

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 205
IB-744/ND/2022
IA-6485/2023, IA-04/2024

IN THE MATTER OF:
(Under Section: 7 of IBC, 2016)

Advani Private Limited

**... Applicant/
Financial Creditor**

Versus

Starlit Power Systems Limited

**... Respondent/
Corporate Debtor**

AND IN THE MATTER OF IA. NO. 04/ND/2024:
(Under Section: 31(1) of IBC, 2016)

Ms. Reshma Mittal
(RP of M/s Starlit Power Systems Limited)
R-4/39, Raj Nagar,
Ghaziabad – 201002

... Applicant

Under Section: 31(1) of IBC, 2016

Order delivered on: 06.05.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant :

For the Respondent : Adv. Swapnil Gupta, Adv. Vaibhav Mendiratta, Adv.
Abhinav Mishra

For the RP : Ms. Reshma Mittal

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

IA-04/2024: The present application has been preferred under Section 31 of IBC, 2016 read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

for approval of the Resolution Plan qua the Corporate Debtor. The factual backdrop regarding filing of application under Section 7 of IBC, 2016, the CIRP process, invitation of expression of interest, resolution plans etc. has been mentioned in Para 4 to 32 of the application which reads thus:-

“4. That, it is submitted that an Application bearing CP No. (IB) 744/ND/2022 was preferred by M/s Advani Private Limited a Financial Creditor, under Section 7 of the IBC, 2016 (hereinafter referred as “IBC, 2016” or “Code”) against the Corporate Debtor, for initiating CIRP proceedings. This Hon’ble Tribunal, vide its order dated 20.03.2023, admitted the afore-stated application filed under Section 7 of the Code, and appointed Mr. Khushvinder Singhal having Registration No. IBBI/IPA-002/IP-N00888/2019 - 2020/12833 as the Interim Resolution Professional (hereinafter referred as “erstwhile IRP”) of the Corporate Debtor.

*Copy of CIRP admission order dated 20.03.2023 is enclosed herewith and marked as **Annexure-4**.*

5. That, it is submitted that the IRP made publication of Form-A dated 22.03.2023 under Section 15 of the Code, inviting the creditors of the Corporate Debtor to submit their proof of claims on or before 04.04.2023. Accordingly, after receiving and collating all the claims submitted by the creditors, IRP constituted a committee of creditors which consists of M/s Punjab National Bank and M/s Adani Powers Ltd. as per the provisions of the Insolvency and Bankruptcy Code, 2016.

6. That, in pursuant to the section 22(3)(b) of the IBC, 2016 an Application bearing IA-3174/2023 for appointment of the Applicant as Resolution Professional (hereinafter referred as “RP”) was filed by the COC before this Hon’ble Tribunal and the same was admitted by the Hon’ble Tribunal by passing order dated 26.07.2023.

Copy of Hon'ble NCLT Order dated 26.07.2023 for appointment of Applicant as Resolution Professional is enclosed herewith and marked as **Annexure-1 (Supra)**.

7. That it is pertinent to mention that post receipt of further claims/documents from the creditors, the Applicant had duly filed the List of Creditors, which had been updated from time to time owing to further verifications. The List of Creditors was lastly updated and placed on record with this Hon'ble NCLT as List of Creditors, Version 2.0 (drawn as on 19.08.2023) filed on 21.08.2023. The latest position of the Financial Creditors as per the aforementioned list, reflecting the amount of claim, percentage of exposure in terms of share in Committee of Creditors i.e. voting share is mentioned hereunder:-

Sr. No.	Name of the Financial Creditor	Amount of Claim admitted (in INR)	Percentage share in Committee of Creditors/in Voting
1.	Punjab National Bank	35,27,95,321.62/-	97%
2.	Advani Pvt. Ltd.	1,05,67,303/-	3%
3.	Mr. Sachin Shridhar (Related Party)	7,559,672/-	0%
4.	Mr. Sachin Shridhar (HUF) (Related Party)	550,000/-	0%
5.	Mrs. Santosh Sharma (through Successors- Sachin Shridhar & Tarun Shridhar) (Related Party)	33,334,000/-	0%
6.	M/s. Starlit Finance Limited (Related Party)	46,917,145/-	0%
7.	M/s. Starlit Infrastructure Limited (Related Party)	680,000/-	0%
	TOTAL	45,24,03,441.62	100 %

8. That the 1st CoC meeting was held on 19.04.2023 wherein the various matters were discussed including the custody and control of the assets of the Corporate Debtor, visit to the premise of the CD

by the IRP, appointment of Transaction auditor, Intimations to the various authorities and Banks etc. Further, the CoC had approved the appointment of Mr. YATENDRA PALIWAL, M/s Mavent Advisors, M/s SSS Valuation Professionals Pvt Ltd. and Mr. Sanjeev Kumar Gupta to carry out the valuation and submit the Fair and Liquidation Value in terms of the provisions of the Code.

Copy of minutes of 1st CoC meeting held on 19.04.2023 along with voting results are enclosed and marked as **Annexure-5 (Colly)**.

9. That, the second meeting of the CoC was held on 11.05.2023 wherein the CoC discussed and deliberated the matters related to the Eligibility Criteria and publication of Form G for invitation of the Expression of Interest (EOI) for submission of Resolution Plan by the Prospective Resolution Applicant.

Copy of minutes of 2nd CoC meeting held on 11.05.2023 along with voting results are enclosed and marked as **Annexure-6 (Colly)**.

10. Thereafter, in pursuance to the Regulation 36A of IBBI (CIRP) Regulations, 2016 the erstwhile IRP made publication of Form G on 17.05.2023 for invitation of the Expression of Interest (EOI) for submission of Resolution Plan and in response to the same the IRP received the EOI from various prospective Resolution Applicants (PRAs). Thereafter, IRP issued Provisional List of PRAs on 11.06.2023 and Final List of PRAs on 26.06.2023.

Copy of Form G dated 17.05.2023 published by erstwhile IRP for invitation of EOI for submission of Resolution Plan is enclosed and marked as **Annexure-7**.

11. That the 3rd CoC meeting was held on 29.05.2023 wherein the various matters were discussed. Pursuant to Regulation 36 (1) of CIRP Regulations, 2016, the Erstwhile IRP shared the Information Memorandum with the CoC and Evaluation Matrix and Request For

Resolution Plan (RFRP) was placed before the CoC members. Further In 3rd CoC meeting the matter related to appointment of the Applicant, Ms. Reshma Mittal as Resolution Professional of the Corporate Debtor was placed and the Resolution for the appointment of the Applicant as Resolution professional was passed by the CoC with 100% voting rights. Hon'ble NCLT vide its order dated 26.07.2023 approved the appointment of the Applicant as Resolution Professional.

*Copy of minutes of 3rd CoC meeting held on 29.05.2023 along with voting results are enclosed and marked as **Annexure-8**.*

12. *That the 4th CoC meeting was held on 12.06.2023 wherein the Evaluation Matrix and Request For Resolution Plan (RFRP) was approved by the CoC.*

*Copy of minutes of 4th CoC meeting held on 12.06.2023 is enclosed and marked as **Annexure-9**.*

13. *That the IRP issued Provisional List of PRAs on 11.06.2023 and Final List of PRAs on 26.06.2023 and the Information Memorandum (IM), Request for Resolution Plan (RFRP) and Evaluation Matrix were issued on 16.06.2023.*
14. *Thereafter, in pursuance to the issuance of the Request for Resolution Plan, Information Memorandum and Evaluation Matrix, the erstwhile IRP received the Resolution Plans from Seven (7) Resolution Applicants (RAs).*
15. *That after appointment of the Applicant as the Resolution Professional in pursuance to Hon'ble NCLT order dated 26.07.2023, the 6th CoC meeting was held on 16.08.2023, wherein CoC was informed by the Applicant that while taking hand over from the IRP it was observed by the Applicant/RP that some of resolution plans were not in the sealed position and seems to be opened and thereafter sealed again. Applicant/RP further*

brought into the notice of CoC that the PRAs has confirmed that their envelope seemed to be opened and thereafter sealed again. One of PRA confirmed the same vide letter dated 02.08.2023 as well as by E-mail dated 03.08.2023 that the envelope containing Resolution Plan was opened and thereafter re-sealed by affixing the cello tape. Therefore, the Applicant/RP had apprehension that the financial model of Resolution plan of some of the PRAs may had been compromised. After Considering the facts put by the Applicant/RP, the CoC decided to re-publish the fresh Form-G for invitation of Expression of Interest (EOI) from all the Prospective Resolution Applicants. CoC also directed to the Applicant/RP to inform about publication of fresh Form G for invitation of EOI to all existing resolution applicants through email also and the Applicant RP complied with the CoC directions. Revised RFRP was also approved by the CoC in this meeting.

