

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-V

I.A. 5864/ND/2022
IN
C.P. No. IB- 721/PB/2021

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

IN THE MATTER OF:

M/S. UTSAV SECURITIES LIMITED

....Financial Creditor

Vs.

M/S. VA REALCON PRIVATE LIMITED

....Corporate Debtor

AND

IN THE MATTER OF:

MOHD. NAZIM KHAN
RESOLUTION PRFOESSIONAL OF
M/s. VA REALCON PRIVATE LIMITED

.... Applicant

Order Delivered On: 30.01.2024

CORAM:

SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present application has been filed ON BEHALF OF Mr. Mohd. Nazim Khan ('Applicant'), Resolution Professional of M/s. VA Realcon Private Limited ('Corporate Debtor') under Section 30(6) read with Section 31 of the Insolvency & Bankruptcy Code, 2016, (the Code) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') seeking approval of the Resolution Plan submitted by M/s. Durgesh Merchants Limited ('Successful Resolution Applicant').
2. The facts of the present case as averred by the applicant in the application are stated in brief as follow:
 - a) The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor, M/s. VA Realcon Private Limited, vide this Adjudicating Authority order dated 07.04.2022, pursuant to an application filed by M/s. Utsav Securities Limited, under Section 7 of the Code and Mr. Mohd Nazim Khan was appointed as Interim Resolution Professional who was later confirmed as the Resolution Professional.
 - b) The applicant carried out a public announcement of initiation of CIRP on 09.04.2022 in Form – A wherein the last date of submission of claims was mentioned as 22.04.2022. The Applicant after collation of claims and determination of the financial position of the Corporate Debtor, a Committee of Creditors (CoC) was duly constituted by the Applicant on 29.04.2022.
 - c) The second meeting of CoC was held on 13.06.2022, wherein the Form –H 'Invitation for Expression of Interest', eligibility criteria pursuant to Section 25 (2) of the IBC,2016 along with the Request for Resolution Plan (RFRP) and Evaluation Matrix was discussed. In pursuance thereof, the RP proposed the resolutions before the COC and the same has been passed by the COC with 100% Voting rights.

- d) The Expression of Interest was published in prescribed Form G for VA Realcon Private Limited on 16.06.2022 in Pioneer English and Pioneer Hindi edition newspapers wherein the last date for receipt of Expression of Interest was 1st July, 2022.
- e) The applicant had received Expression of Interest from two Prospective Resolution Applicants, however, after the Scrutiny of documents, out of the two Prospective Resolution Applicants on, one Prospective Resolution Applicant was ineligible as set of documents and payment of Earnest Money was not submitted by the concerned Prospective Resolution Applicant. Further, the applicant had issued the final list of prospective Resolution Applicants as per Form G on 26.07.2022 containing the name of M/s. Durgesh Merchants Limited, Prospective Resolution Applicant.
- f) The applicant in compliance of the Regulation 36B (1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 had issued Request for Resolution Plan and Evaluation Matrix along with the Information Memorandum on 16.07.2022 to the Prospective Resolution Applicant namely, M/s. Durgesh Merchants Limited.
- g) In accordance with the Form-G and Request for Resolution Plan, the Applicant received the Resolution Plan in sealed envelope from one of the PRA namely M/s. Durgesh Merchants Limited vide email dated 15.08.2022, however physical copy of the Resolution Plan was received in sealed envelope on 27.08.2022 vide speed post.
- h) The third meeting of the COC was conducted on 01.09.2022, wherein the COC members opened the Resolution Plan as submitted by M/s. Durgesh Merchants Limited. The members of the COC sought necessary clarification with the Prospective Resolution Applicant on the Resolution Plan during the presentation of the Resolution Plan.
- i) The applicant had received the modified Resolution Plan from the Prospective Resolution Applicant on 28.10.2022 and accordingly, the RP convened the Fifth COC meeting on 07.11.2022 and placed the

modified Resolution Plan for the Corporate Debtor submitted by M/s. Durgesh Merchants Limited ('Successful Resolution Applicant') along with the due diligence report prepared by the Applicant. The COC considered the Resolution Plan, conducted the financial due diligence and checked the viability of the Resolution Plan and thereafter, approved the Resolution Plan of M/s. Durgesh Merchants Limited with 100% voting in favour. The resolution for approval of Resolution Plan submitted by the Successful Resolution Applicant along with the voting results is reproduced below:-

