



THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

IA 3291/2023

IN

Company Petition No. (IB) – 607/(ND)/2020

Under Section 30 (6) read with Section 31 and Section 60(5) of the
Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the
IBBI (Insolvency Resolution Process for Corporate Persons) Regulations,
2016.

IN THE MATTER OF:

BANK OF BARODA.

.... Financial Creditor

Versus

M/S. MB MALLS PVT. LTD.

.... Corporate Debtor

AND IN THE MATTER OF-

ABHIMANYU MITTAL

RESOLUTION PROFESSIONAL

29FF, THE WHITE HOUSE, SECTOR -57,

GUGAON-122003, HARYANA

FOR M/S MB MALLS PVT. LTD.

.... Applicant

AND

1. COMMITTEE OF CREDITORS

OF M/S M.B. MALLS PVT. LTD.

THROUGH BANK OF BARODA



2. SUCCESSFUL RESOLUTION APPLICANT

CONSORTIUM OF INDIVIDUALS

MR. PRADEEP KUMAR AGARWALLA

& MR. MUKESH KUMAR AGARWAL

THROUGH ITS MEMBER

MR. MUKESH KUMAR AGARWAL

...Respondent/s

CORAM:

SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

Appearance –

For the Applicant/Financial Creditor

: Adv. Alisha K. Shail in IA/4587/2023.
Ms. Saumya Garg, Adv.

For the SRA

: Mr Abhishek Anand, Mr. Karan Kholi
and Ms. Palak Kalra, Advs

For the RP

: Adv. Ankur Mittal, Adv. Yashika
Sharma, Adv. Muskan Jain along with
Abhimanyu Mittal, R.P.

ORDER

PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Pronounced on: 20.09.2024

1. The present Application has been filed by the Resolution Professional of M/s M.B. Malls Pvt. Ltd., (hereinafter referred to as "Corporate Debtor"), under section 30(6) of the Insolvency and Bankruptcy Code, 2016



(hereinafter referred to as “IBC) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as “CIRP Regulation”), on the instructions of the Committee of Creditors of the Corporate Debtor (hereinafter referred to as “CoC”), seeking the approval of Resolution Plan submitted by successful resolution applicant namely, consortium of individuals Mr. Pradeep Kumar Agrawalla & Mr. Mukesh Kumar Agarwal, duly approved by the COC by majority of 100% voting share of COC.

I. Brief facts of the case leading up to the filing of the present IA seeking approval of the resolution plan –

2. The Corporate Debtor is in the business of real estate being engaged in construction of “Business Tower” comprising of corporate office complex and 5 Star Hotel in same compound situated at main Mathura Road, NH-2, Faridabad, Haryana (construction is yet to be completed).

3. An application bearing CP (IB) No. 607/(PB)/2020 was filed by the Bank of Baroda (hereinafter referred to as “Financial Creditor”) under Section 7 of the IBC for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) of the Corporate Debtor. Thereafter, this AA vide order dated 03.08.2022, initiated CIRP against the Corporate



Debtor (“Admission Order”) and Mr. Vikram Bajaj was appointed as the Interim Resolution Professional (hereinafter referred to as “IRP”).

4. In terms of Regulation 6(1) of CIRP Regulations, IRP had made a public announcement in Form A was made on 06.08.2022 for inviting the claims along with proof of claim in -

a. Financial Express (English)

b. Jansatta (Hindi) All India Edition.

5. The IRP collated claims received and constituted the COC in terms of Section 18 read with Section 21 of the IBC.

6. In accordance with the aforesaid public announcement/s and the consequent claims received by the IRP, COC was constituted on 25.08.2022. The claims received by the IRP are summarized as under-

S. No.	Particulars		Amount Admitted		
	Claim Type	Claim Filed	Claim Admitted	Total	Voting %
1.	Financial Creditor	2	2	1,40,72,81,435.56	76.52%
2.	Class of Creditors	10	10	43,17,28,027.49	23.48%
	Total	12	12	1,83,90,09,463.05	100.00%

7. The IRP had filed an application bearing LA. No. 4149/22 seeking appointment of Authorized Representative for Class of Creditors i.e., Real Estate Buyers - buyers in the Real Estate Project “Business Tower”. This AA vide order dated 01.09.2022 appointed Mr. Ashok Kumar Gupta (Registration No.- IBBI/IPA-003/IPN00010/2016-2017/10072) as



Authorized Representative of Financial Creditors in Class of Creditors Real Estate Buyers.