Copy of minutes of Adjourned 6th meeting of Committee of Creditors dated 16.08.2023 along with Voting Results and Voting sheets are attached herewith and marked as **ANNEXURE-10 (Colly)**.

16. Further, in pursuance to resolution passed by the COC in its 6th Meeting held on 16.08.2023, the RP published the Fresh Form-G on 28th August, 2023 in two newspapers namely 1. Financial Express (In English Language, Delhi Edition) and 2. Jansatta (In Hindi Language, Delhi Edition) inviting EOI for submissions of Resolution Plan.

As per Fresh Form G, the last date for Submission of EOI was 12.09.2023 and in pursuance to the above publication of Expression of Interest, the Resolution Professional received Expression of Interest (EOI) from following 17 no. of prospective Resolution Applicants :

Sr. No.	Name of Prospective Resolution Applicants (PRAs)
1.	Statcon Electronics India Ltd
2.	Smt. Babita Jain
3.	Noida Holdings (P) ltd
4.	Krishna Ventures Limited
5.	Sh. Krishan Kumar
6.	Sh. Deepak Maheshvari
7.	Shri Jyoti Services Pvt. Ltd.
8.	Sh. Anuj Goel
9.	PCM Powers Trading Corporation Ltd.
10.	Endeavor Recyclers India Pvt. Ltd. and Amit Kumar Saraogi and Rajat Goyal
11.	Newgen Partners
12.	Resurgent Property Ventures Pvt. Ltd
13.	Subhlaxmi Investment Advisory Pvt Ltd
14.	Consortium of Chinar Steel Segment Centre Pvt. Ltd and Sunrise Industries and Crown Steels
15.	Sabrimala Industries India Limited
16.	Shanti G.D. Ispat & Power Pvt. Ltd.
17.	M/s Future Energy

*Copy of Fresh Form-G for invitation of the EOI is enclosed and marked as **Annexure-11**.*

17. *That the CIRP could not be completed within given timeline i.e. by 15.09.2023 due to republication of Form G therefore the Resolution Professional had filed an application IA 4839/2023 seeking extension of 90 days i.e. till 15.12.2023, which was allowed by this Hon'ble Tribunal vide order dated 15.09.2023. Copy of Hon'ble NCLT order dated 15.09.2023 is enclosed and marked as **ANNEXURE-12**.*
18. *That, thereafter, in accordance with Regulation 36A (10) of the IBBI regulations, the RP issued a provisional list of Prospective Resolution Applicants (PRAs) on 14.09.2023 to the members of Committee of Creditors and to all the PRAs who had submitted*

their EOI. Further, in accordance with Regulation 36B (1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the RP issued the Information Memorandum, Evaluation Matrix and a Request for Resolution Plans (“RFRP”) to the prospective resolution applicants on 19.09.2023 wherein the last date for submission of Resolution Plan was 19.10.2023.

Copy of Information Memorandum and a Request for Resolution Plans (“RFRP”) which includes Evaluation Matrix are enclosed and marked as **Annexure-13 (Colly)**.

19. That the RP verified the documents and information along with EOI received from the Prospective Resolution Applicants (PRAs) and sought further Information/clarification as per the process documents approved by the CoC members. Based on the documents/information and EMD received from the PRAs, the RP issued the final list of following 15 No. of Prospective Resolution Applicants as on 26.09.2023.

Sr. No.	Name of Prospective Resolution Applicants (PRAs)
1.	Statcon Electronics India Ltd
2.	Smt. Babita Jain
3.	Noida Holdings (P) Ltd
4.	Sh. Krishan Kumar
5.	Sh. Deepak Maheshvari
6.	Shri Jyoti Services Pvt. Ltd.
7.	Sh. Anuj Goel
8.	PCM Powers Trading Corporation Ltd.
9.	Endeavor Recyclers India Pvt. Ltd. and Amit Kumar Saraogi and Rajat Goyal
10.	Newgen Partners
11	Resurgent Property Ventures Pvt. Ltd
12	Subhlaxmi Investment Advisory Pvt Ltd
13	Consortium of Chinar Steel Segment Centre Pvt. Ltd and Sunrise Industries and Crown Steels
14	Sabrimala Industries India Limited
15	Shanti G.D. Ispat & Power Pvt. Ltd.

20. That, the 7th CoC meeting was held on 25.10.2023. In which the Resolution Professional apprised the CoC that the last date for submission of Resolution Plan was 19.10.2023 and she has received total Nine (9) Resolution Plans from the following Resolution Applicants:

- I. Deepak Maheshvari**
- II. PCM Powers Trading Corporation Ltd.**
- III. Statcon Electronics India Ltd**
- IV. Babita Jain**
- V. Krishan Kumar Nagpal 34**
- VI. Anuj Goel**
- VII. Resurgent Property Ventures Pvt. Ltd**
- VIII. Sabrimala Industries India Limited**
- IX. Consortium of Endeavor Recyclers India Pvt. Ltd. and Amit Kumar Sarogi and Rajat Goyal.**

Further, the sealed envelopes of the Resolution Plans were opened before the members of committee of creditors in the presence of the respective PRAs and all Nine (9) PRAs were invited for presentations on their respective Resolution Plans and all the PRAs presented the brief summary of their Resolution Plans before CoC.

Copy of minutes of 7th meeting of Committee of Creditors is attached herewith and marked as **ANNEXURE-14**.

21. Thereafter, the Resolution Professional (RP) diligently conducted a thorough due diligence procedure to meticulously assess the Resolution Plans for adherence to all the applicable provisions of the code. During this phase, the RP formally requested additional information and records from the Prospective Resolution Applicants (PRAs). In compliance with the stipulated timelines, the PRAs duly

submitted supplementary documentation in the form of addendums to their respective Resolution Plans.

- 22. That, all the compliant Resolution Plans were placed before the Committee of Creditors (CoC) during its 8th meeting, convened on the 16.11.2023. The Resolution Professional (RP), in strict compliance with Regulation 39 of the IBBI (CIRP) Regulations 2016, formally extended invitations to all the Resolution Applicants for negotiation and to improve their respective resolution plans. In response to this invitation, certain Resolution Applicants opted to improve their financial proposals within the context of their respective resolution plans, while others conveyed their intention to improve their financial proposals during the Challenge mechanism.*
- 23. That the 9th CoC meeting was held on 23.11.2023 wherein the CoC discussed the negotiation process document. This document encompassed the General Rules of the Negotiation Process, comprehensive Steps for the Negotiation Process, and the terms and conditions governing the Challenge mechanism. After deliberation, the Negotiation Process Document was put for E-voting and the CoC duly approved the Negotiation Process Document on 29.11.2023.*

Relevant Extract of resolution passed by the CoC in its 9th meeting held on 23.11.2023 is as under :

“RESOLVED THAT pursuant to the provisions of the Insolvency and Bankruptcy Code, 2016 and the Rules and Regulations there under, the members of the Committee of Creditors hereby approve the Negotiation Process document to negotiate with the Prospective Resolution Applicants of the corporate debtor.”

