

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

Item No. 114

IA/5849/ND/2021 in IB/800/ND/2020

IN THE MATTER OF:

TCI Express Ltd.

...

Applicant

Versus

Turtle Book Pvt. Ltd.

...

Respondent

Order under Section 9 of IBC, 2016.

Order delivered on 31.10.2023

CORAM:

MR. MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,

HON'BLE MEMBER (TECHNICAL)

ORDER

IA/5849/ND/2021 in IB/800/ND/2020 stands allowed.

Sd/-

DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA-5849/2021

IN

Company Petition No. IB- 800(ND)/2020

(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:-

Mr. Rajesh Ramnani
(Resolution Professional of
M/s. Turtle Books Private Limited)

..... Applicant

VERSUS

M/s. Jigsaw Edu Solutions Private Limited & Others

..... Respondents

AND IN THE MATTER OF:

M/s. TCI Express Limited

... Operational Creditor

VERSUS

M/s. Turtle Books Private Limited

... Corporate Debtor

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on:31.10.2023

Page 1 of 16

I.A./5849/2021

IN

C.P.(IB)/800/2020

Mr. Rajesh Ramnani ,RP of M/s. Turtle Books Private Limited

Date of Order:31.10.2023

ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)

The present application has been filed under Section 30(6) read with Section 31(1) 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') on behalf of Mr. Rajesh Ramnani, applicant herein and Resolution Professional (RP) of M/s. Turtle Books Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s. Jigsaw Edu Solutions Private Limited ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') with 100% voting in favor in terms of Section 30(4) of I&B Code, 2016.

2. Briefly stated, the facts as averred by the applicant in the application are as follows:

- a) The Corporate Insolvency Resolution Process against M/s. Turtle Books Private Limited ('Corporate Debtor') had been initiated by this Hon'ble Adjudicating Authority vide its order dated 19.01.2021 in C.P.(IB) No.800/2020, an application under Section 9 of the Code, 2016 filed by M/s. TCI Express Limited ('Operational Creditor') and the applicant Mr. Rajesh Ramnani was appointed as the Interim Resolution Professional of the Corporate Debtor and later confirmed as the Resolution Professional of the Corporate Debtor.
- b) The Corporate debtor is engaged in the business of publishing of books and the business of the corporate Debtor had started declining due to the New Education Policy wherein the CBSE course publications are preferred by the Schools.
- c) The Public Announcement in Form A dated 24.01.2021 was made invited all the creditors to submit their claim and only the Operational Creditors of the Corporate Debtor had submitted their respective claims. Later, the Applicant had received claim from the only Financial Creditor namely M/s. Aditya Birla Finance Limited and verification of the claim submitted by M/s. Aditya Birla Finance Limited, the Committee of Creditors was reconstituted comprising of the sole Financial Creditor M/s. Aditya Birla Finance Limited.
- d) The Invitation for Expression of Interest in Form -G was published in Financial Express (English Edition) and Jansatta (Hindi Edition) on 04.04.2021, wherein the last date for receipt of the EoI was 19.04.2021 and last date of submission of Resolution Plan was 03.06.2021, which was extended by further one month in view of the outbreak of Covid-19. The applicant had received three Expression of

Page 2 of 16

I.A./5849/2021

IN

C.P.(IB)/800/2020

Mr. Rajesh Ramnani ,RP of M/s. Turtle Books Private Limited

Date of Order:31.10.2023

Interest, however, no resolution plan was submitted by the prospective resolution applicants within the extended time period for submission of the Resolution Plan.