“RESOLVED THAT pursuant to Section 30(3) of the Insolvency and Bankruptcy Code, 2016 (IBC) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the resolution plan of Durgesh Merchants Limited be and is hereby approved by the COC.

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 there under, 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 in connection with.”

Approved with 100% Voting Rights

S.No	Name of the Creditor	Voting Share (%)	Signature		
			Assent	Dissent	Abstain
1.	Utsav Securities Private Limited	43.67 %	43.67%		
2.	Avail Financial Services Limited	56.33%	56.33%		
	Total	100	100		

j) Further, the Applicant had filed an Application having IA-4683/2022 for extension of CIRP period for further 90 days beyond stipulated 180

days as per the provision of Section 12(2) and (3) of IBC, 2016 read with Regulation 40 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the same has been allowed by this Adjudicating Authority vide order dated 29.09.2022 passed by the Hon'ble Tribunal granting the extension of 90 days.

3. We have heard the submissions made by the Applicant and have meticulously gone through the documents produced on record.
4. From the averments made in the Application as well as the documents annexed, it seems that the procedures have been duly complied with and the applicant has issued a Compliance Certificate in Form-H and the same is annexed as Annexure-10 (Colly.) pg no.404-412 of the present application. However, this Tribunal must examine the Resolution Plan vis-à-vis with the mandatory compliances under the Code.
5. In view of the Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30(4) of the Code meets the requirements as referred under Section 30(2) of the Code.

Section 30 (2) is quoted below: -

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

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

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

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

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such

manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

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

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

where a resolution plan has not been approved or rejected by the Adjudicating Authority;

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

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

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) conforms to such other requirements as may be specified by the Board.

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

6. Further, as per Regulation 38 of the CIRP Regulations, a Resolution Plan is required to contain a statement how it will deal with the interest of all the stakeholders including Financial Creditors and the Operational Creditors and if these are sufficiently provided for in the Resolution Plan, the Adjudicating Authority may approve the Resolution Plan.

7. The amounts proposed to be paid towards the Corporate Insolvency resolution of the Corporate Debtor pursuant to the implementation of the proposed Resolution Plan submitted by the Successful Resolution Applicant is briefed as under: -

S No	Particulars	Basis	Amount
i.	Corporate Insolvency Resolution Process cost	Actual	INR 10 Lakh or actual amount, whichever is higher
ii.	Secured Financial Creditors, Unrelated, Having Voting Right	Not Applicable	Nil
iii.	Unsecured Financial Creditors, Unrelated, Having Voting Right	2,56,22,286 i.e 80% of the Claim Admitted Amount	INR 2,56,22,286
iv.	Operational Creditors other than workmen and employees	Not Applicable	Nil
v.	Workmen Dues	Not Applicable	Nil
vi.	Employees	Not Applicable	Nil
vii.	Government dues i.e. Income Tax Department	Not Applicable	Nil
viii.	Others	Not Applicable	Nil
ix.	Contingency	Not Applicable	Nil
Total			INR 2,66,22,286

8. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in Part-B (Proposal for CIRP Process Cost) of Chapter 5 of the Resolution Plan which provides that the CIRP Costs shall be paid in priority to any other creditors of the Corporate Debtor.