*Copy of minutes of 8th meeting of CoC dated 23.11.2023 along with the Voting Results and voting Sheets dated 29.11.2023 are attached herewith and marked as **ANNEXURE-15 (Colly)**.*

*Copy of Negotiation Process document dated 23.11.2023 duly approved by the CoC is attached herewith and marked as **ANNEXURE-16.***

24. *That, the CoC approved Negotiation Process document was shared with all the Resolution Applicants by the RP vide E-mail dated 29.11.2023. The 10th CoC meeting was held on 02.12.2023 wherein the challenge mechanism was conducted in which all the Resolution Applicants were invited to participate. An excel sheet was shared with the Resolution Applicants to furnish their revised financial proposals for the benefit of creditors, to be subsequently submitted to the RP. Consequently, negotiation rounds were initiated, and it was duly informed to the Resolution Applicants that, following the conclusion of Round 1, Resolution Applicants would be obligated to augment their offers in Rounds 2 and 3, in multiples of Rs. 25 lakh. Subsequently, commencing from Round 4 and onward, increments would be made in multiples of Rs. 15 lakh. It is noteworthy that all Resolution Applicants actively engaged in the negotiation process. After the culmination of twelve (12) rounds of negotiations, Ms. Babita Jain, a Prospective Resolution Applicant, emerged as the highest financial bidder.*

*Copy of minutes of 10th meeting of Committee of Creditors held on 02.12.2023 of Corporate Debtor is enclosed herewith and marked as **ANNEXURE-17.***

25. *That, In the aftermath of the challenge mechanism conducted during the 10th Committee of Creditors (CoC) meeting on 02.12.2023, wherein Resolution Applicants submitted revised financial offers, it was mandated that they incorporate these revisions into their respective Resolution Plans. The Resolution Applicants dutifully complied with this mandate, and they submitted their Final Resolution Plans.*

26. That, It is imperative to note that the Final Resolution Plan, remained pending for consideration, evaluation, and voting by the Committee of Creditors (CoC) but timeline of the extended Corporate Insolvency Resolution Process (CIRP) period was completing on 15.12.2023. Recognizing the imminent expiration of the original CIRP timeline, the Resolution Professional filed Application IA 6646/2023 seeking an extension of 60 days, commencing 15.12.2023. This Hon'ble Tribunal, in its wisdom, duly considered the application and, by way of an order dated 18.01.2024, granted the requested extension of 60 days.
28. That the RP convened the 12th meeting of the CoC on 21.12.2023, wherein the Agenda, inter-alia, to take decision on Final Resolution Plans submitted by the Resolution Applicants was placed before the CoC. The CoC evaluated the revised and Final Resolution Plans submitted by the respective Resolution Applicants as per the Evaluation Matrix and Section 29A of the Code. After evaluating in terms of both qualitative and quantitative criteria and aggregate, the revised and Final resolution plans submitted by the Resolution Applicants, were put to E-voting on 23.12.2023.
29. That as per the voting conducted as mentioned above, the Resolution Plan dated 16.12.2023 submitted by Ms. Babita Jain was considered and approved by the CoC under section 30(4) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 20.01.2024 with 97% voting in favour of it.

Relevant Extract of resolution passed by the CoC in its 12th CoC meeting is as under :

“RESOLVED THAT in pursuant to Section 30(3) and (4) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(2) of the Insolvency and Bankruptcy Board of India (Insolvency

*Resolution Process for Corporate Persons) Regulations, 2016, the CoC has assessed the technical feasibility and commercial viability of the Resolution Plan and the consent of members of the COC be and is hereby accorded to approve the Final revised Resolution Plan submitted by **Ms. Babita Jain, (“Resolution Applicant”).”***

RESOLVED FURTHER THAT *pursuant to the provisions of Section 30(6) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed thereunder, the Resolution Professional be and is hereby authorized to submit the Resolution Plan as approved by the Committee of Creditors to the Hon’ble Adjudicating Authority and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto.”*

*Copy of the Minutes of the 12th meeting of the Committee of Creditors held on 21.12.2023 along with Voting Results and voting sheets dated 20.01.2024 are enclosed and marked as **Annexure 2 (Supra).***

30. *That the Interim Resolution Professional appointed Ashok Shyam & Associates (Chartered Accountants) (hereinafter “Transaction Auditor”) on 17.05.2023 to conduct the Transaction Audit of the Corporate Debtor and to assist Resolution Professional in identifying whether the corporate debtor has been subject to any transactions covered under Sections 43, 45, 50 or 66 of the IBC. The Transaction auditor submitted their report on 26.07.2023 to the IRP and after that various queries were raised by the RP after her appointment on 26.07.2023 which were replied by the auditor during the period 1 August 23 to 12 Oct 23 and thereafter addendum to report was issued by the auditor vide email dated 26.10.2023. The RP appraised the CoC in its 8th meeting that she has found and determined certain fraudulent transactions under*

section 66 of the IBC details of which were presented before the CoC.

31. That the Resolution Professional filed the avoidance application u/s 66 of the IBC, 2016 vide IA no. 6485/2023 on 20.11.2023. which is pending for adjudication by this Hon'ble Tribunal.
32. That, considering the background, this instant Application is being moved for submission of the approved Resolution Plan submitted by Ms. Babita Jain under section 30(6) of the IBC and for approval under Section 31(1) of the IBC.

That the undersigned hereby quotes the relevant Section 31(1) of the IBC hereunder:

“31. Approval of resolution plan.

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.”

2. The contour of the Resolution Plan, sources of funds, the provisions/procedure regarding implementation of plan are given in Para 33 to 38 of the application which reads thus:-

“33. Contour of the Resolution Plan:

32.1 The Resolution Plan is submitted by Mrs. Babita Jain who is an individual (hereinafter referred as **“Successful Resolution Applicant”/“SRA”**), w/o Virendra Jain and having PAN - AGNPJ6077B.

32.2 Following are the details of Mrs. Babita Jain- The Resolution Applicant.

Name	Mrs. Babita Jain
Father Name	Sampat Mal Baid
Address	555, Double Storey , New Rajinder Nagar, New Delhi-110060
Mob. No.	9891095232
Email address	virendrajain36@gmail.com

32.3 Sources of Funds

As per the net worth certificate dated 21.04.2023 issued by M/s Rakesh Soni & Associates, Chartered Accountants under UDIN 23088264BGWQDY2258, net worth of Successful Resolution Applicant is Rs. 76.64 crores as on 31.03.2023.

Based on the above, the Resolution Applicant has sufficient funds readily available to be deployed in order to meet its financial requirement under the Plan.

32.4 Resolution Plan submitted by Ms. Babita Jain proposed the following considerations for the various stakeholders of the Corporate Debtor :

S.No	Particulars	Basis	Amount (Rs. In Lakh)
i.	Corporate Insolvency Resolution Process Cost (CIRP Cost)	Actual	60.00 or actual
ii.	Secured financial creditors (other than financial creditors belonging to any class of creditors)	3527.95 (32.242% of admitted claim)	1137.50

iii.	Unsecured Financial Creditors, Unrelated, Having Voting Right	105.67 (2.365% of admitted claim)	2.50
iv	Unsecured Financial Creditors, related, Having no Voting Right	890.40	Nil
v.	Operational Creditors other than workmen and employees	0.50 (0.945% of admitted claim)	0.005
vi.	Workmen Dues	NIL	Nil
vii.	Employees	NIL	Nil
viii.	Government & Statutory Dues	5.28 (0.945% of admitted claim)	4.995
ix.	Others	NIL	Nil
x.	Contingency	NA	5.00
xi	Working capital	NA	1000.00
Total			2210.00

32.5 *The SRA stated in Resolution Plan that entire consideration except working capital will be paid **within 60 days** from the date of receipt of certified true copy of order approving the Resolution Plan by the Adjudicating Authority. However, working capital shall be infused by Resolution Applicant depending upon the requirements of the fund from time to time.*

32.6 *Further, In case the CIRP Cost is above Rs. 60 lakh, the actual amount shall be paid by the Successful Resolution Applicant. However, in case the CIRP cost is below Rs 60 lakh, the difference between actual CIRP cost and allocated amount shall be paid to the secured financial creditors.*