- e) The CIRP period of 180 days of the Corporate Debtor had ended on 17.07.2021. This Adjudicating Authority vide order dated 03.08.2021 in I.A. No. 3107/2021 had granted the extension of 90 days in CIRP period of the Corporate Debtor. Further, this Adjudicating Authority vide order dated 22.10.2021 in I.A./4740/2021 had further granted 60 days extension from the 270 days CIRP Period of the Corporate Debtor ending on 15.10.2021
- f) The Expression of Interest in Form-G was republished on 18.07.2021, consequent to which, two resolution plans were received from (i) M/s. Sabrimala Industries India Limited on 09.09.2021 and (ii) M/s. Jigsaw Edu Solutions Private Limited on 10.09.2021. The CoC had deliberated on both the resolution plans and requested the Resolution Applicants to change certain provisions and increase the final offers in order to maximize the value of the assets of the Corporate Debtor.
- g) The Applicant in the 7th CoC Meeting held on 22.11.2021 had informed the CoC that M/s. Jigsaw Edu Solutions Private Limited had submitted addendum to the Resolution Plan, however, no addendum was received from M/s. Sabrimala Industries India Limited.
- h) The CoC in its 8th CoC Meeting held on 30.11.2021 after deliberating the revised resolution plan submitted by M/s. Jigsaw Edu Solutions Private Limited and considering its viability and feasibility had approved the Resolution Plan along with addendum submitted by M/s. Jigsaw Edu Solutions Private Limited ('Successful Resolution Applicant') with 100% voting in favour on 01.12.2021.

3. We have heard the submissions made by the Ld. Counsel for the Applicant and have meticulously gone through the documents produced on record. The salient features of the Final Resolution Plan dated 30.11.2021 as submitted by M/s. Jigsaw Edu Solutions Private Limited and as approved by the COC with an affirmative voting of 100% are reproduced herein below:

I. BACKGROUND OF THE RESOLUTION APPLICANT:

The Resolution Applicant namely M/s.Jigsaw Edu Solutions Private Limited is an ISO 9001:2008 certified company engaged in providing comprehensive education solutions of the highest quality to orient the student potential in a meaningful direction. The aim of JIGSAW is to provide a constructive and quality, precise and relevant education and to make learning interesting and lively. The net worth of M.s Jigsaw Edu Solutions Private Limited as on 31.03.2021 is Rs.93.39 lakhs only.

Page 3 of 16

I.A./5849/2021

IN

C.P.(IB)/800/2020

Mr. Rajesh Ramnani ,RP of M/s. Turtle Books Private Limited

Date of Order:31.10.2023

II. PAYMENT OF CIRP COST

SI No.	PARTICULARS	Amount Admitted	Amount proposed to be paid	Time Frame in which to be settled
1.	CIRP Cost	17,27,099 (This is the CIRP cost till 30.11.2021. However, the actual unpaid CIRP cost as on date is Rs. 3,28,601/-)	15,18,000*	As per our understanding during the CIRP, Insolvency Resolution process cost is being met by the ongoing operations of the Corporate Debtor. As per the available information provided by RP, the present net available funds in current bank account after considering the amount(s) payable is approx. INR 15.18 lakh. Cash/Bank balance of the Corporate Debtor as on the Effective Date shall, firstly, be utilized towards settlement of CIRP costs and remaining balance, if any shall be used for appropriated towards due of the Financial Creditors. However, in case there are outstanding dues in respect of CIRP Cost over and above 15.18 lakh, till the Approval of Resolution Plan by Hon'ble NCLT, the same shall be adjusted from the payment of Financial Creditor and paid in full within 45 days of approval

III. Settlement Proposal to Creditors

2.	Financial Creditors	77,11,345.96	8,75,000.00	The proposed amount shall be paid within 45 days of approval of Resolution Plan Hon'ble NCLT which shall be paid after adjusted amount already paid as EMD submitted along with EOI/Resolution Plan and PMG amount if paid after approval of COC.
3.	Unsecured Financial Creditor	0.00	0.00	NA
4.	Financial Creditors - Related Party	0.00	0.00	NA
5.	Operational Creditor	81,72,190.00	15,000.00	The proposed amount shall be paid within 45 days of approval of Resolution Plan by Hon'ble NCLT.
6.	Workmen / Employees	10,09,366.00	10,000.00	The proposed amount shall be paid within 45 days of approval of Resolution Plan by Hon'ble NCLT.
7.	Statutory Dues	NA	NA	NA
	TOTAL	1,89,20,201.00	24,18,000.00*	

The Plan provides that the cash./bank balances of the Corporate Debtor as on the Effective Date shall, firstly, be utilized towards settlement of CIRP Costs and remaining balances, if any, shall be used for appropriated towards due of the Financial Creditors.