8. That, in accordance with the Section 22(1) of IBC, IRP constituted the COC and convened the following meetings –

Meetings	Date
1 st Meeting of CoC (<i>Page 63-71</i>)	02.09.2022
2 nd Meeting of CoC (<i>Page 74-111</i>)	10.10.2022
3 rd Meeting of CoC (<i>Page 113-128</i>)	11.11.2022 till 15.11.2022
4 th Meeting of CoC (<i>Page 130-160</i>)	29.11.2022
5 th Meeting of CoC (<i>Page 163-177</i>)	02.01.2023
6 th Meeting of CoC (<i>Page 178-185</i>)	01.02.2023
7 th Meeting of CoC (<i>Page 186-194</i>)	14.02.2023
8 th Meeting of CoC (<i>Page 195-201</i>)	14.03.2023
9 th Meeting of CoC (<i>Page 202-210</i>)	27.04.2023
10 th Meeting of CoC (<i>Page 214-255</i>)	02.05.2023
11 th Meeting of CoC (<i>Page 349-379</i>)	09.05.2023
12 th Meeting of the CoC (<i>Page 504-515</i>)	26.05.2023

9. Subsequent, to the first meeting an application under Section 22(3)(b) IBC bearing 1A No.4455/2022 was filed for the appointment of Mr. Abhimanyu Mittal as RP before this AA. This AA vide order dated 20.09.2022 had allowed the appointment of the RP - Mr. Abhimanyu Mittal.

10. RP had published Form G for inviting Expression of Interest (hereinafter referred to as 'EOF') on 18.10.2022 in three newspapers viz-a-viz

- **Times of India having PAN India circulation,**
- **Hindustan Times (In Delhi and NCR) and**



▪ **Jansatta**

with the last date of submission of EOI along with the EMD as 08.11.2022.

11. In the 5th COC meeting, COC members passed a resolution for seeking extension of 90 days beyond 01.02.2023 for completing the CIRP of the Corporate Debtor. Accordingly, RP had filed an I.A. No. 491/2023 seeking extension of 90 days before this Hon'ble Tribunal. This Hon'ble Tribunal vide order dated 30.01.2023 allowed the I.A. No. 491/2023 thereby granted an extension of 90 days beyond 01.02.2023.

12. After several extensions with regards to the timelines for submission of the EoI, RP had convened 6th COC meeting on 01.02.2023 wherein inter alia, COC was apprised of having received following seven (7) resolution plans received till last date of submissions of resolution plans i.e., 31.01.2023 -

- a. Kalyan Toll Infrastructure Limited
- b. Mr. Mukesh Kumar Aggarwal and Mr. Pradeep Kumar Aggarwal (in Consortium)
- c. Narang Township & Projects Private Limited and Naveen Narang (in Consortium)
- d. Mr. Nikhil Jain
- e. Mr. Sandeep Gupta, Anoop Kr. Mittal and Vision Distribution Pvt. Ltd.
- f. United Biotech Pvt Ltd.



g. Vardhman Sales Agency & Namo E-waste Management Ltd.

13. The RP convened 11th Meeting of COC on 09.05.2023, wherein inter alia, independent agency engaged by the COC presented report on feasibility and viability and scores as per Evaluation Matrix. It is submitted that the following is the ranking of the resolution applicants based upon Quantitative and Qualitative parameter on the basis of evaluation matrix as decided by COC; wherein resolution applicant's scores after bid challenge are as follows and same were recorded in minutes of 11th COC Meeting –

Scores as per Evaluation Matrix					
S.No.	Resolution Applicant	Quantitative	Qualitative	Total	Rank
1.	Pradeep Kr Aggarwala	44.61	20.00	64.61	H1
2.	Kalyan toll	44.06	7.00	51.06	H4
3.	Narang Township	42.11	10.00	52.11	H2
4.	Nikhil Jain	28.91	10.00	38.91	H5
5.	Sandeep Gupta	27.75	10.50	38.25	H6
6.	United Biotech	42.48	9.00	51.48	H3

14. The voting on the resolution plans concluded on 24.05.2023 wherein the resolution plan of Mr. Mukesh Kumar Agrawalla and Pradeep Agrawal (in Consortium) dated 24.04.2023 with 1st and 2nd Addendums dated 29.04.2023 and 05.05.2023 along with Last Offer dated 02.05.2023 and clarificatory Email dated 09.05.2023 was duly approved by a majority vote of 100% as per commercial wisdom of the COC; hence rendering Mr.