32.7 *The SRA proposed that upon approval of the Resolution Plan by the NCLT, the Corporate Debtor i.e. M/s Starlit Power Systems Limited will be merged with M/s KDG Properties and Construction Private Limited without any further act, deed or thing on the part of the Corporate Debtor. However, necessary compliances with MCA/ ROC/ SEBI will be done by the SRA.*

32.8 *The SRA stated in her Resolution Plan that upon approval of the Resolution Plan by the NCLT and on becoming the Transferee Company as the Listed Company, the entire paid up share capital of the Transferee Company along with the Corporate Debtor shall be listed on Bombay Stock Exchange and Shareholders of the Corporate Debtor in the category of Public to the extent of 71,08,807 shares will get shares of the Transferee Company in the ratio of one share for every 100 shares (100:1).*

32.9 *That the resolution plan provides for the Implementation and supervision of the plan. The Resolution Applicant stated in her resolution plan that upon approval of the Resolution Plan by the Hon'ble NCLT, the Monitoring Committee will be appointed to monitor and administer the implementation of the proposed Resolution Plan. Further, The Monitoring Committee shall consist of a Resolution professional of the corporate debtor, one representative of secured financial creditor and one representative from the Successful Resolution Applicant. Ms. Reshma Mittal, Resolution Professional shall be the chairperson of the Monitoring Committee.*

32.10 *That the resolution plan provides for the Management of Affairs of the Corporate Debtor after approval of the Resolution Plan. The Resolution Applicant stated in her resolution plan that upon approval of the Resolution Plan by the Hon'ble NCLT, the Board of Directors of the Corporate Debtor will cease to have effect and new Directors will be appointed by the Monitoring Committee to manage the affairs of the corporate Debtor.*

32.11 *It is submitted that Resolution Plan envisages the indicative timelines for implementation schedule in the following manner:*

S. No.	Activity	Estimated Time Line
1.	Submission of proposed Resolution Plan by the Resolution Applicant	__/__/____

2.	Date of Approval of Adjudicating Authority	X (effective date)
3.	Formation of monitoring committee	X+10 days
4.	Signing of Definitive Agreement	Within X+60 Days
5.	Fund Infusion (CIRP Cost)	Within X+60 days
6.	Payment of certain upfront amounts to various stakeholders as contemplated under the Plan	Within X+60 days
7.	Extinguishment of Promoter Shareholding	Within X+180days
8.	Issue / Transfer of Promoters Equity shares to the RA	Within X+365 days

*Copy of the Final Resolution Plan dated 16.12.2023 submitted by Ms. Babita Jain, Successful Resolution Applicant in case of Corporate Debtor is annexed herewith and marked as **ANNEXURE-3 (Supra)**.*

33. *The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016. Applicant herein in its capacity as the Resolution Professional states that the approved Resolution Plan meets all requirements as envisaged under the Code and the Rules/ Regulations made thereunder. In this regard, the Resolution Professional is hereby placing on record the Compliance Certificate, dated 29.01.2024, in **Form H**, as required under Regulation 39(4) of the CIRP Regulations.*

Copy of the Compliance Certificate (Form H) submitted by the RP is annexed herewith and marked as Annexure-18.

34. *That subsequent to approval of the Resolution Plan by the CoC on 20.01.2024, the RP issued a Letter of Intent (LOI) to Ms. Babita Jain (SRA) informing that Resolution Plan submitted by her has been approved by the CoC and that she has been declared as the*

Successful Resolution Applicant (“SRA”) of the Corporate Debtor and advised her to furnish an unconditional and irrevocable Performance Bank Guarantee/security amount in terms of the RFRP. And, in response to that the SRA has accepted the LOI vide email dated 22.01.2023. and deposited the 10% of the Resolution Plan amount as Performance Security in Bank Account of the Corporate Debtor maintained with Punjab National Bank, Bikaji Kama Place, New Delhi having current account number 1988002100195020 in accordance with the terms of RFRP on 29.01.2024.

Copy of the letter of intent (LOI) dated 20.01.2024 along with acceptance of LOI by Ms. Babita Jain is enclosed and marked as Annexure-19 (Colly)

35. *The Applicant further submits that all the requirements envisaged under the Code and Rules/Regulations made thereunder have been met.*
36. *It is pertinent to state that time limit for completion of CIRP is 13.02.2024. and the CoC by exercising its commercial wisdom has approved the Resolution Plan submitted by Ms. Babita Jain, Successful Resolution Applicant on 20.01.2024, therefore the Resolution Plan has been approved by the CoC within the stipulated time limit, as required under Section 12 of the Code.*
37. *In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) the Hon’ble Apex Court held that, “if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the*

resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less”.

38. *The Hon’ble Supreme Court has further held at para 35 of the above judgement that 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.***”

3. It is stare decisis that while considering an application for approval of resolution plan, this Tribunal need to examine as to whether the requirements of Section 30(2) of IBC, 2016 has been met, viz., whether the operational creditor and dissenting financial creditor are to be paid in priority, the plan contain sufficient mechanism for implementation thereof and there is provision mentioned in the plan regarding supervision of the implementation. It is also the requirement of the provisions of Section 30(2)(e) of the Code that the Tribunal need to satisfy itself that plan is not contrary to any provision of law.

4. It can be seen from clause 6.2 of the Resolution Plan that there is a provision contained regarding payment of CIRP cost. Clause 6.2 of the plan reads thus:-

“6.2 TREATMENT FOR THE INSOLVENCY RESOLUTION PROCESS COSTS

6.2.1 CIRP COST & TREATMENT THEREOF:

Since the Corporate Insolvency Resolution Process cost is estimated at INR 60,00,000/-, the amount of INR 60,00,000/-will be paid by the Successful Resolution Applicant. The CIRP Cost between the period of approval of resolution plan from COC members and approval from Adjudicating authority will be approved by the COC members and paid by the Successful Resolution Applicant.

6.2.2 UNDERTAKING

The Resolution Applicants for and on behalf of the Corporate Debtor acknowledge that the CIRP Cost may vary or increase between the date of submission of this Resolution Plan and its approval by the Adjudicating Authority and agreed to pay the same.

6.2.3 SOURCES OF FUNDS

The Resolution Applicants for and on behalf of the Corporate Debtor shall arrange the funds for the payment to the final CIRP Costs (i.e., as defined under the IBC and as approved by the Committee of Creditors) from its own internal accruals and its own resources/ reserves and her relatives.”

5. The clause 6.6 of the plan provides treatment for operational creditors other than employees, workmen and Government. The clause 6.6 of the plan provides that the treatment of the operational creditor would be cleared in priority. The clause reads thus:-

“6.6 TREATMENT FOR OPERATIONAL CREDITORS OTHER THAN EMPLOYEES, WORKMEN AND GOVERNMENT:

(i) Claim Admitted Amount: *INR 50,000 as admitted as per the details provided by the Resolution Professional in the Information Memorandum.*

(ii) Treatment: *As per Para 6.1 above*

(iii) Other Conditions: Nil

- (a) *Save and except as provided hereinabove, all other claims, debts and dues of the Operational Creditors pertaining to the period prior to the approval of the Resolution Plan by the CoC shall stand extinguished, and no such existing claim, debt or due shall subsist against the Corporate Debtor and the Resolution Applicants by the Operational Creditors.*
- (b) *It is clarified that in the event any claim of the Operational Creditors is not submitted to the Resolution Professional prior to the approval of the Resolution Plan by the CoC or such claim is rejected by the resolution Professional or such claim raised subsequently however pertains to period prior to the approval of the Resolution Plan by the CoC, such Operational Creditors will not be entitled to receive payments, if any, under the Resolution Plan with respect to such claims.*
- (c) *Any assets of the Corporate Debtor, movable or immovable, in the possession of employees, operational creditors or any other third party shall be returned to the possession of Corporate Debtor immediately on the cut-off date.*
- (d) *Pursuant to the amendment by way of Notification vide IBBI/2017-18/GN/REG022 dated 31.12.2017 (wef. 31.12.2017) resulting into omission of clause j and k Regulation 36(2) of CIRP Regulation 2016, the liquidation value is no longer disclosed in the information memorandum circulated by the Resolution professional.*

Hence in the absence of liquidation value, the applicant who is relying on his initial due diligence, on the basis

of which the applicant considers the liquidation value of the assets of the corporate debtor is inadequate and will not be sufficient enough even to cover the dues of the secured financial creditors in full. Accordingly the operational creditor dues would receive nothing in terms of section 53 of the IBC, 2016, in the event of liquidation of the Corporate Debtor. Keeping this in view, it is proposed that the dues of all operational creditors would be resolved in full and final at amount proposed in Para 6.1 above and the said amount will be paid within Ninety days in priority before payment to financial creditor.”

