



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

(An application filed under Section 30(6), 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India Regulations, 2016)

IN THE MATTER OF:

SHRAVAN KUMAR VISHNOI

(Resolution Professional)

M/s Renu Residency Pvt. Ltd.

IBBI Regd. No. IBBI/IPA-002/IP-N00040/2016-2017/10079

.....Applicant

Versus

1. PUNJAB NATIONAL BANK

(Member- Committee of Creditors)

Bank Road Branch

Address: - Bank Road, Gorakhpur, UP-273001

E-mail: bo0183@pnb.co.in

2. UPMA JAISWAL

289-C, Saketpuri Colony,

Near Heritage School, Lachhipur, Gorakhpur, U.P.

3. MURLI MANOHAR JAISWAL

Azad Nagar, South Barhaj,

Deoria- 274601

4. PRITAM JAISWAL

Azadnagar, South Barhaj,

Deoria-274601

5. SHYAM SUNDAR JAISWAL

Azadnagar, South Barhaj,

Deoria-274601

.....RESPONDENTS

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 1 of 96

-Sd-

-Sd-



(An application under Section 7 of the IBC, 2016 Read with Rule 4 of the Insolvency and Bankruptcy Rules, 2016)

AND IN THE MATTER OF:

PUNJAB NATIONAL BANK

.....Financial Creditor

Versus

M/S RENU RESIDENCY PRIVATE LIMITED

..... Corporate Debtor

Order Pronounced on: 20.03.2025

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Abhishek Anand with
Sh. Karan Kohli & Sh. Krishna
Sharma, Sh. Akshat Awasthi,
Sh. Ishaan Dhingra &
Sh. Sameer Sethi, Advs. : *For the RP/ Sh. Shravan
Kumar present in person*

Sh. Srijan Mehrotra, Adv. : *For the COC in all IAs*

Sh. Navin Sinha, Sr. Adv.
assisted by
Sh. Utkarsh Srivastava, Adv. : *For the SRA*

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

Page 2 of 96

-Sd-

-Sd-



ORDER

Preliminary

1. The present interlocutory application bearing I.A. No.131/2022 was filed on behalf of Mr. Shravan Kumar Vishnoi, Resolution Professional (**“RP”**) of the Corporate Debtor, M/s Renu Residency Private Limited under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as **“the Code”** or **“IBC”**] read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**“CIRP Regulations”**) for approval of the Resolution Plan submitted by Ms. Upma Jaiswal as approved by the Committee of Creditors (hereinafter referred as **“CoC”**) with 100% voting Share as stated under Section 30(4) of the IBC, 2016.
2. The underlying Company Petition CP (IB) No.391/ALD/2019 filed by the Punjab National Bank under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**“CIRP”**) against the Corporate Debtor namely M/s Renu Residency Private

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 3 of 96

-Sd-

-Sd-



Limited, which was admitted by this Adjudicating Authority *vide* its order dated 12.02.2021 (“**Admission Order**”).*Vide* the order dated 12.02.2021 (“**Insolvency Commencement Date**”), Mr. Shravan Kumar Vishnoi (IBBI Reg. No. IBBI/IPA-002/IP-N00040/2016-17/10079) was appointed as IRP.

3. It is stated in the application for approval of the Resolution Plan that in terms of Section 13 and 15 of the Code, public announcement was made by the IRP on 13.02.2021 in the newspapers namely *Financial Express (English)* and *Jansatta (Hindi)*, wherein he called for submission of proof of claims from the creditors of the Corporate Debtor and informed lenders to submit their claims as envisaged under the Code on or before 26.12.2021.
4. It is also stated in the application that pursuant to the collation and verification of claims received, the COC was constituted on 06.03.2021 with the Sole Financial Creditor namely, Punjab National Bank.



S. No.	Name of the Financial Creditors	Amount of Claims Admitted (in Rs.)	Voting Share (100%)
1.	Punjab National Bank	295690627.72	100.00
Total Amount Claim Admitted		295690627.72	100.00

- 5.** It is further stated that CoC in their 1st meeting held on 12.03.2021 confirmed the IRP as the Resolution Professional (hereinafter referred as the “RP”) . Further, as per Regulations 27 of IBBI (Insolvency Resolution Professional for Corporate Persons) proceeded with appointment of Registered Valuers.
- 6.** RP issued the Information Memorandum to the CoC vide an email dated 07.04.2021 after receipt of Non-Disclosure Agreement.

Evaluation and voting

- 7.** It is stated in the Application for the Resolution Plan that the 2nd CoC was held on 08.04.2021 whereby the CoC Inter alia approved the publication of Form G, Request for Resolution plan, Evaluation Matrix, and eligibility criteria. Accordingly, invitations for Expression of Interest (EoIs) in

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 5 of 96

-Sd-

-Sd-



Form-G were published on 11.4.2021 in English and Hindi Newspaper. RP informed to the CoC that in terms of section 43,45,50 and 66 of the IBC, 2016 r/w Regulation 35B of IBBI (Insolvency Resolution Process for Corporate Persons) there is no such transactions undertaken by the Corporate Debtor. Thus, there is no need to pursue such application before this Tribunal.