Pradeep Kumar Agrawalla & Mr. Mukesh Kumar Agarwal (in Consortium)
as the Successful Resolution Applicant/SRA.

15. The Letter of Intent was accordingly issued on 25.05.2023 to Successful Resolution Applicant and same was unconditionally accepted by the Successful Resolution Applicant. Further, the Successful Resolution Applicant has deposited a sum of INR 5,00,00,000 (Rupees Five Crore) as performance security by way of Bank Guarantee No. 088GT02231500003 dated 30.05.2023 for an amount of Rs. 5,00.00,000/- (Rupees Five Crore) issued by FIDFC Bank Limited, Patparganj Industrial Area, New Delhi 110092.

16. Subsequent, to approval of the aforesaid resolution plan by the CoC, the RP gained control over the office of the CD and admitted further claims which were under consideration and the consequent claim list has been reproduced as under –

S. No.	Category	Total No. of claims received	Total Amount Claimed	Total No. of claims admitted	Total amount of claim admitted
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1

1.	Secured Financial Creditor	2	1,53,07,19,838	2	1,53,07,19,838
2.	Unsecured financial creditor belonging to a class of creditors	32	86,55,24,105	31	59,36,98,228
3.	Unsecured financial creditors (other than financial creditors belonging to a class of creditors)	0	0	0	0
4.	Operational creditor other than Workmen & Employee and government dues	1	12, 81,774	1	4, 72,519
5.	Operational Creditors government dues	3	31, 27, 11,455	2	3, 66, 52,173
6.	Claim from Employee and Workmen	--	--	--	--
7.	Other creditors	17	18,90,98,635	16	9,07,18,278
8.	TOTAL	55	2,89,93,35,807	52	2,25,22,61,036

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17. After the negotiations were conducted by way of Bid Challenge Mechanism, the plan value of successful resolution applicant and share of financial Creditors and other creditors is as under as per Resolution Plan submitted –

(Rs. In Crores)

S. No.	Particulars	Claim Accepted	Resolution Amount	Upfront Payment (within 0-90 days)	Remarks
1.	CIRP COST as on date of plan approval by NCLT		1.00 or actual	T+30	100 % CIRP cost will be paid in Priority as per IBC2016
2.	Secured Financial creditors	153.07	72.00*	T+90	30 Cr will be paid within 1 Month from Effective Date 22 Cr will be paid within 2 Months from Effective Date 20 Cr will be paid within 3 Months from Effective Date
3.	Operational Creditors - Workmen & Employee	NIL	0.01	T+30	RP has not received any claim of Workmen & Employee. Rs 1 lakh is kept for payment to meet all liabilities of operational creditors (Workmen & Employee). However, claims received & verified till approval of Resolution Plan by



					Hon'ble NCLT will be fully paid.
4.	Unsecured Financial creditors in class of creditors - Space Buyers	58.08		T+ 9 months**	Possession of Space Buyers will be given within 9 months** from effective date, subject to receipt of timely payment from Space Buyers / Unit Allottee and the Occupation Certificate from the competent authority.
5.	Operational Creditors (a) Income Tax Appellate Tribunal (b) Custom Department (c) Electricity Department or any other charges of the development authority which are crucial for expeditious and successful implementation of the plan.	NIL	0.02	T+30	Claims which are admitted. Provisionally admitted by the RP provision of Rs 2 lakh is kept for payment to meet all liabilities of operational creditors as defined under clause
6.	Related Parties of the Corporate Debtor	NIL	NIL	NIL	NIL
7.	Contingency a) DTCP – EDC- IDC, License renewal fee, b) Municipal Corporation of Faridabad dues,	NIL	6.00	T+365 days	Rs 6 crore is kept as contingency in order to meet out Principal dues of DTCP & MCF
8.	Capex needed to rebuild the Hotel at Hotel Project and Commercial Business Tower		40		The Fund will be infused to complete the Project of the CD
9.	Total Resolution Plan Value		119.03		

* As per Last Offer dated 02.05.2023 submitted by SRA

**As per Last Offer dated 02.05.2023 submitted by SRA



II. Key Features of the Resolution Plan –

18. **Effective Date** – The Approved Resolution Plan provides that the SRA shall undertake to complete all the actions envisaged in the Table 5A and Table 14A of the Approved Resolution Plan within 365 Days of the Effective Date under section 31 of the Code. *(Refer to Definition: pg.481, Clause 5 of the Resolution Plan: pg. no.416-417 & clause 14 of the Resolution Plan: pg. no. 460-462)*