6. The clause 6.7 of the plan provides for treatment for operational creditors-employees. It is seen from the said clause that the dues of all operational creditors (employees) would be resolved in full and final. The clause 6.7 reads thus:-

“6.7 TREATMENT FOR OPERATIONAL CREDITORS – EMPLOYEES

(i) Claim Admitted Amount: - *Not Applicable*

(ii) Treatment: - *As per Para 6.1 above*

(iii) Other Conditions

(a) Save and except as provided hereinabove, all other claims, debts and dues of the Operational Creditors pertaining to the period prior to the approval of the Resolution Plan by the CoC shall stand extinguished, and no such existing claim, debt or due shall subsist against the Corporate Debtor and the Resolution Applicants by the Operational Creditors.

(b) It is clarified that in the event any claim of the Operational Creditors is not submitted to the Resolution Professional prior to the approval of the Resolution Plan

by the CoC or such claim is rejected by the resolution Professional or such claim raised subsequently however pertains to period prior to the approval of the Resolution Plan by the CoC, such Operational Creditors will not be entitled to receive payments, if any, under the Resolution Plan with respect to such claims.

- (c) Any assets of the Corporate Debtor, movable or immovable, in the possession of employees, operational creditors or any other third party shall be returned to the possession of Corporate Debtor immediately on the cut-off date.*
- (d) Pursuant to the amendment by way of Notification vide IBBI/2017-18/GN/REG022 dated 31.12.2017 wef 31.12.2017) resulting into omission of clause j and k Regulation 36(2) of CIRP Regulation 2016, the liquidation value is no longer disclosed in the information memorandum circulated by the Resolution professional.*

Hence in the absence of liquidation value, the applicant who is relying on his initial due diligence, on the basis of which the applicant considers the liquidation value of the assets of the corporate debtor is inadequate and will not be sufficient enough even to cover the dues of the secured financial creditors in full. Accordingly the operational creditor dues would receive nothing in terms of section 53 of the IBC, 2016, in the event of liquidation of the Corporate Debtor. Keeping this in view, it is proposed that the dues of all operational creditors would be resolved in full and final at amount proposed in Para 6.1 above and the said amount will

be paid within Ninety days in priority before payment to financial creditor.”

7. There is no secured financial creditor who dissented with the Resolution Plan. Nevertheless, M/s Advani Pvt. Ltd which is unsecured financial creditor, having 3% vote share did not vote in favour of the plan. The clause does not provide for any preferential treatment in distribution of the bid amount in favour of the dissenting financial creditor. Nevertheless, Clause 6.5 of the plan provides for treatment to unsecured financial creditor (related party). The Clause 6.4 reads thus:-

“6.4 TREATMENT FOR UNSECURED FINANCIAL CREDITOR (UNRELATED):

(i) Claim Admitted Amount: - *INR 1,05,67,303 as admitted as per the details provided by the Resolution Professional in the Information Memorandum.*

(ii) Treatment: - *As per Para 6.1 above*

(iii) Other Conditions

(a) Save and except as provided hereinabove, all other claims, debts and dues of the unsecured financial creditor pertaining to the period prior to the approval of the Resolution Plan by the CoC shall stand satisfied and extinguished, and no such existing claim, debt or due shall subsist against the Corporate Debtor and the Resolution Applicants by the unsecured financial creditor.

(b) It is clarified that in the event any claim of the unsecured financial creditor is not submitted to the Resolution Professional prior to the approval of the Resolution Plan by the CoC or such claim is rejected by the resolution Professional or such claim raised

subsequently however pertains to period prior to the approval of the Resolution Plan by the CoC, such unsecured financial creditor will not be entitled to receive payments, if any, under the Resolution Plan with respect to such claims.

- (c) Any assets of the Corporate Debtor, movable or immovable, in the possession of unsecured financial creditors or any other third party shall be returned to the possession of the Transferee Company immediately on the cut-off date.*
- (d) Any security interest, charge, hypothecation, mortgage, etc created on assets of corporate debtor in favour of the unsecured financial creditors shall be satisfied or discharged on the closing date.*
- (e) That the claim of the unsecured financial creditors against the personal guarantors and the properties mortgaged by them will continue and that the unsecured financial creditor are free to pursue all legal remedies to recover the balance outstanding dues.*
- (f) Any Financial creditor who have a right to vote under section 21(2) of the Code, and who did not vote in favor of the Resolution Plan, will be entitled to receive at least the amount that they would have received in accordance with sub section (1) of section 53 of the IBC in the event of a liquidation of the corporate debtor shall be paid in priority over financial Creditors who voted in favor of the Resolution Plan, subject to the fact that the overall payments by the Resolution Applicant under the Resolution Plan shall not increase and distribution inter-se amongst the Financial Creditors shall be changed by the committee of creditors in accordance with the Code.”*

8. The Resolution Plan also contain the provisions regarding effective implementation of the plan. The clause contained in Chapter-IV of Clause 4.4 and 4.10 reads thus:-

“4.4 TERM OF PLAN AND IMPLEMENTATION PERIOD

4.4.1 *Once this Resolution Plan is approved by the Adjudicating Authority, the Resolution Applicant will seek all necessary approvals for effecting such terms from various statutory/regulatory authorities, if required; Its being understood that all such approvals being to the satisfaction of the Monitoring Committee.*

4.4.2 *In a period, between Effective Date and Closing Date, the management of the Corporate Debtor shall vest with the Monitoring Committee. Entire expenses incurred by the Monitoring Committee for supervision and implementation of the Resolution Plan shall be borne by the Successful Resolution Applicant.*

4.4.3 *The term of the Resolution plan shall be one year from the date of the approval of the resolution plan and the implementation period shall be the period from the effective date till the date of completion of the following events:*

4.4.4.1 *Upfront payment and payment to all stakeholders be made as per the Plan;*

4.4.4.2 *Issuance of equity/debt/any other instruments; and*

4.4.4.3 *Creation of security thereof, if so required.*

4.4.4.4 *Listing of shares of resolution applicant on stock exchange.*

4.4.4.5 *The Role of the Monitoring Committee will cease once the Resolution Plan is fully implemented in all respects as per the Resolution Plan submitted.*

X X X

**4.10 INDICATIVE TIMELINE FOR IMPLEMENTATION/
IMPLEMENTATION SCHEDULE**

The Resolution Plan shall be implemented in the following manner, as per the timelines stated below or as per applicable laws:

S. No.	Activity	Estimated Time Line
1.	Submission of proposed Resolution Plan by the Resolution Applicant	__/__/__
2.	Date of Approval of Adjudicating Authority	X (effective date)
3.	Formation of monitoring committee	X+10 days
4.	Signing of Definitive Agreement	Within X+60 Days
5.	Fund Infusion (CIRP Cost)	Within X+60 days
6.	Payment of certain upfront amounts to various stakeholders as contemplated under the Plan	Within X+60 days
7.	Extinguishment of Promoter Shareholding	Within X+180days
8.	Issue / Transfer of Promoters Equity shares to the RA	Within X+365 days

9. The Clause 4.9 of the plan contained the provisions regarding provision monitoring of the implementation of the plan. The clause reads thus:-

“4.9 SUPERVISING AND MONITORING THE IMPLEMENTATION OF PLAN

The Resolution Applicant proposes the following for supervision and monitoring of implementation of the Resolution Plan:

- *Monitoring Committee shall consist of Resolution professional of the corporate debtor, one representative of secured financial creditor and one representative from the Successful Resolution Applicant. Resolution Professional shall be the chairperson of the Monitoring Committee. Once the payment of Rs. 12,10,00,000/- will be made by Resolution Applicant to Chairperson of Monitoring committee to distribute in accordance with Chapter VI of this plan, the Monitoring Committee will be dissolved.*

- *Progress reports on implementation of the Resolution Plan on such frequency and in such manner as may be prescribed under IBC Code, 2016.*
- *Appointment of independent consultants viz. Chartered Accountants, Engineers etc. for inspection of Books of Accounts and the orders being undertaken by the Corporate Debtor during implementation of the Resolution Plan.”*

10. Regarding the treatment to be given to the Provident Fund, the SRA has given a specific affidavit. The relevant excerpt of the affidavit reads thus:-

“2. That the following payments are provided for/or will be paid over and above the provisions of the Resolution Plan in compliance of the order of the Hon'ble NCLAT in the Case of M/s Jet Airways India Ltd.; upheld by the Hon'ble Supreme Court in Civil Appeal No 407 of 2023 with Civil Appeal Nos 465-469 of 2023.

