



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH, COURT-V**

**I.A. 5917/ND/2021  
IN  
C.P. No. IB- 269/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:**

**FUTURE POWER TECHNOLOGY PRIVATE LIMITED**

**.... Operational Creditor**

**Vs.**

**M/S. SMR ENTERTAINMENT PRIVATE LIMITED**

**.... Corporate Debtor**

**AND**

**IN THE MATTER OF:**

**MR. ASHWANI KUMAR  
RESOLUTION PROFESSIONAL OF  
M/S. SMR ENTERTAINMENT PRIVATE LIMITED**

**Order Delivered On: 09.01.2024**

**CORAM:**

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

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**PRESENT**

**For the Applicant**

**:Mr. Abhishek Parmar**

**For the Suspended Board of Directors: Adv. Ramesh Kumar Mahaliyan**

## ORDER

**PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**



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') by Mr. Ashwani Kumar, Resolution Professional (Applicant), on behalf of M/s SMR Entertainment Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s K2 Plan Power Renewals Private Limited ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') with 100% votes in its 8<sup>th</sup> CoC Meeting held on 19.11.2021.

2. Briefly stated, the facts as averred by the applicant in the application are stated are as follows:
- a) That by an order dated 07.01.2021, this Adjudicating Authority had initiated Corporate Insolvency Resolution Process against the Corporate Debtor (M/s SMR Entertainment Private Limited) and Mr. Kailash Chandra Jain was appointed as the Interim Resolution Professional (IRP) in the matter.
  - b) That Public Announcement in the matter for inviting the claims from the creditors of Corporate Debtor was made on 13.01.2021 by the IRP in Form-A in "Financial Express (English language) and in Jansatta (Hindi language).
  - c) That the IRP sent a letter dated 18.01.2021 to the suspended Board of Directors of the Corporate Debtor, requesting them to extend co-operation, provide all the information relating to Corporate Debtor and handover all the assets and records of the Corporate Debtor. However, no information was received from erstwhile management of the Corporate Debtor
  - d) That vide order dated 02.03.2021, this Adjudicating Authority replaced the existing IRP with Mr. Harish Chander Arora (New IRP). The new IRP took the charge on 19.04.2021 and requested the suspended director of the Corporate Debtor to provide all the information relating to Corporate Debtor and to handover all the assets and records of the Corporate Debtor. Despite multiple reminders and follow-ups, no information or assets were provided by the erstwhile management.



- e) That the Committee of Creditors (CoC) of the Corporate Debtor was constituted on 24.04.2021. with 2 financial creditors and the first CoC meeting was held on 07.05.2021, where the new IRP was not confirmed as the Resolution Professional. Hence, this Adjudicating Authority vide its order dated 10.06.2021 appointed the Applicant herein, as the Resolution Professional of the Corporate Debtor and the intimation regarding the change in appointment of Resolution Professional was intimated to all the stakeholders of the Corporate Debtor, IPA as well as IBBI. Further, a public announcement to this effect was made in Delhi edition of Financial Express (English Daily) and Jansatta (Hindi Daily) on 16.06.2021.
- f) That, in 2<sup>nd</sup> CoC meeting held on 16.06.2021, the CoC approved publication of the Form-G. Accordingly, in compliance with Regulation 36A of the CIRP Regulations, Form G for invitation of Expression of Interest (“EoI”), was published in Delhi edition of Financial Express (English Daily) and Jansatta (Hindi Daily) on 16.06.2021. Thereafter, Form INC -28 intimating initiation of the CIRP of the Corporate Debtor was also filed with MCA on 18.06.2021.
- g) That in the 3<sup>rd</sup> CoC meeting held on 29.06.2021, the e Resolution Professional apprised the members of the CoC that no fresh claims from any of the Financial/Operational/Workers/Employees had been received since the last updated list of claims as presented in 2<sup>nd</sup> meeting of CoC held on 07.06.2021.
- h) That in the 4<sup>th</sup> CoC meeting held on 30.07.2021, the Resolution Professional apprised the members of CoC that he had issued recovery notices and balance confirmation letters by email/speed post to the debtors of the Corporate Debtor, as appearing in details of debtors & loans and advances shared by statutory auditors. However, notices could only be issued to parties whose contact information was available in public domain.
- i) That the Form G inviting Expression of Interest (EoI) was published in Financial Express (English) and Jansatta (Hindi) on 30.07.2021. However, amongst 6 PRAs, only one PRA, M/s K2 Power Renewal Private Limited submitted their EoI before the last date of submission of EoI, i.e., 14.08.2021. The list of provisional PRAs was issued on 18.08.2021 and final list of PRAs was issued on 30.08.2021. The last date of submission of Resolution Plan was 22.09.2021.



