the Resolution Plan.



13. The details of Management and Control of the business of Corporate Debtor during the term of Resolution Plan is stated under Clause 4 of the Resolution Plan contents of which reads thus:

4. Management and control of the business of the Corporate Debtor during the term of the Resolution Plan

- (a) During the period between the NCLT Approval Date and the Closing Date, the Corporate Debtor shall be managed by the Monitoring Agency (*as defined hereinbelow*).
- (b) On and from the Closing Date, (i) RKG Fund I shall be the shareholder of the Corporate Debtor (ii) the Investor Company will exercise its rights in accordance with Applicable Law and the Corporate Debtor shall be managed solely by the new management of the Corporate Debtor who will be guided in their activities entirely by the reconstituted Board of the Corporate Debtor and (iii) the Monitoring Agency shall cease to exist.
- (c) On and from the Closing Date in accordance with the steps for implementation of the Resolution Plan as set out in **Annexure - V**, the Resolution Applicant /SPC will exercise its rights in accordance with Applicable Law and the business activities of the Corporate Debtor shall be managed by RA/ SPC; and (iii) the Monitoring Agency shall cease to exist.
- (d) On and from the Closing Date, the Corporate Debtor and/or the SPC or PAL shall have the right and discretion to conduct sale or transfer of any Assets of the Corporate Debtor, or enforce the Security Interest Assigned inter alia for partial repayment of the ARC Retained Amount or for any other purpose as it/they may deem fit.

14. As per Clause - 24 of the Resolution Plan, the Avoidance Application shall be pursued by the Financial Creditors and the proceeds of the same shall be distributed amongst the Secured Financial Creditors on a proportionate basis.

15. As per Clause - 7 of the certificate given by the RP on the prescribed form viz. Form-H, the SRA has proposed to pay much less than the amount admitted by the RP, to the different stakeholders.

15.1 But as per the law laid down by Hon'ble Supreme Court it is not for this Tribunal to interfere with the same and it is for the Committee of Creditors to take a call in this regard. In this context it would not be out of place to refer to the Judgement of Hon'ble Supreme Court passed in **Vallal RCK vs. M/s Siva Industries and Holdings Limited and Others**, (Civil Appeal Nos. 1811-1812 of 2022). The relevant excerpts of the Judgement thus:-

*“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of “**K. Sashidhar v. Indian Overseas Creditors of Essar Bank and Others, Committee of Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard***

Apartments Welfare Association and Others v. NBCC (India) Limited and Others.

.....

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

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

15.2 It has been ruled by the Hon'ble Supreme Court in **Ebix Singapore Private Limited Vs Committee of Creditors of Educomp Solutions Limited & Anr.**, (Civil Appeal No. 3224 of 2020) that while considering an application for approval of the plan, this Adjudicating Authority needs only to see as to whether there is compliance of the provisions of Section 30(2) of IBC, 2016.

15.3 Thus, we may not comment upon the amount offered to be paid by SRA to various stakeholders.

16. The Applicant/RP has also filed on record, the proof of the Performance Guarantee worth Rs.4 Crore deposited by the SRA vide RTGS Mode. The details of which were provided to the RP vide email dated 31.05.2023.

17. The Applicant has sought various reliefs and concessions stipulated under Part IV of the Resolution Plan, which reads thus: -

Sr. No.	Relief and/or Concessions and Approvals Sought	Competent Authority/ Courts/ Government/Semi-Government Authority for relief sought
1.	Relief from payment of stamp duty and applicable fees	State Revenue/Stamp Authorities
2.	All licenses, approvals, clearances to remain valid after approval of plan	
3.	All export liabilities, obligations, prosecuted due to acts of erstwhile promoter shall be deemed to permanently	
	extinguished by the NCLT	
4.	Extinguishment and write-off of any financial liabilities against Central Warehousing Corporation	
5.	Registrar of Companies to take on record the Resolution Plan	ROC