19. **CIRP Cost** - The Resolution Plan provides that the total CIRP Cost till the Effective Date is estimated to be approximately Rs. 1 Crore. The Resolution Plan envisages payment of the entire CIRP costs at actuals as on the Effective Date till Rs. 1 Cr shall be paid in top priority within 30 days from Effective Date. Any cost more than this Rs.1 Cr shall be deducted from share of the Secured Financial Creditors out of the resolution plan amount. *(Refer to Clause 6 of the Resolution Plan: pg. no.421)*

20. **Operational Creditors** - Successful Resolution Applicant proposes an aggregate upfront payment of Rs.3 Lacs against all the claims/outstanding operational creditors. Further, Successful Resolution Applicant has kept a contingency fund of Rs. 6 Crore to meet out contingent liability. *(Refer to Clause 8 of the Resolution Plan: pg. no.435)*

21. **Statutory Dues:** There is no claim received from Employee Provident Fund Organization (EPFO). RP has admitted claim towards the statutory dues/ government dues are of DGFT amounting to Rs. 86.29 Lacs and apart from this, claim of HRERA is rejected and claim of DTCP is accepted



to the extent of Rs.2,80,23,000. Further, DTCP claim to the extent of Rs.13,31,30,300 is accepted contingently in June 4 2023. The Plan provides that if there is any claim in this regard Successful Resolution Applicant will honour the same. Further, the Resolution Applicant undertakes to pay @ 2.30% of the admitted claim amount payable to operational creditors (including statutory and government dues) in terms of Liquidation Value in accordance with the provisions of Section 30(2)(b) of the Code if the same is higher than the amount proposed to be paid to them under this Plan. (Refer to Clause 8 of the Resolution Plan: pg. no.438-429 and 2nd Addendum: pg. no.491-492)

22. **Dissenting Financial Creditors:** The Resolution Plan has been approved by 100% voting share. (Refer to Clause 5(iy) of the Resolution Plan: pg. no.419).

23. **Secured Financial Creditors:** The total admitted claims of secured financial creditors amounts to Rs. 1,53,07,19,838.00 for which, the SRA proposes an amount of Rs. 72,00,00,000 (Rs. 72 Crore) within 3 months from the Effective Date as per the Last Offer made by the SRA during Bid Challenge Mechanism conducted in 10th Meeting of COC dated 02.05.2022.

S. No.		Amount of Claim Admitted	Voting Share (% in CoC)	Settlement Proposed to be paid within 3 Months of the Effective Date
A.	Financial Creditor (Secured)			
1.	Bank of Baroda	731,101,176	33.98	34,38,85,820
2.	Punjab National Bank	799,618,662	37.17	37,61,14,180
	TOTAL A	1,53,07,19,838	71.15	72,00,00,000

(Refer to Clause 7 of the Resolution Plan: pg. no.422 and Last Offer dated 02.05.2023: pg. no.486)



24. **Unsecured Financial Creditors:** The total admitted claims of financial creditors in a class (Space Allotees) amounting to Rs. 59,36,98,228. Successful Resolution Applicant proposes to offer delivery of units to allottees with 9 months from Effective Date as per Last Offer dated 02.05.2023.

S. No.	Particulars	Period	Remarks
1.	Financial Creditors belongs to any class of creditors (Unsecured - Space Buyers)	9 Months	Possession is being offered within 9 Months from Effective Date as per Last Offer dated 02.05.2023.

(Refer to Clause 7 of the Resolution Plan: pg. no.428-434 and Last Offer dated 02.05.2023: pg. no.486)

25. **Other Creditor Claims:** Further, SRA proposes to settle other creditors, if any, (other than financial creditors and operational creditors) and Successful Resolution Applicant has created contingency fund of Rs. 6 (six) Crores for treatment of the claim settlement of DTCP and Municipal Corporation of Faridabad or any other statutory authority/govt authority/any liability. (Refer to Clause 8 of the Resolution Plan: pg. no.435)