- j) That in the 5<sup>th</sup> CoC meeting held on 01.09.2021, the Resolution Professional briefed the members about updated list of claims received by him till date of the notice.
- k) That in the 6<sup>th</sup> CoC meeting held on 23.09.2021, the Resolution Professional informed the members that he had received claim from Income Tax Department on 03.09.2021 for an amount of INR 66,320, which was under verification.
- l) That the sole PRA submitted the Resolution Plan on 15.10.2021 which was circulated for consideration in the 7<sup>th</sup> CoC meeting. Further, the Resolution Professional undertook to check if the plan was compliant with the provisions of the Code and to obtain Section 29A Due Diligence of the Resolution Applicant done through an independent professional as appointed by him.
- m) That the Resolution Professional filed three applications for avoidance of undervalued, fraudulent and preferential transactions against the suspended board of directors of the Corporate Debtor undertaken in the preceding years and the notice has been issued to the Respondents by this Adjudicating Authority.
- n) That the Resolution Professional identified certain inconsistencies and deficiencies which were communicated to Resolution Applicant for rectification. The CoC was also informed about the inconsistencies. Based on the observations of the Resolution Professional, the Resolution Applicant submitted the revised Resolution Plan on 17.11.2021.
- o) That the Resolution Professional received Valuation Reports issued by two IBBI Registered Valuers who were appointed by the new IRP which included Fair Market Value & Liquidation Value of the assets of the Corporate Debtor under the heads of Land & Building, Plant & Machinery and Securities & Financial assets.
- p) That the Applicant made several requests to the erstwhile management of the Corporate Debtor to allow the valuers to access the premises of the Corporate Debtor so as to effectively conduct the valuation of the Corporate Debtor. However, Mr. Mukesh Choudhary, vide email dated 27.09.2021 blatantly denied any entry to the premises on the ground that it was his private property and therefore, valuation could not be conducted effectively.



- q) That in the 8<sup>th</sup> CoC meeting held on 19.11.2021, the Resolution Professional informed the CoC that two claims filed by Mr. Rajendra Prasad, amounting to INR 1694.67 lakh and INR 21.12 lakh respectively were rejected by the Resolution Professional, since no documents in support of these claims were furnished. Thereafter, the Resolution Professional presented the updated list of claims before the members of CoC.
- r) That an application for issuance of new GST registration number had been filed. Further, application for opening a new Bank Account for meeting CIRP cost was also filed with IDBI Bank, New Delhi.
- s) That the Resolution Professional received Valuation Reports issued by two IBBI registered valuers who were appointed by new IRP Mr. Harish Chander Arora. Further, the valuation reports were placed before the members of CoC. As per the Land and Building Valuation report of the Corporate Debtor, the Fair and the Liquidation Value of the land and building of the Corporate Debtor is NIL. Further, as per the Valuation Report submitted by Mr. Alok Kaushik, the fair value of the Plant and Machinery of the Corporate Debtor comes to INR 5,27,463/-, while the liquidation value of the Plant and Machinery of the Corporate Debtor is INR 3,96,847/-. Additionally, as regards to the Securities and Financial Assets of the Corporate Debtor, as per the valuation report of Mr. Alok Kaushik, the fair value comes to INR 16,20,375/- while the liquidation value is INR 8,56,097/-.
- t) That as per the due diligence report prepared by Sambhav Jain & Company, the Resolution Applicant M/s K2 Power Renewal Private Limited was found to be not disqualified under Section 29A and hence eligible to submit a Resolution Plan.
- u) That the revised Resolution Plan as submitted by Resolution Applicant on 17.11.2021 was placed before members in the meeting of 19.11.2021 and the same was found to be in compliance with the provisions of the Code and all applicable rules and regulations. Hence, the Resolution Plan approved by the CoC in its 8<sup>th</sup> meeting held on 19.11.2021 with 100% votes is placed before this Adjudicating Authority vide I.A./5917/ND/2021 and the same is taken up for consideration.