9. As regards compliance of clause (b) of Section 30(2) of the Code, it is seen that the amount due to the Operational Creditors is Nil as specified in Part D (Claim of Operational Creditors) of Chapter 5 of the Resolution Plan since as per the Information Memorandum no claim was received by the applicant on behalf of the operational creditors and therefore, no amount is payable to the operational creditor.
10. As regards compliance of clause (c) of Section 30(2) of the Code, it is seen that the Resolution Plan provides the details regarding the formation and functioning of the Corporate Debtor, its business and affairs, as a going concern after the approval of the Resolution Plan and the same is set forth in Part L (Proposal for management and control of business of the Corporate Debtor) of Chapter 5 of the Resolution Plan.
11. As regards compliance of clause (d) of Section 30(2) of the Code, it is seen that the implementation provisions are mentioned in Part M (Proposal for supervising Resolution Plan and its implementation) of Chapter 5 of the Resolution Plan. The implementation of the Plan until the final payment shall be jointly supervised by the Monitoring committee till the final payment of Resolution Plan. As per the Resolution Plan, the Monitoring Committee shall comprise of (i) Chairman of Monitoring Agency; (ii) a representative of the Financial Creditor having the highest voting share (COC); and (iii) a representative of the Resolution Applicant.
12. As regards compliance of clause (e) and clause (f) of Section 30 (2) of the Code, the successful resolution applicant has submitted declaration under Section 30(2)(e) and Section 30(2)(f) of the Code affirming that the Resolution Plan does not contravene any of the provisions of the law and conforms to such other requirements as may be specified by the Board in Part N of Chapter 5 of the Resolution Plan.
13. As per Regulations 39(4) of the of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP regulations), the applicant has filed compliance certificate in Form-H certifying that the Resolution

Plan submitted by the successful resolution applicant meets the requirements as laid down in various clauses of Section 30 (2) of the Code.

14. In sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30 (2) are fulfilled. In respect of compliances regarding CIRP Regulations specifically Regulations 38 and 39, the Resolution Professional has certified in Form-H and explained in detail that the Resolution Plan has complied with all the required Regulations.
15. The brief summary of the implementation of the proposed Resolution Plan is as follows: -
 - a) Corporate Restructuring through amalgamation of Corporate Debtors with Resolution Applicant as per the terms and conditions as envisaged in the Resolution Plan.
 - b) Resolution Plan provides for amalgamation of VA Realcon Private Limited (Corporate Debtor) into Durgesh Merchants Limited (Resolution Applicant) and subsequently transfer of all the assets and liabilities of Corporate Debtors into/to Resolution Applicant which includes all assets and liabilities (liabilities to be recognised after giving effect of the proposals in this Resolution Plan for the respective stakeholders).
 - c) The scheme of Amalgamation of VA Realcon Private Limited into Durgesh Merchants Limited ensures continuity of business of Corporate Debtor which preserves going concern valuation of the corporate debtors and also develop market and generate adequate cash flow as compared to as asset under CIRP.
 - d) The 'Appointed Date' means the date as may be approved by the NCLT or such other appropriate authority.

e) Proposal to Shareholders of the Corporate Debtor.

• **Proposal to Shareholders of VA Realcon Private Limited:**

Sl. No.	Category	No. of Shares	Allotment Proposal
1	Public	1,05,10,000	A total of 2,80,253 (Two Lakh Eighty Thousand Two Hundred Fifty Three) shares shall be allotted to the shareholders of Corporate Debtor in the proportion of their shareholding in Corporate Debtor
2	Promoter	100	

16. The proposed payment to the Financial Creditors and its timeline as per Part C of the Resolution Plan is represented below in tabular format: -

Sl. No.	Name	Amount Claimed (Rs.)	Amount Admitted (Rs.)
1	Utsav Securities Private Limited	1,39,87,857/-	1,39,87,857/-
2	Avail Financial Services Limited	1,80,40,000/-	1,80,40,000/-
	Total	3,20,27,857/-	3,20,27,857/-

Outstanding of financial creditors shall be settled under this Resolution Plan at 80% at a total consideration of Rs. 2,56,22,286/- (Rupees Two Crores Fifty Six Lakh Twenty Two Thousand Two Hundred Eighty Six) which will be funded/ arranged by Durgesh Merchants Limited, Resolution Applicant. The balance dues, if any, of the Financial Creditors shall stand waived. The Financial Creditors shall have no claim against the Corporate Debtor or Resolution Applicant for the balance amount in any form save and except in the event of default in agreed payment.

