

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**COURT - IV**

**Item No. 108**

**IA/5726/ND/2022 in IB/595/ND/2021**

**IN THE MATTER OF:**

Thakral Computers Pvt. Ltd.	...	Applicant
Versus		
Pythnos Technology 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/5726/ND/2022 in IB/595/ND/2021 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-5726/2022**

**IN**

**Company Petition No. IB- 595 (ND)/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:-**

Mr. Sunder Khatri  
(Resolution Professional of  
M/s. Pythhos Technology Private Limited)

**..... Applicant**

**AND IN THE MATTER OF:**

M/s. Thakral Computers Private Limited

**... Operational Creditor**

**VERSUS**

M/s. Pythhos Technology 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**

## **ORDER**

**PER: DR. BINOD KUMAR SINHA, HON'BLE 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. Sunder Khatri, applicant herein and Resolution Professional (RP) of M/s. Pythhos Technology Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s. Treillage Private Limited ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') in its 8<sup>th</sup> CoC Meeting held on 14.10.2022 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. Pythhos Technology Private Limited ('Corporate Debtor') had been initiated by this Hon'ble Adjudicating Authority vide its order dated 04.02.2022 in C.P.(IB) No.595/2021, an application under Section 9 of the Code, 2016 filed by M/s. Thakral Computers Private Limited ('Operational Creditor') and Mr. Sunder Khatri 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 was engaged in the business of rendering consulting, delivery organisation to cater to Fortune 500 Companies' growth strategies demand.
- c) The Public Announcement in Form A dated 13.02.2022 was made in the newspaper wherein all the creditors were invited to submit their claim and the last date for submission of proof of claim was 25.02.202. On receipt of the claims, after verification, the applicant had constituted the Committee of Creditors (CoC) comprising of sole Financial Creditor namely M/s. Export Import Bank of India ('EXIM') having 100% voting share in the CoC of the Corporate Debtor.
- d) The details of the claims received by the Applicant and verified as well as admitted by the applicant are reproduced herein below: -

**i. FINANCIAL CREDITORS CLAIMS**

S. No.	Particulars	Amount Claimed (Rs.)	Amount Admitted (Rs.)
1.	Export Import Bank of India	40,79,00,000/-	40,79,00,000/-

**ii. OPERATIONAL CREDITORS CLAIMS**

S. No.	Particulars	Amount Claimed (Rs.)	Amount Admitted (Rs.)
1.	Thakral Computers Pvt. Ltd.	1,02,21,098/-	102,21,098
2.	Shiv Goel	89,500	89,500
3.	Rohit Gupta & Co. LLP	2,78,889	0.00
4.	Good and Service Tax	18,84,641	0.00
<b>TOTAL</b>		<b>1,25,47,128</b>	<b>1,03,10,598</b>

**iii. EMPLOYEE AND WORKMAN CLAIMS**

S. No.	Particulars	Amount Claimed (Rs.)	Amount Admitted (Rs.)
1.	Rajeev Vaid	2,38,68,389	1,47,85,055
2.	Guninder Singh Sandhu	32,57,266.8	17,48,888
<b>TOTAL</b>		<b>2,71,25,655.8</b>	<b>1,65,33,943</b>

**(Details of the claim received from the Stakeholders)**

- e) The Invitation for Expression of Interest in Form –G was published on two occasions i.e., (i) 07.05.2022 and (ii) 13.06.2022. Pursuant to the issue of Form G dated 07.05.2022 on first occasion, no valid Expression of Interest was received till the last date of submission of EoI i.e., 22.05.2022 as mentioned in Form G. Accordingly, Form-G dated 13.06.2022 was re-issued in Jansatta (Hindi Edition), Financial Express (English Edition) and in some additional areas of Hyderabad, Chennai, Bangalore, Kolkata and Mumbai to attract more number of EoI's, wherein the last date for receipt of the EoI was 28.06.2022 and last date of submission of Resolution Plan was 12.08.2022. Pursuant to the Form-G, the applicant had received Two (2) Expression of Interests, however, till the last date of receipt of Resolution Plan i.e., 12.08.2022, only one Resolution Plan from M/s. Treillage Private Limited was submitted to the applicant.