v) That the Resolution Plan is in compliance with the provisions of Section 30 of the Code as well as Regulation 38 of the CIRP Regulations and therefore a Letter of Intent was issued to the successful Resolution Applicant.

w) The Applicant submits that the Resolution Plan is as per requirement of Regulation 39 and a copy of Form H has been placed on record by the Resolution Professional along with this application as Annexure A-5.

x) The present Application has been filed before this Adjudicating Authority in view of Section 30(6) of the Insolvency and Bankruptcy Code 2016, which provides that "*The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority*" read with Regulation 39(4) which states:

*"The resolution professional shall endeavor to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under Section 12, along with a compliance certificate in Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B."*

3. We have heard the submissions made by the Ld. Counsel for the applicant and have gone through the documents produced on record.

4. That salient features of the Resolution Plan are as follows:

i) That the synopsis of the financial proposal of the Resolution Applicant is as under:

<b>Particulars</b>	<b>Amount (in lacs)</b>
<b>Financial Outlay</b>	
Upfront Consideration (Cash) for Resolution Debt + IRP Cost Fresh	10.00
Payment to Unsecured Financial Creditors	3.00
<b>Total</b>	<b>13.00</b>
 <b>Source of Funds</b>	
From Own Contribution of Resolution Applicants to be infused through SPV /	13.00
<b>Total</b>	<b>13.00</b>

ii) That the amounts provided for the stakeholders under the Resolution Plan is as under:



(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0.00	0.00	0.00	0.00
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	0.00	0.00	0.00	0.00
		(ii) who voted in favour of the resolution plan	0.00	0.00	0.00	0.00
		Total[(a) + (b)]	0.00	0.00	0.00	0.00
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	16,967.83	0.00	0.00	0.00
		(b) Other than (a) above:	9.41	5.85	3.00 \$	51.28
		(i) who did not vote in favour of the resolution Plan	0.00	0.00	0.00	0.00
		(ii) who voted in favour of the resolution plan	9.41	5.85	3.00	51.28
		Total[(a) + (b)]	5.85	5.85	3.00	51.28
3	Operational Creditors	(a) Related Party of Corporate Debtor	0.00	0.00	0.00	0.00
		(b) Other than (a) above:				
		(i)Government	0.66	0.63	0.00	0.00
		(ii)Workmen	0.00	0.00	0.00	0.00
		(iii)Employees	0.00	0.00	0.00	0.00
		(iv) Operational Creditors	51.75	51.75	0.00	0.00
		Total[(a) + (b)]	52.41	52.38	0.00	0.00
4	Other debts and dues	CIRP Cost	-	-	10.00**	0.00
Grand Total						

iii) That the Salient features of the Resolution Plan are as under:



<b>Sl. No.</b>	<b>Features</b>	<b>Provisions of the Plan</b>
1.	Financial Proposal	<p>A. The Plan proposes a payment of INR 13 lakh which includes a payment of INR 10 lakh within a period of 90 days from the Effective Date, i.e., the date on which this Hon'ble Tribunal approves the Resolution Plan. The remaining funds shall be deployed in within 120 days from the Effective Date.</p> <p>B. Based on the Information Memorandum, audited balance sheet and other documents provided by the Resolution Professional, the Resolution Applicant assumes that the liquidation value is not enough to cover the CIRP Cost itself. Therefore, the liquidation value due to operational creditors and unsecured financial creditors has been considered NIL and hence, no amount is payable to them.</p> <p>C. In line with Section 53 of the Code, the Resolution Applicant proposes to pay the CIRP cost in priority. The CIRP cost till the date of submission of plan was taken to be INR 9 lakh. The estimated additional CIRP Cost was taken to be INR 1 lakh. Therefore, the Resolution Applicant proposes to pay a sum of INR 10 lakh towards CIRP Cost.</p> <p>D. There are no claims from the end of workmen or employees of the Corporate Debtor and therefore, no payment proposal is required for the same.</p>