The Terms of Payment to Financial Creditors shall be as follows: -

Sl. No.	Particulars	Amount (Rs.)
1.	Cash Component	2,56,22,286/-
2.	Allotment of Equity Shares of Resolution Applicant	0/-
	Total	2,56,22,286/-

The Financial Creditors as listed above of this Resolution Plan shall be paid within 180 days upon approval of Resolution Plan along with sanction of the Scheme of Amalgamation by NCLT as per the payment schedule.

Upfront Payment

- The Resolution Applicant will make an upfront payment of 25 % of the total consideration payable to Financial Creditors as upfront payment within 60 days from the date of approval of resolution plan by the Hon'ble Adjudicating Authority and sanction of scheme of amalgamation.

S. No	Name	Amount (In Rs)	Period (In Days)
1	Financial Creditor	Total 2,56,22,286/-	64,05,572 i.e 25% of the total amount in 60 days ** 1,92,16,714 balance 75% within 180 days**

**The period of 60 and 180 days will start from the date of approval of resolution plan by the Hon'ble Adjudicating Authority and sanction of scheme of amalgamation.

17. This Adjudicating Authority vide its order dated 18.08.2023 has sought the following clarifications from the Applicant as well as from the Successful Resolution Applicant: -
- a. To provide the list of the shareholders of the Corporate Debtor along with the number of equity shares proposed to be issued by the Successful Resolution Applicant.
 - b. The rationale behind the issue of equity shares to the shareholders of the Corporate Debtor including the promoters of the Corporate Debtor.
18. The applicant had submitted affidavit dated 31.08.2023 before this Adjudicating Authority providing the following reply to the clarifications sought: -
- a) The list of the shareholders of the Corporate Debtor along with the number of equity shares proposed to be issued by the Successful Resolution Applicant on the approval of the proposed Resolution Plan is as under: -

Shareholding Pattern of the Corporate Debtor pre and post- merger is as under:

Particulars	No of Equity Shares	Face Value	Amount
Pre- Merger	1,05,10,100	10/-	10,51,01,000
Post-Merger	2,80,253	10/-	28,02,530

Below is the list of the shareholders of the Corporate Debtor along with the number of equity shares proposed to be issued by the Successful Resolution Applicant in view of the Resolution Plan:

S No	Name of the Shareholder	Category	Number of shares held	
			Before Merger	Post-Merger
1.	Nandi Mercantile & Credits Private Limited	Public	39,63,000	105,674
2.	Danveer Investment Private Limited	Public	26,00,000	69,330
3.	Sulphur Securities Private Limited	Public	20,72,000	55,250
4.	S.K.P.J. Investment and Finance Pvt. Ltd.	Public	9,25,200	24,670
5.	Reliable Finance Corporation Private Limited	Public	841,000	22,426
6.	Aquarius Fincap and Credits Pvt. Ltd.	Public	98,800	2,635
7.	Sh. Praveen Rastogi	Public	5,000	134
8.	Sh. Anup Verma	Public	5,000	134
9.	Pawan Kumar Gupta	Promoter	100	3
Total			1,05,10,100	2,80,253

Share Swap Ratio: 2.6665:100. Accordingly, 2.6665 Equity shares will be issued for 100 shares, please refer clause 6.4 of the scheme.