18. The aforementioned indicates that the relief or concession that the SRA is generally seeking relates to the renewal of licences for the CD without requiring the payment of interest, penalty fees, or composition fees. An additional concession proposed in the plan is the exemption from the licence acquisition restriction, if applicable. As previously mentioned, the plan also requests a multitude of additional concessions and forms of relief. It is clear from Section 31(4) of IBC 2016 that the Resolution Applicant must obtain the required approval under any law in force at the time within one year from the date of the order passed under Section 31(1) of IBC 2016, in accordance with the Resolution Plan approved under sub-Section 1 of Section 31 of IBC 2016. Furthermore, in accordance with the stipulations outlined in Section 14 of the Code, licences, permits, registrations, quotas, concessions, clearances, or comparable rights granted by the Central Government/State Government, Local Authorities, Sectoral Regulators, or any other authority established under any other law in effect at the time shall remain unaffected even during the CIRP period, provided that no default occurs. So long as the aforementioned facilities remain accessible to the CD only in the absence of default in payment of current dues, even during the moratorium period, the SRA/CD cannot be placed in a more advantageous position upon resolution plan approval.

18.1 Under the Code, the Creditors in class, operational creditors, financial creditors, workers and employees, and other creditors may present their claims before the IRP/RP in accordance with the provisions of sections 13 and 15 of the Insolvency and Bankruptcy Code 2016 and regulations 6, 6A, 7, 8,

9 and 9A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016. The resolution of the claims is carried out by the Insolvency Resolution Process for Corporate Persons (IRP) in accordance with Section 18(b) of the Insolvency and Bankruptcy Code, 2016 and Regulations 12(A), 13, and 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, respectively. The RP is then required to prepare an Information Memorandum in accordance with Regulation 36(2) of the 2016 IBBI (Insolvency Resolution Process for Corporate Persons) Regulations. The Memorandum includes, among other things, a list of creditors that details the variety of creditors, the amounts they have claimed, the amount of their admitted claim, and any security interest that may exist with respect to such claims. In accordance with Regulation 36(A) of the Regulations, the RP is required to publish brief particulars of the invitation for Expression of Interest in Form G of Schedule I to the Regulations no later than sixty days after the Insolvency Commencement Date. Prospective resolution applicants who are interested and eligible to do so must submit resolution plans by that date. The RP is obligated to provide the Request for Resolution Plans, Information Memorandum, and Evaluation Matrix within five days from the date of issuance of a provisional list of eligible Prospective Resolution Applicants (as specified in Regulation 36(A)(10) of the Regulations). In consideration of the Information Memorandum and Evaluation Matrix, the RP submits a Request for Resolution Plan. The request for a resolution plan specifies the manner and objectives of each interaction between the prospective resolution applicant and the resolution professional, as well as each step of the procedure. Following the Committee of Creditors' review of the IM, EM, and RFRP, the

submitted Resolution Plan is subsequently assessed. However, it must adhere to the stipulations outlined in Regulations 37 and 38 of the current set of regulations. As soon as the CoC grants its approval to the plan in accordance with Regulation 39 of the aforementioned Regulations, it effectively transforms into a legally binding agreement between the CD, represented by RP and SRA, and its creditors. Upon receiving approval from the Adjudicating Authority, the plan enters into force for the Corporate Debtor and its members, creditors (including the Central Government, any State Government, or any local authority to which a debt is owed for the payment of dues arising under any law currently enforced, including authorities to which statutory dues are owed), guarantors, and other stakeholders engaged in the Resolution Process (as per Section 31 (1) of the Code).

18.2 In addition, the provisions of Section 32A, which were added to the Code by Act No.1 of 2020 on 28.12.2019, pertain to liability for prior offences. As a result of the stipulations outlined in Section 32A(2), no legal action is initiated against the assets of the corporate debtor concerning a transgression committed prior to the initiation of the corporate insolvency resolution process of the debtor-debtor (CD) or where such assets are encompassed within a Resolution Plan sanctioned by this governing body under Section 31, and which transfers control of the CD to an individual who was not a promoter, manager, or control of the corporate debtor or the CD.

18.3. Based on the preceding analysis and discussion, it is evident that the CD/SRA cannot be absolved of the obligation to remit the dues or fees

associated with the necessary licence, permit, registration, quota, concession, clearance, or comparable grant or right. This is true unless there is substantial evidence to suggest that withholding a particular relief would have an adverse impact on the Corporate Debtor's ability to continue as a going concern. Regarding the current matter, no such case has been established. Therefore, the SRA/CD would have an obligation to obtain necessary approval from relevant authorities within a timeframe of one year from the date of this order or within the timeframe specified in applicable legal provisions, whichever occurs later. However, liberty is accorded to the SRA to approach the concerned authorities with the request for any relief and concession, who would then expeditiously examine these claims in accordance with the stipulations of the applicable legislation.