		<p>E. Similarly, no claim has been received from any secured creditor and hence, no proposal has been made.</p> <p>F. The Resolution Applicant proposes a payment of INR 3 lakh as the full and final consideration towards unsecured financial creditors of the Corporate Debtor. However, in the event the CIRP cost exceeds the estimated sum of INR 10 lakh, the same will be paid in full from the funds allotted for payment of unsecured financial creditors.</p> <p>G. Since the liquidation value due to the Income Tax Department is NIL, the Resolution Applicant has not proposed any payment.</p> <p>H. The Resolution Applicant has not proposed any payment for any remaining debts, or to preference shareholders or to equity shareholders or partners.</p>
2.	Plan Implementation	<p>A. The plan will become effective from the date of approval of the plan by this Hon'ble Tribunal ("<b>Effective Date</b>") and will stand operative on Closing Date. The term of the plan is proposed to be 120 days from the Effective Date. A payment of INR 10 lakh shall be made within 90 days from the Effective Date and the remainder amount shall be paid within 120 days from the Effective Date. The monitoring committee shall continue till the Closing Date.</p>



		<p>B. The Plan proposes reduction of the capital of the company from INR 26,80,000/- to INR 2,68,000/- without any payout to existing shareholders, by reducing the face value of the shares from INR 10 to INR 1. Further, the existing shareholding of the</p>
		<p>Corporate Debtor shall be cancelled without any payout to the Existing Promoter Group</p> <p>C. An amount of INR 13 lakh shall be infused by the Resolution Applicant from its own funds in consideration, for which the Corporate Debtor shall issue equity shares of INR 1 each to the Resolution Applicant.</p> <p>D. Upon completion of the capital reduction, the shall capital shall stand reduced to 13,00,000 shares of INR 1 each, and shall become a subsidiary of the Resolution Applicant.</p>
3.	Supervision of Implementation of the Plan	<p>A. The Plan proposes appointment of appropriate monitoring committee within 10 business days from the Effective Date. The CoC will constitute the monitoring committee, which may comprise of a representative of the Resolution Applicant, a representative of the CoC and an Insolvency Professional.</p> <p>B. The powers of the monitoring committee have been provided under Chapter X Para 10.3 of the Resolution Plan.</p>
4.	Reliefs and Concessions	<p>A. The Reliefs and Concessions sought by the Resolution Applicant have been provided under Chapter XIII of the Resolution Plan.</p>

iv) The average fair value and liquidation value of Corporate Debtor is Rs. 23.50 Lakhs and Rs. 12.48 Lakhs respectively.



v) That the final resolution plan and its addendum submitted by M/s K2 Power Renewal Private Limited meets the requirements of Section 30(2) of the Code as under: -

<b>Section</b>	<b>Provisions under Section 30(2) of the Code</b>	<b>Compliance under Resolution Plan</b>
30(2)(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;	YES Clause 8.3, Page No. 37
30(2)(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	YES Clause 8.3 Page No. 38



	in accordance with the order of priority in sub-section (1) of section 53	
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	YES Chapter-XI, Page No. 53-55
30(2)(d)	the implementation and supervision of the resolution plan;	YES Chapter-X, Page No. 50-52
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	YES Clause 6.9, page No. 33

vi) That the RA has provided the indicative timeline of events for implementation of the Resolution Plan at page 189 which is reproduced as under: -