- b) The rationale behind the issue of equity shares to the shareholders of the Corporate Debtor including the promoters of the Corporate Debtor is that in the case of merger, there are two types of stakeholders i.e. one is Shareholders and another is Creditors and the Corporate Debtor in order to satisfy the claim of both the stakeholders has proposed to pay the consideration to both the stakeholders. Accordingly, an amount of Rs 2,56,22,286 (Rupees Two Crore Fifty-Six Lakh Twenty-Two Thousand Two Hundred Eighty-Six shall be paid to the Financial creditors of the Corporate Debtor being 80% of the total claim and shareholders of the Corporate Debtor shall be allotted a total of 2,80,253 Equity Shares of face value of Rs 10/- as per swap ratio (i.e. 2.6665:100) Furthermore, the Corporate debtor is the unlisted private company while the Resolution Applicant is a public listed company and on the dissemination board of the NSE and very soon will become an NSE-listed company and the listing benefits will automatically going to the shareholders of the Corporate Debtor.

19. This Adjudicating Authority vide order dated 16.10.2023 had directed the applicant and the Successful Resolution Applicant to provide the following clarifications: -
- a) Disclosure of Relationship of the shareholders of the Corporate Debtor before proposed Amalgamation vis-a-vis, the Successful Resolution Applicant.
 - b) Rationale for continuing the shareholders of Corporate Debtor as the Shareholders of the Successful Resolution Applicant after amalgamation of Corporate Debtor into SRA.
20. The Applicant had submitted an affidavit dated 19.10.2023 and following clarifications are submitted: -
- a) With regard to the clarification No.1, the Successful Resolution Applicant had submitted that the shareholders of the Corporate Debtor do not have any relation with the SRA in terms of section 5(24) of IBC. Further, the resolution professional has also conducted his due diligence in this regard and has not found any such relationship.
 - b) With regard to the clarification No.2, it was submitted that the corporate debtor's account has not been classified as NPA, neither the promoters are declared as willful defaulter, also, there is no avoidance/ fraudulent transaction reported by the resolution professional, being so the bar of section 29A does not apply to the present case. The aforesaid two factors i.e. balancing the interest of all the stakeholders (including the shareholders of the corporate debtor) and there being no bar under section 29A of IBC, the SRA had proposed to issue shares to the existing shareholders of the corporate debtor post amalgamation. The idea of balancing the interest of all the stakeholders finds strength from the fact that in the resolution plan an amount of Rs 2,56,22,286/- is proposed to be paid to the financial creditors of the corporate debtor, being 80% of the total claim, while shareholders of the corporate debtor are proposed to be allotted a total of 2,80,253 Equity Shares of face value of Rs 10/-.as per swap ratio (i.e. 2.6665:100).
21. The Hon'ble Supreme Court vide its order dated 21.11.2023 in the case **Ramkrishna Forgings Limited Vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr. in Civil Appeal No. 1527/2022** had held as follows:-

“27. Having considered the matter in depth, the Court is unable to uphold the decisions rendered by the Adjudicating Authority-NCLT as also the NCLAT. The moot question involved is the extent of the jurisdiction and powers of the Adjudicating Authority to go on the issue of revaluation in the background of the admitted and undisputed factual position that no objection was raised by any quarter with regard to any deficiency/irregularity, either by the RP or the appellant or the CoC, in finally approving the Resolution Plan which was sent to the Adjudicating Authority-NCLT for approval. Further, the statutory requirement of the RP involving two approved valuers for giving reports apropos fair market value and liquidation value was duly complied with and the figures in both reports were not at great variance. Significantly, the same were then put up before the CoC, which is the decision-maker and in the driver's seat, so to say, of the Corporate Debtor. K Sashidhar (supra) and Committee of Creditors of Essar Steel India Ltd. (supra) are clear authorities that the CoC's decision is not to be subjected to unnecessary judicial scrutiny and intervention. This came to be reiterated in Maharashtra Seamless Limited (supra), which also emphasised that the CoC's commercial analysis ought not to be qualitatively examined and the direction therein of the NCLAT to direct the successful Resolution Applicant to enhance its fund flow was disapproved of by this Court. Thus, if the coc, including the FC(s) to whom money is due from the Corporate Debtor, had undertaken repeated negotiations with the appellant with regard to the Resolution Plan and thereafter, with a majority of 88.56% votes, approved the final negotiated Resolution Plan of the appellant, which the RP, in turn, presented to the Adjudicating Authority-NCLT for approval, unless the same was failing the tests of the provisions of the Code, especially Sections 30 & 31, no interference was warranted. In Kalpraj Dharamshi v Kotak Investment Advisors Limited, (2021) 10 SCC 401, the Court concluded that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of "commercial wisdom", NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.”