- f) The CoC in its 5<sup>th</sup> CoC Meeting held on 19.07.2022 with 100% voting in favour had approved the resolution for seeking extension of the CIRP period for further 90 days. The Hon'ble Adjudicating Authority vide its order dated 05.08.2022 in I.A./3783/2022 had allowed the further extension of 90 days i.e., from 02.08.2022 to 31.10.2022 in the CIRP period of the Corporate Debtor.
- g) The Applicant in the 6<sup>th</sup> CoC Meeting dated 02.09.2022 had placed before the CoC the agenda for discussion and deliberation on Resolution Plan submitted by M/s. Treillage Private Limited. The sole member of the CoC vide email dated 04.10.2022 had informed the applicant that M/s. Treillage Private Limited is required to improve the plan amount and to reduce the duration of the entire payment and to submit the Revised Resolution Plan.
- h) The Applicant had issued a Letter of Intent dated 26.10.2022 to the Successful Resolution Applicant and the Successful Resolution Applicant had conveyed his unconditional acceptance. Further, as per Regulation 36B(4A) of the CIRP Regulations, 2016, the Successful Resolution Applicant is required to submit an amount of Rs.15,00,000/- as Performance Security in terms of the approved RFRP. The Successful Resolution Applicant has submitted an amount of Rs.10,00,000/- as Financial Bank Guarantee vide DD No. 531012 dated 28.10.2022, in favor of Export Import Bank of India. Further, Bid Bond Guarantee of Rs.5,00,000/- vide DD No. 530909 dated 09.08.2022 has been deposited in the account of the Corporate Debtor.

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 copy of the Resolution Plan dated 11.10.2022 as submitted by M/s. Treillage Private Limited ('Successful Resolution Applicant') and approved by the CoC with 100% voting in favor is annexed as Annexure A-3 to the present application. The salient features of the Resolution Plan dated 11.10.2022 as submitted by M/s. Treillage Private Limited ('Successful Resolution Applicant') and approved by the CoC in its 8<sup>th</sup> CoC Meeting held on 14.10.2022 followed up with E-Voting on 21.10.2022 with 100% voting in favor are reproduced herein below:

#### **I. BACKGROUND OF THE RESOLUTION APPLICANT:**

M/s. Treillage Private Limited ('Successful Resolution Applicant'), is a Private Limited Company bearing CIN: U74999DL2022PTC400323 and having its registered office at T/F Back Side Flat No-6, Plot No.166, Pole No. J-55, South West Delhi – 110077. The Successful Resolution Applicant focus to expertise in the business of providing management service, multi-disciplinary consultancy,

liaisoning, business development and all transactions related consultancy and advisory services to Foreign and Indian Companies. The Successful Resolution Applicant has expertise in strategy consulting and a delivery centre for a US Consulting firm namely, M/s. Trellis Systems LLC.


## **II. SETTLEMENT PROPOSAL TO CREDITORS**

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**II. DETAILS OF THE PROPOSED RESOLUTION PLAN**

**Proposed settlement/ resolution of debts of the Corporate Debtor**

S.I. No.	Name of the Creditors	Nature of the Creditor	Claim Submitted (Amount in Rs.)	Total Claim Admitted (Amount in Rs.)	Payment Under Resolution Plan (Amount in Rs.)	Recovery to Creditors as % of Claim Admitted
1	Export Import Bank of India	Financial Creditor - Secured	407,900,000	407,900,000	70,00,000	2 %
	<b>Total - FC</b>		<b>407,900,000</b>	<b>407,900,000</b>	<b>70,00,000</b>	
1	Thakral Computers Pvt. Ltd.	Operational Creditor	1,02,21,098	1,02,21,098	19,826	0.19%
2	Shivam Goel	Operational Creditor	89,500	89,500	173	0.19%
3	Rajeev Vaid	Employees	23,868,389	14785055	71,538	0.21%
4	Guninder Singh	Employees	3,257,266	1,748,888	8,462	0.21%
	<b>Total – OC and Employees</b>		<b>37,436,253</b>	<b>26,844,541</b>	<b>100,000</b>	
<b>Total Payment to Claimants under Resolution Plan</b>					<b>71,00,000</b>	





### III. PAYMENT OF CIRP COSTS

As per the information provided by the Resolution Professional, CIRP Costs incurred till date has been paid and there are no outstanding. Hence, in the absence of any outstanding CIRP Costs same has not been considered in the above cash flow. However, the Resolution Applicant has undertaken to pay the CIRP costs up to the date of approval of Resolution Plan by the Adjudicating Authority on actual basis. Thus, any CIRP costs incurred up to the date of approval of the Resolution Plan by the Adjudicating Authority, if outstanding, would be paid on priority as per IBC, 2016.