26. **Implementation & Supervision of the Resolution Plan:** Clause 13 of the Resolution Plan envisages that from the Effective Date, monitoring committee shall be formed for monitoring the implementation of the resolution plan till the constitution of the new Board of Directors of the CD. On and from the Effective Date until constitution of the new Board of Directors of the CD, the operations of the CD will be monitored by Monitoring Committee who will be carrying out the day to-day functions of the CD, however the basic role of the Monitoring Committee shall be supervision of the implementation of the Resolution Plan. The Monitoring



Committee will consist of seven representatives, three of them shall be of successful resolution applicant, three shall be nominated/appointed by the financial creditors and the seventh shall be the Resolution Professional (or any external qualified person appointed by the Financial Creditors) who shall be the chairman of the Monitoring Committee. Appointment of new board of directors will take place within 40 business days from on receipt of the approval order passed by this Tribunal or on payment of the upfront resolution amount, whichever is later. (Refer to Clause 13 of the Resolution Plan: pg. no.455-458; Addendum dated 05.05.2023; pg. no. 492)

III. Compliance of the Resolution Plan with the corresponding Sections in IBC, 2016 and allied regulations –

27. It has been averred by the RP that he has verified the contents of the Approved Resolution Plan and has confirmed that the Approved Resolution Plan complies with the requirements envisaged under Regulation 38 of the CIRP Regulations as well as Section 30 of the Code.

28. Change in Capital Structure in accordance with clause 12 of the resolution plan–

Transaction Structure:

The shareholding of the CD as on date of the CIRP is as follows:

- Authorized Share Capital 1,00,00,000 shares of Rs.10/- each : Rs. 10,00,00,000
- Issued, Subscribed & Paid up Capital fully paid up Equity 1,00,00,000 Shares of Rs.10/- each : Rs. 10,00,00,000



29. The SRA proposes re-organization of the capital structure of the CD by cancellation of 100% of all the existing equity shares of the CD outstanding on the Effective Date i.e., NCLT Approval Date and subscription of 60,00,000 fresh equity shares of face value of Rs.10/- each by way of infusion of funds by SRA or the holding company of the SRA. The capital structure of the CD post infusion of the equity by the SRA and after cancellation of all shares of the existing shareholding in the CD shall be as follows:

S. No.	Name of Shareholders	Equity Capital infused	%	Face Value of Share (Rs.)
1.	Mr. Pradeep Kumar Agrawalla	3,00,00,000	50%	10
2.	Mr. Mukesh Kumar Agarwal	3,00,00,000	50%	10
	Total	6,00,00,000	100%	

30. The entire process of Reorganization of Capital Structure of the Corporate Debtor is proposed to be implemented and shall be completed in different steps within the total time frame of 60 days from the Effective date.

31. The Monitoring Committee will appoint the new board of directors within 40 Days from Effective Date or on payment of the upfront resolution amount to Secured Financial Creditor, whichever is later (as per the Addendum dated 05.05.2023).

32. On and from the NCLT Approval Date, the Company will be managed and controlled by Monitoring Committee and a new Board of Directors will



join as proposed by SRA in resolution plan and once the new board will take charge; the CD will be managed by the Board of the Company and Monitoring Committee will have right to monitor implementation of the plan.

33. Further, the section wise compliance with the relevant sections in the IBC, 2016 along with the corresponding regulations has been detailed as under –

<u>Relevant Provision</u>	<u>Provisions of the Code/ Regulation</u>	<u>Reference</u>
Sec. 30 (2)(a) of the Code	provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor	Section 6 of the Resolution Plan
Sec. 30(2) (b)of the Code	Provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debt or under section 53.	Section 8 of the Resolution Plan
Sec. 30 (2) (b) of the Code	And provides for payment of debts of financial creditors who do not vote in favour of the resolution Plan, in such a 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 liquidation of the corporate Debtor	Section 5 of the Resolution Plan