S.No.	Activity	Estimated Time Line
1.	Submission of modified Resolution Plan by the Resolution Applicant	15 <sup>th</sup> October 2021
2.	NCLT Approval Date	X (effective date)
3.	Formation of monitoring committee	X+10 days
4.	1st tranche of fund infusion	Within X+ 90 days
3.	Payment of CIRP Costs	Within X+ 90 days
4.	Infusion of Funds for payment to Unsecured Financial Creditors	Within X+ 120 days

vii) Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan -	YES



	(a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]	Chapter VIII, Page No. 35-45
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]	YES Chapter VIII, Page No. 35-45
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]	NO Clause 6.16, Page No. 33
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	YES Chapter-X, Page No. 47-49
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	YES Chapter-XI, Page No. 53-55
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	YES Chapter-X, Page No. 50-52
38(2)(d)	provides for the manner in which proceedings in respect of avoidance	YES Page No. 13



	transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:	The Resolution Applicant shall pursue the application for avoidance transactions after approval of resolution plan.
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	YES Clause 5.1, Page No. 26
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	YES Chapter-X & XI, Page No. 47-55
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	YES Chapter-XI, Page No. 53-55
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	YES Chapter-XII, Page No. 56
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	YES Chapter-VIII, Page No. 35-45

viii) There are no objections to the Resolution Plan by any of the stakeholders.

### **PLAN FOR REVIVAL**

5. The Resolution Applicant propose to survey market and expand to territories where there is lesser competition. The company propose to utilize PAN India License to expand beyond Delhi. Further, the Resolution applicant shall deploy experienced manpower, infuse the required working capital, and do efficient sourcing which shall help in quick turnaround of SMR. The Resolution Applicant shall infuse funds required, if any, for smooth running/reviving of the operation of the Corporate Debtor. The Resolution Applicant will efficiently source the material



through competition in the market, its financial credibility and the additional quantum of volumes being purchased due to enhanced capacity utilization. Further, the Resolution Applicant has strong business relations with vendors and ensuring easy availability of material supplies and the Company is planning to increase revenue sources of SMR through adding local contents in broadcasting, advertisement and collaborating in related sectors such as internet, service, etc.

6. 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) 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 regarding Regulation 39(4) of the CIRP Regulations, the Applicant has filed a compliance certificate in Form-H annexed as Annexure A-5 at Page 160-168 of the application, 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. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is eligible under the provisions of Section 29A of the Code, 2016.
8. As to the waiver, relief and concessions sought in the Resolution Plan more specifically set out in Chapter-XIII (Reliefs and Concessions) of the Resolution Plan, it is pertinent to refer to 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**. The relevant part of the judgment 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.”

In the light of the decision of the Hon’ble Supreme Court in the **Embassy Property Development Private Limited (Supra)**, as to the waiver, relief and concessions sought in the Resolution Plan, it is clarified that this Adjudicating Authority is not inclined towards granting any such relief prayed for except for what is provided in the Code itself. However, the Successful Resolution Applicant may approach and file the necessary application before the necessary forum/authority in order to avail the necessary relief and concessions, in accordance with respective laws.

9. In so far as the approval of the resolution plan is concerned, this Adjudicating 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 judgment 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.”

10. Further, 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 judgment 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.”

11. 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 expositied by this Court.'* (emphasis supplied)



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.**

12. Thus, from the judgments 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.
13. It is further observed that the CoC has approved the Resolution Plan with 100% voting. In view of this, we have not gone into the question of commercial aspects of the Decision of the CoC.
14. In view of the above discussion, this Adjudicating Authority is satisfied that the Resolution Plan as filed and explained by the SRA meets the requirement of Section 30(2) of IBC.
15. Therefore, in our considered view, there is no impediment to giving approval to the instant Resolution Plan. Accordingly, we hereby, **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of the corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, Successful Resolution Applicant and other stakeholders involved.
16. 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.
17. 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 in such law.



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 in its database in terms of Section 31(3) (b) of the Code. The Resolution Professional is further directed to hand over all the records, premises, and properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.

19. The approved Resolution Plan shall become effective from the date of passing of this order. The Approved Resolution Plan shall be a part of this order, subject to our observations regarding concessions, reliefs and waivers sought therein.
20. The Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.

In view of the above, the **I.A./5917/ND/2021 stands allowed** in terms of the aforesaid discussion.

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

**Sd/-**  
**(DR. SANJEEV RANJAN)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**