19. While the approval of the Resolution Plan was under consideration by this Authority, Central Warehousing Corporation (CWC), a Government of India undertaking filed an application stating that the Resolution Professional did not remove the goods from the warehouse of CWC and kept it unauthorisedly ICD- Loni, which obstructed the business carried out by CWC.

20. This Adjudicating Authority by its order dated 12.06.2023 observed that IRP/RP was definitely negligent in discharging their duties and also granted liberty to CWC to file an application of CIRP cost. Consequently, IA-3914/2023 was filed claiming CIRP cost for the period between 01.03.2023 to 15.07.2023. However, this authority disposes of the application with an observation that it has no jurisdiction to award damages to CWC.

21. Against this order, CWC had preferred an application before the Hon'ble NCLAT, which by its order dated 08.04.2024 has observed, inter alia, that the proceedings in the CIRP shall abide by the result of the said Appeal.

22. In view of said observations the SRA is directed to meet the liability relating to CWC after the finalization of the aforementioned Appeals towards the CIRP cost, if any, over and above the amounts offered under CIRP cost in the present plan. In any case of any failure to pay the additional sum under CIRP cost, if any, arising consequent to the appeal, we direct initiation of the Liquidation Process of the CD. In such an event, we further direct that no proceeding under Section 74 of the Code relating to punishment for contravention of the resolution plan is to be initiated against the Corporate Debtor.

23. In the sequel to the above, we are inclined to approve the Resolution Plan as approved/recommended by the CoC as placed by the Applicant before this Adjudicating Authority. We, therefore, allow the present Application and approve the COC-approved Resolution Plan as placed before us by the Applicant/RP with the following directions: -

- (i) The approved Resolution Plan shall become effective from the date of passing of this Order and shall be implemented strictly as per the term of the plan and implementation schedule given in the Plan;
- (ii) The Performance Guarantee/FD shall be renewed in the name of and kept alive by the "Monitoring Committee of the Corporate Debtor" till the Resolution Plan is fully implemented.

- (iii) The SRA/CD would be entitled to no other relief/ concession/waiver except those available/permissible to it as per the provisions of Section 31(1) and 32A of IBC, 2016. The SRA is, however, at liberty to approach the relevant authorities who would consider these claims as per the provisions of the relevant law in an expeditious manner.
- (iv) The Successful Resolution Applicant is to make payments towards Provident Fund and Gratuity over and above the provisions of the Resolution Plan in compliance with the Order of the Hon'ble NCLAT in the case of M/s Jet Airways India Ltd.; which was upheld by Hon'ble Supreme Court in Civil Appeal No. 407 of 2023 with Civil Appeal Nos. 465-469 of 2023. We further note that:
- (a) The workmen and employees are entitled to receive the amount of provident fund and gratuity in full since they are not part of the liquidation estate under Section 36(4)(b)(iii).
- (b) The workmen are entitled to receive their dues from the Corporate Debtor for period of 24 months as per provision of Section – 53(1)(b) at least to the minimum liquidation value envisaged under Section 30(2)(b) read with Section 53(1).
- (v) The SRA will pay the liability, if any, towards CWC as additional CIRP costs depending on the outcome of the Appeals before the Hon'ble NCLAT.
- (vi) The Monitoring Committee as provided in the Resolution Plan shall be set up by the Applicant/RP within 07 days of passing of this Order, which in

turn, shall take all necessary steps for time bound implementation of the Resolution Plan as per approval.

(vii) The order of the moratorium in respect to the corporate debtor passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order; and

(viii) The Resolution Professional shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to the IBBI for its record and database.

24. The Court Officer and Resolution Professional (RP) shall forthwith make available/send a copy of this Order to the CoC and the Successful Resolution Applicant (SRA) for immediate necessary compliance.

25. A copy of this order shall also be sent by the Court Officer and Applicant to the IBBI for their record.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

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