Sec 30(2)(c)	provides for the management of the affairs of the Corporate debtor after approval of the resolution plan	Section 2, 11, 12 and 13 of the Resolution Plan
Sec 30 (2) (d)& Regulation 38(2)(c)	Term of the plan, implementation schedule and supervision of the resolution plan	Section 13 of the Resolution Plan
Sec. 30 (2) (e)	Does not contravene any of the provisions of the law for the time being in force	Resolution Applicant has prepared the Resolution Plan after taking into consideration compliance of all applicable laws and regulations and the plan does not contravene any of the provisions of the law for the time being in force.
Sec. 30 (2) (f)	Plan conforms to such other requirements as may be specified by the Board	The resolution plan has been prepared taking every aspect into consideration so as to conform with such other requirements as may be specified by Board.
Regulation 37 (a) & (b)	transfer of all or part of the assets of the corporate debtor to one or more persons; sale of all or part of the assets whether subject to any security interest or not	The Resolution Plan does not immediately envisage transfer or sale of any of the assets of the Corporate Debtor barring possible sale of the NON-Core assets of the CD
Regulation 37 (c)	the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor	Section 11 and 12 of the Resolution Plan
Regulation 37 (ca)	Cancellation and delisting of any shares of corporate debtor	Section 11 and 12 of the Resolution Plan
Regulation 37 (d)	satisfaction or modification of any security interest	On full payment of the resolution amount as proposed in the plan, the entire charge on the assets of the corporate debtor would be deemed to be satisfied and vacated by the financial creditors therein.
Regulation 37 (e)	curing or waiving of any breach of the terms of any debt due from the corporate debtor	The debts of various parties due from the Corporate Debtor are proposed to be settled /



		restructured / waived as provided separately under this Resolution Plan. Refer Section 7 – Section 11 & 12
Regulation 37 (f)	reduction in the amount payable to the creditors	Section 6-Section 15 of the resolution plan
Regulation 37 (g)	extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor	Section 6 to Section 11 of the resolution plan
Regulation 37 (h)	amendment of the constitutional documents of the corporate debtor	No amendment of the constitutional documents of the Corporate Debtor is proposed under the Resolution Plan
Regulation 37 (i)	Issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests or other appropriate purpose.	Fresh equity shares would be issued as part of the Resolution Plan, as per section 11 of this resolution plan
Regulation 37 (j)	Change in portfolio of goods or services produced or rendered by the corporate debtor.	No amendment or change in the portfolio of goods or services produced or rendered by the corporate debtor is envisaged/ proposed at this stage
Regulation 37 (k)	Change in the technology used by the corporate debtor.	There is no change in the technology proposed.
Regulation 37 (l)	Obtaining necessary approvals from the Central and State Governments and other authorities.	Certain necessary approvals of the Central and State Governments are already in place for the operation of the business. Refer Section 15 In case of expiry of approval, such approval shall be extended by government agencies in time bound manner.
Regulation 38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors	Section 8 of the Resolution plan.



Regulation 38(1A)	Dealing with interests of all stake holders including financial creditors and operational creditors	Resolution Applicant proposes to make payment to various creditors (financial & operational) as per provisions of section 5 to Section 10 of the resolution plan and undertakes to implement the same as per the provisions of section 11 to section 14 of the resolution plan.
Regulation 38 1(B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	We hereby declare that Resolution Applicant or any of its related parties hasn't failed to implement or contributed to the failure of implementation, in past of any resolution plan approved under the Insolvency and Bankruptcy Code ("Code").
Regulation 38 (2) (a)	Term of plan and its implementation schedule	Resolution Applicant proposes to make payment to various creditors (financial & operational) as per provisions of section 6 to Section 10 of the resolution plan and undertakes to implement the same as per the provisions of section 11 to section 14 of the resolution plan.
Regulation 38 (2) (b)	Management and control of the business of corporate debtor during term of resolution plan	Section 2, 3 11 & 12 of the resolution plan.
Regulation 38(3)	A resolution plan shall demonstrate that – (a) it addresses the cause of default; (b) it is feasible and viable; (c) it has provisions for its effective implementation; (d) it has provisions for approvals required and the timeline for the same; and (e) the resolution applicant has the capability to implement the resolution plan	Section 2, Section 3, Section 4, Section 6, Section 11- Section 15 of the resolution plan.



Regulation 39 (1)	An undertaking by the Resolution Applicant that every information and records provided in connection with or in the Resolution Plan is true and correct and discovery of any false information and record at any time will render the applicant ineligible, forfeit the Earnest Money and attract penal action under the IBC.	Clause xi(e) of Section 15 of the resolution plan
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IV. Treatment of Avoidance transactions –

34. If any avoidance application is filed by RP under sections 43, 45, 47, 49, 50 or 66 of IBC, the Successful Resolution Applicants will pass over 100% benefit/recovery from such applications to secured financial creditors and only the secured financial creditors will pursue the said applications after approval of Plan. The CoC have the right to indicate the distribution mechanism to secured financial creditors. *(Refer Clause 7 of Resolution Plan: pg. no.433)*

V. Analysis and Findings -

35. A We have heard the submissions made by the Ld. Counsel(s) for the parties appearing in the present matter, and upon perusal of documents placed on record to substantiate their respective claims, proceed to adjudicate the present application on merits.