IV. TREATMENT OF RECOVERY FROM “PUFE” APPLICATION

The Resolution Applicant states that application is being filed under Section 43,45,49 and 66 of IBC, 2016 by the Resolution Professional before the NCLT. The Resolution Applicant proposes to share 50% of any recovery on the basis of the said application with the Secured Financial Creditors after deducting legal expenses to be incurred by RA in pursuing such PUFE applications. The RA shall regularly update the Financial Creditors of the proceeding held in adjudication of matters.

V. TIMELINE FOR THE IMPLEMENTATION OF THE RESOLUTION PLAN

7.1 Timeline of the implementation of the resolution plan

RA intend to implement the Resolution Plan as per the following milestones:

Sl.	ACTION	TIME LINES (in Months unless specifically mentioned)
1.	Date of the Adjudicating Authority's approval of the Resolution Plan by the Adjudicating Authority and constitution of the Supervisory Committee	X
2.	Extinguishing the shareholding of the outgoing promoters and subscribing to fresh equity of the company.	X+2
3.	Change in Management of the Corporate Debtor, by appointment of Directors nominated by RA/SPV on the Board of the Corporate Debtor	X+1
4.	Payment of CIRP Costs	X+45
5.	Payment and settlement of claims of Operational Creditors	NA
6.	Payment and settlement of claims of Secured Financial Creditors	X+45*
7.	Payment and settlement of Claims Received from Workers and Employees (Creditors for wages and salary)	X+45
8.	Payment and settlement of Statutory Dues	NA

4. This Adjudicating Authority vide its order dated 16.10.2023 had observed that the claims of the Operational Creditors admitted by the RP amounts to Rs.81,72,190/- and the Successful Resolution Applicant proposes to pay Rs.15,000/-. Also the claims of the Workmen/Employees amounts to Rs.10,09,500/- and the Successful Resolution Applicant proposes to pay Rs.10,000/-. This Adjudicating Authority had directed the Applicant as well as the Successful Resolution Applicant is directed to explain how the same is in compliance of Section 30(2)(b) by way of an affidavit within a period of three days.
5. The Applicant in compliance of this Adjudicating Authority's order dated 16.10.2023 had submitted the Clarification affidavit dated 25.10.2023 wherein it was submitted as follow:-
 - a) The Corporate Debtor has not engaged any workmen during the tenure of its functionality, however, it has engaged only employees and as on the Insolvency Commencement Date, there was no employee in the Corporate Debtor. Accordingly, the page 17 of the Resolution Plan actually referred to the claims filed by the Financial Creditors, Operational Creditors (other than employees) and Employees only.
6. Further, during the hearing dated 30.10.2023, the Resolution Professional, appearing in person, submitted that the payment of debts to the Employees (Operational Creditor) is in compliance of Section 30(2)(b) of the Code, 2016 considering the Average Liquidation Value of the Corporate Debtor and the waterfall mechanism as provided under Section 53 of the Code, 2016.
7. This Adjudicating Authority had meticulously gone through the clarification affidavit dated 25.10.2023 filed by the Applicant in compliance of this Adjudicating Authority's order dated 16.10.2023. Upon comparison of the settled position of law, with the facts and circumstances of the present case, this Adjudicating Authority is satisfied with the clarifications given by the Applicant. Henceforth, this Adjudicating Authority

is proceeding further for considering the fulfilment of mandatory requirements as per the Code by the proposed Resolution Plan.

8. In view of 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-

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

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

or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]
(c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;
(d) The implementation and supervision of the Resolution Plan;
(e) does not contravene any of the provisions of the law for the time being in force
(f) conforms to such other requirements as may be specified by the Board.
Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

9. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in clause 5.3.1 (i) (Payment of CIRP Cost), Chapter -5 (Financial Proposal) at pg no. 17 of the Resolution Plan provides that as per the available information, CIRP Cost is being paid by the present operations of the Corporate Debtor. As per the available information, the present net available funds in current bank account after considering the amount(s) payable is approx..INR 15.18 Lakhs. The cash./bank balances of the Corporate Debtor as on the Effective Date shall, firstly, be utilized towards settlement of CIRP Cost. Further in case, there are outstanding dues in respect of CIRP cost over and above Rs. 15.18 Lakhs, till the approval of Plan by Adjudicating Authority, the same shall be adjusted from the payment of Financial Creditor and paid in full within 45 days of approval of the Resolution Plan by this Adjudicating Authority.
10. In respect of compliance of Section 30(2)(b) of the Code, it is seen that there is a provision in clause 5.3.5 (operational creditors) Chapter -5 (Financial Proposal) at pg no. 18 of the Resolution Plan provides that out of the total admitted claim of Rs.81,72,190/-, it is proposed to pay Rs.15,000 within 45 days of approval of the Resolution Plan. Further, clause 5.3.6 (Workmen/Employee) Chapter -5 (Financial Proposal) at pg no. 18 of the Resolution Plan provides that out of the total admitted claim of Rs.13,09,566/-, it proposed to pay Rs.10,000 within 45 days of approval of the Resolution Plan.

11. In respect of compliance of Section 30(2)(c), it is seen that there is a provision in clause 5.3.v (operational creditors) Chapter -5 (Financial Proposal) at pg. 19 of the Resolution Plan, which provides that Dissenting Financial Creditor, shall receive an amount which shall be paid in priority over Assenting Financial Creditor. However, this clause shall not be applicable, since there is only one Financial Creditor in the CoC of the Corporate Debtor.
12. In respect of compliance of Section 30(2)(d) and 30(2)(e) of the Code, it is seen that the manner of the management of the affairs and control of the business of the Corporate Debtor has been provided in detail in clause 6.2 (Management of CD post approval of Resolution Plan) Chapter -6 (Management & Control) at pg no. 20 of the Resolution Plan. Further Clause 7.2.2.(c) in Chapter 7 (Implementation and supervision) of the Resolution Plan, provides that a Supervisory Committee shall constitute of the existing RP, one representative of M/s. Aditya Birla Finance Limited and one representative of the Successful Resolution Applicant. The supervisory Committee will be monitoring the functions of the Corporate Debtor till the constitution of the new Board of the Corporate Debtor.
13. In respect of compliance of Section 30(2)(f) of the Code, it is seen that the information provided in the Resolution Plan and the supporting documents provided by the Successful Resolution Applicant, it seems that the Resolution Plan is in compliance with the applicable laws.
14. In respect of compliance regarding Regulation 38 (1A) of the CIRP Regulations, it is seen that Chapter 5 (Financial Position) and Chapter 6(Management & Control) of the Resolution Plan provides how it will deal with the interest of all the stakeholders including secured and unsecured financial creditors, operational creditors of the corporate debtor, statutory dues and interests of the employees and workmen, as per the requirement of Regulation 38(1A) of the CIRP Regulations.

15. In respect of compliance regarding Regulation 39(4) of the 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 sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. The copy of Form-H (Compliance Certificate) is annexed as Annexure- 15 to the present application.
16. On perusal of Form-H annexed as Annexure-15 at page no.235-243 of the present application,, we observe that the Average Fair Market Value of the Corporate Debtor as provided in Form- H is (i) Average Fair Value of SFA is Rs.70.28 Lakhs and Average Fair Value of P&M is Rs.1.67 Lakhs and the Average Liquidation Value of the Corporate Debtor is (i) Average Liquidation Value of SFA is Rs.30.34 Lakhs and Average Liquidation Value of P&M is Rs. 1.51 Lakhs.
17. The Applicant had submitted the affidavit dated 02.09.2023, explaining the rationale for approval of Resolution Plan by the Committee of Creditors even when the value of the proposed Resolution Plan is below the Fair Value and the Liquidation Value. The Applicant submitted that because of the change in the business dynamics and Corporate Debtor's failure in coping with the change in Government Policy, the business prospect of the Corporate Debtor had deteriorated. The Committee of Creditors had published the Expression of Interest on two occasions, wherein the First Occasion no Resolution Plan was received whereas in the Second Occasion two Resolution Plans were received, out of which the other Resolution Applicant had refused to raise the final bids. Accordingly, it was submitted that the CoC is of the view that the Liquidation of the Corporate Debtor would fetch a much lower value and felt it to be prudent to approve the best Resolution Plan even though the amount offered in the Proposed Resolution Plan is below the Liquidation Value.
18. We have heard the Id. Counsel for the Applicant and meticulously perused the submissions of the Applicant. At this juncture it is relevant to refer the

judgement of the Hon'ble Supreme Court in **Maharashtra Seamless Steel Ltd. v. Padmanabhan Venkatesh & Ors. [Civil Appeal No. 4242 of 2019; Judgement dated 22.01.2020]**, wherein it was observed as follows:-