### IV. TIMELINE FOR THE IMPLEMENTATION OF THE RESOLUTION PLAN

**Illustrative implementation plan:**

S.I. NO.	KEY STEPS
1.	<b>Approval of the Committee of Creditors and Adjudicating Authority</b> (i) The Resolution Plan will have to be approved by the CoC. (ii) Post receipt of the approval of the CoC, the Resolution Plan will have to be filed with the Adjudicating Authority for its approval.
2.	<b>Reconstitution of Board and constitution of Monitoring Committee</b> Upon approval of plan by Adjudicating Authority, the following actions to be taken: (a) Handover of the Corporate Debtor to be done by the Resolution Applicant within 30 days of the order of the Hon'ble NCLT (b) Formation of the Monitoring Committee: We propose for following three members in the monitoring committee as follows: (i) Resolution Professional, Chairperson (monthly proposed fee as per business plan from the date of receipt of the NCLT order approving the resolution plan till 3 months i.e. three months from the effective date wherein the monitoring is proposed) (ii) Resolution Applicant – One Person (Director of Treillage) (iii) Export Import Bank of India Bank – One Person (c) Formation of the Board members: After completion of the handover the Resolution Applicant shall reconstitute the Board of the Corporate Debtor as follows: (i) Mr. Pramod Kumar (DIN – 09247669) (ii) Ms. Asha Rani (DIN – 09247705)
3.	<b>Repayment of Priority Dues</b> (a) Within 30 days from the effective date (the date of receipt of the order pronounced approving the Resolution Plan by the Adjudicating Authority), the following amounts shall be paid: (i) Outstanding CIRP Cost within 30 days of the effective date (ii) Payment to Operational Creditors within 30 days of the effective date –Rs. 20,000 (iii) Payment to employees within 30 days of the effective date – Rs. 80,000 (iv) Payment Upfront to Financial Creditors within 30 days of the effective date as per business plan – Rs. 35,00,000 (b) Balance payment to the Financial Creditors within 3 months from the effective date as per business plan – Rs. 35,00,000

4. This Adjudicating Authority vide its order dated 28.08.2023 had sought the explanations/clarifications as to what was the reasons for approval of such Resolution Plan with reference to the following from the Applicant as well as from the Committee of Creditors:-
- a) The reasons for acceptance of haircut to the tune of 98% with reference to feasibility and viability of the proposed Resolution Plan, considering the facts that the total plan value is much below the liquidation value, and
  - b) The reasons and justification for waiver of the lender's right as conferred through the deed of the corporate guarantee, in the proposed Resolution Plan, by the sole CoC Member i.e. Exim Bank.
5. The Sole Member of the CoC i.e., Exim Bank through its Authorised Representative had placed on record an affidavit dated 13.09.2023, providing the following explanations to the observation of this Adjudicating Authority. The explanations provided are recapitulated herein below:-
- a) With reference to the observation (a) of this Adjudicating Authority, it is submitted that the Resolution Plan submitted by the Successful Resolution Applicant is the only plan received under the CIRP of the Corporate Debtor. Further the Corporate Debtor had no tangible assets as, it is into the business of Consultancy Services. It was further submitted that the payment of Rs. 70 Lakhs being offered by the Successful Resolution Applicant is above the average liquidation value of the Corporate Debtor whereas if the liquidation of the Corporate Debtor is ordered, the realization will be lesser than the amount offered to the Financial Creditor in the Resolution Plan.
  - b) With reference to the observation (b) of this Adjudicating Authority, it is submitted that the claim of EXIM Bank of India amounting Rs.40.79 crore consist of (i) claim amounting Rs. 28.97 crores against the Corporate Debtor as Principal Borrower and (ii) Claim amounting Rs. 11.8 Crores as Corporate Guarantor of M/s. Pythhos Technology LLC, USA. Since, the entire claim of EXIM Bank of India which includes claim as principal borrower as well as corporate guarantor has been admitted and paid under the proposed Resolution Plan, the Guarantee given by the



Corporate Debtor to Exim Bank, on approval of this Resolution Plan shall be deemed extinguished.