36. In view of Section 31 of the Code, this Adjudicating Authority before approving the Resolution Plan is required to examine whether the Resolution Plan which is approved by the CoC under Section 30 (4) of the



Code meets the requirements as referred to under Section 30 (2) of the Code. Section 30 (2) of IBC is quoted below: -

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

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;

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-

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;]

provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan;

The implementation and supervision of the Resolution Plan;

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

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.]”

37. The applicant has prayed for number of waivers in Section 15 the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration the judgement of the Hon’ble Supreme Court of India in the matter of “Embassy Property Development Private Limited versus State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019”, we direct the Successful Resolution Applicant to file necessary application before the appropriate forum/ authority in order to avail the necessary



relief and concessions, in accordance with respective laws. The relevant part of the said 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.”

38. In so far as the approval of the resolution plan is concerned, 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 follows: -

“35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.”



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

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

40. The above view of the Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association v NBCC (India) Limited (Supra) is reaffirmed by the Hon'ble Supreme Court in its recent decision dated 21.11.2023 in the case of Ramkrishna Forgings Limited Vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr., Civil Appeal No. 1527/2022.

41. The Hon'ble Supreme Court vide its order dated 21.11.2023 in the case of Ramkrishna Forgings Limited Vs Ravindra Loonkar, Resolution



Professional of ACIL Limited & Anr. in Civil Appeal No. 1527/2022 held as follows (relevant extract): -

“30. At this juncture, it also cannot be lost sight of that it is for the FC(s) who constitute the CoC to take a call, one way or the other. Stricto sensu, it is now well-settled that it is well within the CoC's domain as to how to deal with the entire debt of the Corporate Debtor. In this background, if after repeated negotiations, a Resolution Plan is submitted, as was done by the appellant (Resolution Applicant), including the financial component which includes the actual and minimum upfront payments, and has been approved by the CoC with a majority vote of 88.56%, such commercial wisdom was not required to be called into question or casually interfered with. Surprisingly, the discussion in both orders is wanting, except for the difference in the figure of the total outstanding dues and the amount of money which the appellant was to put up initially for taking over the Corporate Debtor, for this Court to understand as to what other reasons, grounded in the Code's provisions, compelled the Adjudicating Authority-NCLT to embark upon the novel path of ordering revaluation by the OL. At the cost of repetition, nobody had moved before the NCLT or raised any objection challenging the Resolution Plan pending approval. Even the NCLAT has only indicated that when "figures of crores" are emerging stage-wise, "then there is no harm to look at the Expert opinion", which the Adjudicating Authority-NCLT in this case has asked for.”

42. Addtioanlly, 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.”

43. 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. In the present case, it is observed that CoC had after conscious deliberation accorded approval to the Resolution Plan submitted by the SRA herein with 100% Voting Share.

44. For general context, it is observed that the following interlocutory application(s) raising certain objections to the proposed Resolution Plan were dismissed by this Adjudicating Authority as mentioned below: -

- I. I.A. No. 3418/2021 which was dismissed vide order dated 18.09.2024 passed by this Adjudicating Authority.
- II. I.A. No. 4587/2023 which was dismissed vide order dated 18.09.2024 passed by this Adjudicating Authority.
- III. I.A. No. 5451/2023 which was dismissed vide order dated 20.09.2024 passed by this Adjudicating Authority.
- IV. I.A. No. 4730/2023 which was dismissed vide order dated 20.09.2024 passed by this Adjudicating Authority.

45. Additionally, it is pertinent to mention that certain contentions pertaining to the present resolution plan were raised in the aforementioned I.A.s. However, with regards to the aforesaid objections which have been



raised by the virtue of the said I.A.s, this AA is satisfied that the said objections have been properly addressed in this resolution plan.

46. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby approve the Resolution Plan, 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. In view of the above, I.A. 3291/2023 in C.P.(IB) No. 607 (ND)/ 2020 stands allowed with such directions prescribed below:

47. 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.

48. However, the resolution plan shall not be construed as 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 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 the case of "Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development."



49. Accordingly, Memorandum of Association and Articles of Associations of the corporate debtor shall be amended and filed with the Registrar of Companies (NCT of Delhi & Haryana) for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.

50. 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. 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.

51. 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.

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

-SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)