(i) 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).

(ii) The workmen are entitled to receive their dues from the Corporate Debtor for the period of 24 months as per provision of Section 53(1)(b) at least to minimum liquidation value envisaged under Section 30(2)(b) read with Section 53(1).

3. That the SRA undertakes for payment of PF and Gratuity dues up to the date of order of the NCLT approving the Resolution Plan in terms of the order of the Hon'ble NCLAT in the Case of M/s Jet Airways India Ltd.; upheld by the Hon'ble Supreme Court in Civil Appeal No 407 of 2023 with Civil Appeal Nos 465-469 of 2023.

4. That the Contingent Liability has been taken into account in the Resolution Plan.”

11. The RP who is present in person submitted that the corporate debtor is MSME, but the plan has been submitted by the SRA, who is fully eligible to do so in terms of the provision of Section 29A of IBC, 2016. Though the Ld. RP, who is present in person, could not draw our attention to any specific affidavit to the effect, she could refer to clause 7.6 of the Resolution Plan, wherein it has been specifically averred that as on date of the plan and on the basis of the record of the resolution applicant, the applicant was eligible to submit the plan. The clause 7.6 and 7.7 of the plan reads thus:-

“7.6. Eligibility under Section 29A of the Code

The RA confirms that, as on the date of this Plan and on the basis of the records of the Resolution Applicant, the Resolution Applicant is eligible under Section 29A of the Code to submit the Resolution Plan. The Resolution Applicant and any 'connected person' (as defined under Explanation I to Section 29A of the Code) or any other person covered under Section 29A of the Code:

- a) is not an un-discharged insolvent;*
- b) is not a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;*
- c) at the time of submission of this resolution plan has does not have any account, does not control or manage, or not the promoter of, a corporate debtor whose account has been, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any law for the time being in force and at least a period of one year has lapsed from that date of such classification till the date of commencement of the corporate insolvency resolution process of the Corporate Debtor.*

- d) has not been convicted of any offence punishable with imprisonment for two years or more under any Act specified under the Twelfth Schedule of Code or for seven years or more under any law for the time being in force.*
- e) is not disqualified to act as a director under the Companies Act, 2013;*
- f) is not prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;*
- g) has not been the promoter, or been in the management or control of a corporate debtor, in which a preferential transaction, an undervalued transaction, an extortionate credit transaction or a fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under the Code;*
- h) has not executed an enforceable guarantee in favor of a creditor, in respect of a corporate debtor under insolvency resolution process or liquidation under the code a such guarantee has been invoked by the creditor and remains unpaid in full or part;*
- i) has not been subject to any disability, corresponding to the aforesaid conditions under any law in a jurisdiction outside India.*

7.7. The Resolution Applicant further intends to clarify the following details:

- a) The Resolution Applicant confirms and declares that neither of them has been convicted for any offence during the preceding five years.*
- b) The Resolution Applicant confirms and declares that there are no criminal proceedings pending against any of them.*
- c) The Resolution Applicant confirms and declares that neither of them has been identified as a willful defaulter by any bank or financial institution or consortium thereof in accordance with the guidelines of the Reserve Bank of India.*

- d) The Resolution Applicant confirms and declares that there is no debarment from accessing to, or trading in, securities market under any order or directions of the Securities and Exchange Board of India (SEBI).*
- e) The Resolution Applicant confirms and declares that there are no transactions with the Corporate Debtor in the preceding two years in any capacity and in any manner with the Corporate Debtor.”*

12. In Clause 7.8 of the plan, the RP specifically averred that the plan is not in contravention of any provision of law. The Clause 7.9 of the plan disclosed that the same is in conformation to such other requirement as has been specified by the Board. The Clauses 7.8 and 7.9 of the plan reads thus:-

“7.8. Declaration to the effect that the Plan is not in contravention of provisions of the Applicable Law

The Resolution Applicant hereby confirms that this Resolution Plan is not in contravention of the provisions of any Applicable Laws.

7.9. Confirmation to the effect that such other requirements as may be specified by the Board

The Resolution Applicant confirms to the effect that the said plan satisfies all the other requirements as may be specified by the Insolvency & Bankruptcy Board of India.”

13. The Clause 7.11 of the plan outlined the feasibility & viability thereof. The clause reads thus:-

“7.11. Feasibility and Viability of the Resolution Plan

The Resolution Plan proposed by Resolution Applicant is in compliance with IB Code and its regulations. Resolution Applicant

has proposed the upfront payment to the stakeholders which has been discussed in the chapter V (financial proposal).

The resolution applicant is quite experienced and have enough business acumen and will appoint technically capable professional to handle and revive the Corporate Debtor in the best interest of all the stakeholders. The Resolution Plan also states the process of its implementation and management to make it feasible and viable.”

14. It is also the stand taken in the plan that neither resolution applicant nor any of it's related parties had failed to implement or contributed to the failure to implementation of any other resolution plan approved by this Adjudicating Authority. The Clauses 7.14 to 7.16 of the plan reads thus:-

“We hereby undertake that neither the resolution applicant nor 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.

7.14. Resolution Applicant(s) confirms that Resolution Professional, the members of COC, Resolution Process Advisor, employees, and agents are indemnified for all acts done in good faith in respect of matters arising out of or in relation to the Resolution Plan Process. The indemnity will survive beyond the CIRP period.

7.15. Resolution Applicant(s) represents to the COC that it has/ they has obtained all requisite corporate permissions and regulatory approvals required for submission of the Resolution Plan and shall be required to submit the requisite supporting documents along with the Resolution Plan in this regard.

7.16. Resolution Applicant acknowledges that implementation of Approved Resolution Plan may be subject to approvals including approvals from the regulatory authorities(as amended from time to

time), COC and Adjudicating Authority, other regulatory approvals and Resolution Applicant shall submit necessary applications for obtaining all such approvals prior to submission of Resolution Plan of Successful Resolution Applicant for approval by Adjudicating Authority and shall obtain all such approvals prior to Transfer Date.”