This Adjudicating Authority had meticulously gone through the clarification affidavit dated 13.09.2023 filed by the sole member of CoC in compliance of this Adjudicating Authority's order dated 28.08.2023. 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 CoC. Henceforth, this Adjudicating Authority is proceeding further for considering the fulfilment of mandatory requirements as per the Code by the proposed Resolution Plan.

6. 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.]”*

7. In respect of compliance of Section 30(2)(a) of the Code, it is seen that Chapter VII at pg. no. 18 read with Chapter X at pg no. 26 of the Resolution Plan provides that as per the available information, CIRP Cost is being paid by the present operations of the Corporate Debtor and there are no outstandings. Hence, in the absence of any outstanding CIRP Costs, the same has not been considered in the above cash flow. However, the Resolution Applicant hereby undertake to pay the CIRP costs up to the date of approval of Resolution Plan by the Hon'ble NCLT on actual basis. Thus, any CIRP costs incurred up to the date of approval of the Resolution Plan by the Adjudicating Authority if outstanding would be paid on priority as per IBC, 2016.
8. In respect of compliance of Section 30(2)(b) of the Code, it is seen that there is a provision in chapter VII at pg no. 18 of the Resolution Plan red with Chapter X at pg no.26 of the Resolution Plan which provides that out of the operational creditor's total admitted claim of Rs.26,844,541/-, it is proposed to pay Rs.1,00,000/- within

30 days of approval of the Resolution Plan. Further, it is seen that the payment to dissenting Financial Creditor will not be applicable, since there is only one Financial Creditor in the CoC of the Corporate Debtor.

9. In respect of compliance of Section 30(2)(c), it is seen that Chapter VIII ('Business Plan') at pg no. 21-23 of the Resolution Plan provides in detail about the management of affairs of the Corporate Debtor after the approval of Resolution Plan.
10. 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 Chapter IX (Term, Implementation Schedule and Monitoring of the Resolution Plan) at pg no. 24 -25 of the Resolution Plan. Further Clause 2 of in Chapter IX of the Resolution Plan, provides that a Monitoring Committee shall be constituted with the Resolution Professional as the chairperson, one director of M/s. Treillage and one representative of the EXIM Bank.
11. 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. Also, the Successful Resolution Applicant had given the undertakings and affidavit dated 10.08.2022 certifying eligibility under Section 29A of the Code, 2016.
12. In respect of compliance regarding Regulation 38 (1A) of the CIRP Regulations, it is seen that Chapter X (Treatment of various stakeholders) at pg. no 26 – 27 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.

13. 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- 4 to the present application.
14. On perusal of Form-H annexed as Annexure 4 at page no.124 – 129 of the present application, we observe that the Average Fair Market Value of the Corporate Debtor as provided in Form- H is Rs. 47,23,752.25/- and the Average Liquidation Value of the Corporate Debtor is Rs. 47,05,252.25/-. Further, it is observed that no Preferential, Fraudulent, Undervalued or Extortionate Transactions ('PUFE') applications are pending before this Adjudicating Authority.
15. As to the relief and concessions sought in the Resolution Plan more specifically set out in Clause 7 (Desired Reliefs and concessions) of Chapter -XIII (Terms of the Resolution Plan) at pg no 32 -35 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.”

16. 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 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.*

17. 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, 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.”*

18. 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 proposed Resolution Plan dated 11.10.2022 as submitted by the Successful Resolution Applicant.
19. Accordingly, subject to the aforesaid observations, we hereby approve the Resolution Plan dated 11.10.2022 ('Approved Resolution Plan') submitted by M/s. Treillage Private Limited ('Successful Resolution Applicant'), 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.5726/ND/2022 stands allowed.***

20. 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.
21. 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).**
22. 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.
23. 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.

24. 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.
25. 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.
26. In view of the above, the **I.A./5726/ND/2022 in C.P.(IB)/595/2021 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 SANKARIAH SHANMUGA SUNDARAM)  
MEMBER (J)**