22. Further, on perusal of the Resolution Plan, it is observed that sources of funds are provided in Part L at pg no. 24 of the Resolution Plan wherein it is provided as follows: -

The Resolution Applicant proposes to bring necessary funds to repay all amount pertains to the Financial Creditors of the Corporate Debtor as per the IM, upon approval of the Resolution Plan and pertaining to Shareholders of the Company by way of Equity Share Capital of the Resolution Applicant.

The Resolution Applicant proposes to bring necessary funds to repay the settled amount of Rs. 2,56,22,286/- pertains to the Financial Creditors of the Corporate Debtors against outstanding as per IM, upon approval of this Resolution Plan (including Scheme of Amalgamation), as Resolution Applicant (transferee company) has sufficient net-worth to pay all settled amount/claims. Moreover, Resolution Applicant further proposes to bring necessary funds amounting to Rs. 10 Lacs to meet the cost of this Resolution Process, including Resolution Professional cost along with applicable laws.

The tabular representation of the payments proposed to be made under the Resolution Plan is as follows:-

Sl. No.	Particular	Amount (Rs.)
1	Resolution Professional Cost	10,00,000.00
2	Financial Creditors	2,56,22,286.00
3	Operational Creditors (Admitted)	0.00
4	Employees Dues	0.00
5	Statutory Dues	0.00
	Total	2,66,22,286.00

23. The Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

"38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants."

24. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.

25. For the reasons discussed above, in our considered view, the Resolution Plan fulfils the requirement as referred in Section 30 (2) of the Code and there are sufficient provisions in the Plan for its effective implementation as required under the proviso of Section 31 (1) of the Code, the Resolution Plan has been unanimously approved by CoC.
26. As to the relief and concessions sought in the resolution plan more specifically set out in Part H (Reliefs and Concessions) of the Resolution Plan, taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, we direct the Successful Resolution Applicant to file requisite application before the concerned forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws.
27. On perusal of Form-H annexed as Annexure-10 (Colly.) at page no.404 - 411 of the present application, it is found that the Average Fair Market Value of the Corporate Debtor as provided in Form- H is Rs. 2,55,90,912.72/- and the Average Liquidation Value of the Corporate Debtor is Rs.1,28,01,940.97/-. We further observe that no application under Section 43, 45, 50 and 66 of the Code, 2016 is pending before this Adjudicating Authority.
28. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which has been approved by the CoC i.e., by 100% voting. The Plan approved shall be binding on the Corporate Debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any Local Authority to whom statutory dues are owed
29. Resultantly, the present **IA No. 5864/ND/2022 is hereby allowed** with the following directions:

- i. The amalgamation of VA Realcon Private Limited (Corporate Debtor) into M/s. Durgesh Merchants Limited (Resolution Plan) as provided in the Chapter 6 of Resolution Plan is hereby granted subject to the compliance of the provisions of Companies Act, 2013 and rules made thereunder.
- ii. It is clarified that Section 30 (2) (f) of the Code mandates that the Resolution Plan should not be against any provisions of the existing law. The Resolution applicant therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein.
- iii. It is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.
- iv. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code.
- v. The approved 'Resolution Plan' shall become effective from the date of passing of this order, The Approved Resolution Plan shall be part of this order.
- vi. The Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.

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

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

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)