15. Ms. Reshma Mittal, the Ld. RP who is present in person to present the plan submitted at the bar that the Resolution Applicant has deposited an amount of Rs. 12,10,00,000/- in CIRP account of the corporate debtor, as a security/guarantee to implement the plan and in the event of any lapse on the part of the SRA to implement the plan, in addition to the action under Section 74 of IBC, 2016 the SRA would also be liable to forfeit the aforementioned amount deposited by her as above. The RP shall file an affidavit along with the certified copy of entries from Bankers’ Book to authenticate the deposition of the amount as alleged by her within one week. The Clause 4.5 of the plan indicates Sources of Funds for the Resolution Plan. The clause reads thus:-

“4.5 SOURCES OF FUNDS FOR THE RESOLUTION PLAN

4.5.1 *The Resolution Applicant will arrange the funds from its internal accruals and its own resources and from their relatives.*

4.5.2 *The total amount of INR 12,10,00,000/- (INR Twelve Crore Ten Lakh Only) is to be paid within 60 days from the date of receipt of certified true copy of order approving the Resolution Plan by the Adjudicating Authority.*

The working capital of Rs. 10,00,00,000/- (INR Ten Crore Only) shall be infuse by Resolution Applicant depending upon the requirements of the fund from time to time from the date of

receipt of certified true copy of order approving the Resolution Plan by the Adjudicating Authority

4.5.3 *The aforesaid amount is to be utilized for the purpose of payment to the creditors as per the terms of resolution plan.*

4.5.4 *Further, the RA shall infuse funds in the event of any shortfall to the extent of such shortfall in the funds committed under the Resolution Plan in order to successfully implement the Resolution Plan.*

4.5.5 *Once the Resolution Plan is approved and if any of the terms of the Resolution Plan cannot be enforced for any reason whatsoever, upon seeking approval from the Monitoring Committee, the Resolution Applicant shall make modification to the plan subject to the instructions/approval of the NCLT.*

4.5.6 *The Resolution Applicant is open to modify the structuring of the consideration under this Resolution Plan to meet banking and regulatory requirements.”*

16. The clause 4.2 of the plan (ibid) indicates the distribution of the bid amount amongst the stakeholders and the total consideration of the plan payable to stakeholders. The Chapter VI (Clause 6.0) of the plan indicate the treatment under the Resolution Plan. The clause reads thus:-

“6.0 TREATMENT UNDER RESOLUTION PLAN

6.1 Summary of treatment to Stakeholders

Summary of treatment proposed under the plan for all stakeholders as per the information memorandum prepared by the interim resolution professional of the Corporate Debtor is as under:

S N	Particulars	Basis	Amount (Rs.)
i.	Corporate Insolvency Resolution Process Cost	Actual	60,00,000 or actual
ii.	Secured financial creditors (other than financial creditors belonging to any class of creditors)	35,27,95,322 (32.242% of admitted claim)	11,37,50,000
iii.	Unsecured Financial Creditors, Unrelated, Having Voting Right	1,05,67,303 (2.365% of admitted claim)	2,50,000
iv.	Unsecured Financial Creditors, related, Having Voting Right	8,90,40,817	Nil
v.	Operational Creditors other than workmen and employees	50,000 (0.945% of admitted claim)	473
vi.	Workmen Dues	Not Applicable	Nil
vii.	Employees	Not Applicable	Nil
viii.	Government & Statutory Dues	5,28,30,476 (0.945% of admitted claim)	4,99,527
ix.	Others	Not Applicable	Nil
x.	Contingency	Not Applicable	5,00,000
xi.	Working capital	Not Applicable	10,00,00,000
		Total	22,10,00,000

- i) Upon the consideration paid:
Entire consideration after plan approved by Adjudicating Authority including CIRP Cost except working capital will be paid within 60 days from the date of receipt of certified true copy of order approving the Resolution Plan by the Adjudicating Authority. However, working capital shall be infuse by Resolution Applicant depending upon the requirements of the fund from time to time from the date of receipt of certified true copy of order approving the Resolution Plan by the Adjudicating Authority.
- ii) In case the CIRP cost is below Rs 60,00,000, the shortfall amount shall be paid to the secured financial creditors.
- iii) In case any litigation is pending before any court in India and the said litigation is decided against the Corporate Debtor post approval of the Resolution Plan by the COC, the amount

arising from the said litigation shall be paid from the contingency in the ratio of 0.94553% of the amount as mentioned in the order of the respective litigation.

- iv) In case the amount of contingency is not utilized during the period of implementation of plan, the said amount will be paid to secured financial creditors.*
- v) In case any change/ variation in admitted claims of the secured financial creditors or change in constitution of the CoC, the total amount offered in the plan to the secured financial creditors will be paid to respective secured financial creditor proportionate to their revised/ amended voting shares in CoC*

It is further clarified that in case of admission of any claim of secured creditors by the Resolution Professional or due to any order of tribunal/ court, the total amount offered to the secured creditors in the resolution plan will remain unchanged.

Hence, the Plan envisages justified payout to different class of creditors.”

17. Indubitably, the value of the plan as also the amount distributed to the stakeholders is not such as should have been. Nevertheless, it is stare decisis that once in exercise of its commercial wisdom the CoC has accepted the Resolution Plan, this Tribunal/Adjudicating Authority should not interfere with the same. In **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors**, Hon’ble Supreme Court ruled that the limited power of judicial review available to this this Tribunal is in four corners of Section 30(2) of the Code. It is also the view taken by Hon’ble Supreme Court that such power of review does not enable this Tribunal to interfere with the Resolution Plan.

18. Also in **re Vallal RCK vs. M/s Siva Industries and Holdings Limited & Ors**, Hon'ble Supreme Court ruled that the commercial wisdom of the CoC has been given paramount status without any judicial intervention to ensure the completion of stated processes within the timelines prescribed by the IBC. Also in **Arun Kumar Jagatramka vs. Jindal Steel and Power Limited and Another**, Hon'ble Supreme Court ruled that the legislature has been working hard to ensure that the efficacy of the same would remain robust, thus the need for judicial interaction or innovation from NCLT and NCLAT should be kept at its bare minimum. The Paras 39 & 40 of the application filed for approval of plan containing reference of the aforementioned Judgments reads thus:-

*“39. The Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors**, held that “the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved”.*

40. The Hon'ble Supreme Court of India, in the recent ruling in **re Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors**, has held as under:-

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 Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.***

27. This Court has, time and again, emphasized the need 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.....”

19. Besides, in **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr.** (Civil Appeal No. 3224 of 2020), the Hon'ble Supreme Court ruled that the scope of examination of the application for approval of Resolution Plan by this Tribunal is confined to the provisions of Section 30(2) of IBC, 2016. Para 153 of the Judgment of the reads thus:-

“153 Regulation 38(3) mandates that a Resolution Plan be feasible, viable and implementable with specific timelines. A Resolution Plan whose implementation can be withdrawn at the behest of the successful Resolution Applicant, is inherently unviable, since open-ended clauses on modifications/withdrawal would mean that the Plan could fail at an undefined stage, be uncertain, including after approval by the Adjudicating Authority. It is inconsistent to postulate, on the one hand, that no withdrawal or modification is permitted after the approval by the Adjudicating Authority under Section 31, irrespective of the terms of the Resolution Plan; and on the other hand, to argue that the terms of the Resolution Plan relating to withdrawal or modification must be respected, in spite of the CoC’s approval, but prior to the approval by the Adjudicating Authority. The former position follows from the intent, object and purpose of the IBC and from Section 31, and the latter is disavowed by the IBC’s structure and objective. The IBC does not envisage a dichotomy in the binding character of the Resolution Plan in relation to a Resolution Applicant between the stage of approval by the CoC and the approval of the Adjudicating Authority. The binding nature of a Resolution Plan on a Resolution Applicant, who is the proponent of the Plan which has been accepted by the CoC cannot remain indeterminate at the discretion of the Resolution Applicant. The negotiations between the Resolution Applicant and the CoC are brought to an end after the CoC’s approval. The only conditionality that remains is the approval of the Adjudicating Authority, which has a limited jurisdiction to confirm or deny the legal validity of the Resolution Plan in

terms of Section 30 (2) of the IBC. If the requirements of Section 30(2) are satisfied, the Adjudicating Authority shall confirm the Plan approved by the CoC under Section 31(1) of the IBC.”

20. The clause 6.1 of the plan (supra) also makes a provisions to meet the contingent liabilities which may discovered qua the corporate debtor at later stage.

21. The SRA also sought various Reliefs and Concessions enumerated in Clause 4.11. Nevertheless, the SRA has given an undertaking that irrespective of the grant of relief and concessions by this Adjudicating Authority, the Plan would be implemented. The relevant excerpt of the undertaking in the Plan reads thus:-

“4.11.27 That the Resolution Applicant shall unconditionally and irrevocably implement the Resolution Plan and shall not back out at any time from implementation of Resolution plan during its tenures if any relief or concession as asked for in the resolution plan is not granted by the Hon'ble National Company Law Tribunal in pursuant to the provision of the Insolvency and Bankruptcy Code, 2016. However, in case the Resolution applicant is unable to implement the Resolution plan, the performance security may be forfeited.”