“25. Now the question arises as to whether, while approving a resolution plan, **the Adjudicating Authority could reassess a resolution plan approved by the Committee of Creditors, even if the same otherwise complies with the requirement of Section 31 of the Code.** Learned counsel appearing for the Indian Bank and the said erstwhile promoter of the corporate debtor have emphasized that there could be no reason to release property valued at Rs.597.54 crores to MSL for Rs.477 crores. Learned counsel appearing for these two respondents. have sought to strengthen their submission on this point referring to the other Resolution Applicant whose bid was for Rs.490 crores which is more than that of the appellants MSL.

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

27. **It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof.** We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan.

28. The Appellate Authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the Adjudicating Authority has to be satisfied that the requirement of sub-section (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the

other point on which an Adjudicating Authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the Adjudicating Authority in limited judicial review has been laid down in the case of Essar Steel (supra), the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the Appellate Authority ought to have interfered with the order of the Adjudicating Authority in directing the successful Resolution Applicant to enhance their fund inflow upfront.”

19. Considering the conspectus of facts and the ratio laid down in the Judgement Maharashtra Seamless Steel Ltd (supra), this Adjudicating Authority is prima facie satisfied that the possible endeavours are made by the Applicant and the CoC to maximize the value of assets of the Corporate Debtor.
20. We further observe that one application bearing I.A./5742/ND/2021 filed under Section 66 of the Code, 2016 filed on 10.12.2021 is pending before this Adjudicating Authority. On perusal of the proposed Resolution Plan, we observe that pg. no. 19 of the Resolution Plan provides that Resolution Applicant proposes to share 50% of any recovery on the basis of the said application with the Secured Financial Creditors after deducting legal expenses to be incurred by RA in pursuing such PUFEE applications. The RA shall regularly update the Financial Creditors of the proceeding held in adjudication of matters.
21. As to the relief and concessions sought in the Resolution Plan more specifically set out in Clause 7.3 (Relief prayed to the Adjudicating Authority), Clause 8.5(Tax Liabilities & Waivers) and Clause 9 (Waivers/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**, this Adjudicating Authority direct the Successful Resolution Applicant to file necessary application before the necessary forum/

authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

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

“25. Duties of resolution professional –

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

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

(a).....

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

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

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

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

35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the

Page 13 of 16

I.A./5849/2021

IN

C.P.(IB)/800/2020

Mr. Rajesh Ramnani ,RP of M/s. Turtle Books Private Limited

Date of Order:31.10.2023

resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

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

Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan dated 24.02.2023.

25. Accordingly, subject to the aforesaid observations, we hereby **approve the Resolution Plan dated 30.11.2021 ('Approved Resolution Plan') submitted by M/s. Jigsaw Edu Solutions Private Limited**, which 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, guarantors, Successful Resolution Applicant and other stakeholders involved. Resultantly, ***I.A.5849/ND/2021 stand allowed.***
26. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
27. We further reiterate that the Approved Resolution Plan shall not construe any waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the Approved Resolution Plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).**
28. Accordingly, MoA and AoA of the Corporate Debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the Approved Resolution Plan as mentioned above, it is clarified that the Successful Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.

29. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the Corporate Debtor and the Approved Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
30. 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, subject to our observations regarding concessions, reliefs and waivers sought therein.
31. The Supervisory Committee/Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.
32. In view of the above, the **I.A./5849/ND/2021 stands allowed in terms of aforesaid discussion.**

Let the copy of the order be served to the parties

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAHSHANMUGA SUNDARAM)
MEMBER (J)**