22. As can be seen from Section 31(4) of IBC 2016, the Resolution Applicant shall pursuant to the Resolution Plan approved under sub-Section (1) of Section 31 of IBC, 2016 obtain the necessary approvals required under any law for the time being in force within a period of one year from the date of the order passed under Section 31(1) of IBC 2016. Besides, in terms of the provisions of Section 14 of the Code, even during the period of CIRP, the license, permit, registration,

quota, concession, clearances, or similar grant or right given by the Central Government/State Government, Local Authority, Sectoral Regulator or any other Authority constituted under any other law for the time being in force shall not be suspended or terminated on the ground of Insolvency subject to the condition that there is no default in payment of current dues arising for the use or continuance of the license, permit, registration, quota, concession, clearance or similar grant or right during the moratorium period. Thus, when even during the moratorium period, the facilities mentioned above are made available to the CD only when there is no default in payment of the current dues, on approval of the Resolution Plan, the SRA/CD cannot be put on better footings. For convenient reference, the Explanation is reproduced herein below:-

“14. Moratorium.—(1) *Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -*

.....

(d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

Explanation.- For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit,

registration, quota, concession, clearances or a similar grant or right during the moratorium period;”

23. In any case, in terms of the provisions of Sections 13 and 15 of the IBC 2016 read with Regulation 6, 6A, 7, 8, 8A, 9 and 9A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, all the claimants such as Operational Creditors, Financial Creditors, Creditors in Class, Workmen and Employees and other Creditors can raise their claims before the IRP/RP. The claims are dealt with by IRP in terms of the provisions of Section 18(b) of the IBC, 2016 and by RP in terms of the provisions of Section 25(b) thereof read with Regulations 12(A), 13 and 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thereafter, the RP prepares an Information Memorandum in terms of the provisions of Regulation 36(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Memorandum contains inter alia a list of creditors containing the range of creditors, the amounts claimed by them, the amount of their claim admitted and the security interest if any in respect of such claims. As has been provided in Regulation 36(1) of the Regulations (ibid), the Information Memorandum is required to be submitted in electronic form to each member of CoC, on or before 95th day from the Insolvency commencement date. As has been provided in Regulation 36(A) of the Regulations the RP publish brief particulars of the invitation for Expression of Interest in Form G of Schedule I to the Regulations at the earliest i.e. not later than 60th day from the Insolvency commencement date, from interested and eligible Prospective Resolution Applicants to submit Resolution Plans. As can be seen from Regulation 36(B) of

the Regulations, the RP shall issue Information Memorandum Evaluation Matrix (IMEM) and request for Resolution Plans, within 5 days of the date of issue of provisional list of eligible Prospective Resolution Applicants (required to be issued under Regulation 36(A)(10) of the Regulations). It is with reference to such Information Memorandum Evaluation Matrix that the RP issues request for Resolution Plan. The request for Resolution Plan details each step in the process and the manner and purposes of interaction between the Resolution Professional and the Prospective Resolution Applicant. The Resolution Plan submitted after consideration of the IMEM and RFRP is then examined by the Committee of Creditors. Nevertheless, it needs to satisfy the requirements of Regulation 37 and 38 of the extant Regulations. Once the plan is approved by the CoC, in terms of the provisions of Regulations 39 of the aforementioned Regulations, it virtually becomes a contract entered into between the CD represented through RP, SRA and the Creditors of the CD. On being approved by this Adjudicating Authority, by operation of Section 31 (1) of the Code, the plan becomes 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 enforced such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Thus, Section 31(1) of IBC, 2016, takes care of most of the relief/concession/waiver solicited by the Resolution Applicant.

24. Besides, in terms of the provisions of Section 32(A), for an offence committed prior to the commencement of the Corporate Insolvency Resolution

Process, the liability of the CD ceases and the CD is not liable to be prosecuted from the date of approval of Resolution Plan by this Adjudicating Authority, if the Resolution Plan results in change of management or control of the CD to a person who was not promotor or in the management or control of the CD or a related party of such a person or a person with regard to whom the concerned Investigating Agency has reason to believe that he had abated or conspired for the commission of the offence and has submitted or filed a report or a complaint to the relevant statutory authority or Court. In such cases, where the prosecution is instituted against the CD, during CIRP, the CD stands discharged qua the same from the date of approval of the Resolution Plan. Nevertheless, every person who was a designated partner as defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008, “an officer who is in default” as defined in Clause (60) of Section 2 of Companies Act, 2013 or was in any manner in charge of, or responsible to the CD for the conduct of his business or associated with the CD in any manner and was directly or indirectly involved in the commission of an offence as per the report submitted or complaint filed by Investigating Agency shall continue to be liable to be prosecuted and punished for such an offence committed by the Corporate Debtor notwithstanding the Corporate Debtors’ liability ceases after approval of the plan.

25. In the wake of the provisions of Section 32(A)(2), no action is taken against the property of the Corporate Debtor in relation to an offence committed prior to the commencement of the Corporate Insolvency Resolution Process of the CD, where such property is covered under Resolution Plan approved by this

Authority under Section 31, which result in the change in the control of the CD to a person who was not a promotor or in the management or control of the Corporate Debtor or related party of such person or a person with regard to whom the Investigating Agency has reason to believe that he had abated or conspired for commission of the offence and has submitted or filed a report or complaint to the relevant statutory authority or Court.

26. The action against the property of the Corporate Debtor as referred to in Section 32(A) of the Code includes the attachment, seizure, retention or confiscation under such law as may be applicable to the Corporate Debtor. One may also be not oblivious of the fact that in the backdrop of provisions of Section 31(3)(a) of the IBC, 2016, the moratorium order passed by the Adjudicating Authority under Section 14 ceases to have effect.

27. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver except those, which are available to it as per the provisions of Section 31(1) and 32(A) of IBC, 2016.

28. In the backdrop of aforementioned factual position, discussion, analysis and findings, **the IA-04/2024 filed by the RP for approval of the Resolution Plan is allowed. The Plan submitted by the SRA, certified by the RP is approved.**

29. The SRA shall furnish the updated Performance Bank Guarantee which should remain valid till the implementation of the Resolution Plan. The SRA and the monitoring committee shall ensure that the Plan qua Resolution of Insolvency of CD, submitted by it is implemented in letter and spirit, with due

deference to all the terms and conditions thereof. The Plan shall be binding on the Corporate Debtor and its employee, members, creditors (including the Central, 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 authority to whom the statutory dues are owed), Guarantors and other Stakeholders involved in the Resolution Plan. The Moratorium declared under Section 14 of IBC 2016 shall cease to have effect forthwith. The Resolution Professional shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to IBBI to be recorded on its data base (Section 31(3)(b) of IBC 2016). The RP shall also forthwith send a copy of this order to the participants and the Resolution Applicant. He would also send a copy of this order to the ROC concerned within 15 days of this order. The RP shall intimate each claimant about the principle or formulae, as the case may be, for payment of debts under the Plan. The SRA shall act in terms of the provisions of Section 31(4) of IBC 2016. The Monitoring Committee shall file the progress report regarding implementation of the Plan before this Adjudicating Authority, every month.

IA-6485/2023: Apparently, IA-6485/2023 filed by the RP under Section 66(1) of IBC,2016 is pending. It has been provided in the Resolution Plan that the application shall be pursued by the Monitoring Committee. Monitoring Committee and the proceed of the application would be paid to the Financial Creditor. The relevant excerpt/clause of the plan reads thus:-

“4.11.15 If any PUFEE and other recovery application is filed by the RP, those PUFEE and other recovery application(s) will be followed

and continued by the Chairman of the Monitoring Committee till its tenure and after the tenure of Monitoring Committee, will be followed and continued by Resolution applicant and the distribution of the of proceed if recovered from those PUFÉ and other recovery application(s) will be paid to the secured financial creditor.”

As prayed by the RP who is present in person two weeks’ time is granted for filing the rejoinder.

List on 04.07.2024.

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

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

Ashima/Ruchita