- 8.** In Pursuant of said publication in newspaper, RP received two “Expressions of Interest” from the following resolution applicants: -

i. M/s Kumar Durga Memorial Sansthan

ii. M/s RKG Asset Management LLP

- 9.** Due to receipt of less EOI, the RP Published Form-G three more times with extended dates for submitting EOIs on 30.4.2021, 14.05.2021 and 29.05.2021 with the approval of COC. The last date for submitting EOI was 03.6.2021. Subsequently, Resolution Professional received three EOI from the following resolution applicants: -

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 6 of 96

-Sd-

-Sd-



- i.** M/s Kumar Durga Memorial Sansthan
- ii.** M/s RKG Asset Management LLP
- iii.** M/s Kundan Care Products Ltd

10. After this, on 13.06.2021 RP proceeded with issuance of Information Memorandum (IM) along with Request for Resolution Plan (RFRP) to all the prospective resolution applicants as per the timeline mentioned in Form-G. On 14.06.2021 an amended RFRP was further issued after consultation with the CoC to all the prospective resolution applicants. In the meantime, provisional list of prospective resolution applicants was issued on 08.06.2021. The final list of prospective resolution applicants was issued on 18.06.2021.

11. The Resolution Professional filed an interim application bearing IA no. 205 of 2021 before this tribunal seeking exclusion of period of 76 days from 16.03.2021 to 30.6.2021 from the CIR Process due to imposition of lockdown by the State Government on account of COVID-19 Pandemic. This tribunal vide order dated 15.7.2021

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 7 of 96

-Sd-

-Sd-



allowed the said application by granting the exclusion of 76 days from CIRP.

- 12.** The Resolution Professional received only one Resolution Plan from the M/s Kumari Durga Memorial Sansthan amongst the three prospective resolution applicants till the last date i.e 19.7.2021. The said plan was put up for deliberation in the 6th CoC Meeting which was held on 20.7.2021.
- 13.** In the 8th COC Meeting which was held on 18.8.2021, the resolution plan valued Rs. 15 crore submitted by the M/s Kumari Durga Memorial Sansthan was discussed at length. During the course of discussion, CoC asked the representative of the resolution applicant i.e Mr. Raju Jaiswal to increase the upfront value from Rs. 15 cr. to Rs. 22 cr. In addition to the above suggestion, discussion also took place regarding the value of the assets of the Corporate Debtor along with the matter relating to attachment of property of the Corporate Debtor by the Enforcement Directorate.

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 8 of 96

-Sd-

-Sd-



- 14.** In the 9th CoC Meeting held on 25.8.2021, Mr. Harendra Jaiswal one of the representative of the Resolution Applicant submitted a revised resolution plan of Rs. 21 crores. The representative of Financial Creditor (Punjab National Bank) Mr. Bharat Pandey emphasized that approving the Plan for an amount lower than Rs. 22 Crores would not be feasible. He also cautioned that reducing the amount by just Rs. 1 Crore could potentially undermine the entire CIR process, as well as the efforts of the Resolution Applicant, the Resolution Professional, and the CoC.
- 15.** Pursuant to the said discussion, the Resolution Applicant agreed to the revised Resolution Plan value of Rs. 22 Crores and immediately submitted an addendum to the Resolution Plan, reflecting the updated amount, to the CoC. The addendum was addressed to the RP.
- 16.** In the 10th CoC Meeting which took place on 04.9.2021, the Resolution Professional placed the revised resolution plan along with addendum of updated amount before the



CoC for approval. The RP also submitted the compliance report containing the clauses of the addendum to the revised resolution plan before the CoC.

- 17.** The CoC and the RP had an in-depth discussion regarding the deviation from the standard CIRP as stipulated under the IBBI (CIRP) Regulations. The COC's representative informed that after the issuance of the RFRP, receipt and discussion of the Resolution Plan, the COC had the discretion to decide the best approach for maximizing its recovery. The COC proposed issuing a public notice to invite participation from the general public, allowing the existing Resolution Applicant also to participate in the process as well. Since the COC had only received one Resolution Plan, they were free to invite other potential participants, even if they were not initially part of this Resolution Process.
- 18.** During the aforesaid discussion, the CoC discussed about the issuance of fresh Form-G for inviting EOI from the other participants without rejecting the existing revised



resolution plan rather giving existing resolution applicant M/s. Kumari Durga Memorial Sansthan one more chance to participate in this resolution process by publishing another Form-G.

- 19.** After deliberations on the issuance of fresh Form-G for inviting EOI, the Resolution Professional published the Form G (invitation for expression of Interest) on 08th and 09th of September, 2021. After publication of the new Form-G, the first Resolution Applicant sent a mail to the Resolution Professional stating that issuance of a fresh form-G while holding the Resolution Plan of the existing resolution applicant is illegal as per provisions of the Code, 2016. After considering the entire facts and circumstances of the matter so far occurred, the RP promptly withdrew Form-G by issuing a corrigendum on 10.9.2021. Before taking this step, the RP reviewed various case laws passed by the NCLT and the Hon'ble Supreme Court, as well as sought legal opinion on the matter. Copy of Form-G along with corrigendum



withdrawing Form-G are annexed as **Annexure-10** with the Application.

- 20.** After withdrawing the Form-G, the Resolution Professional received a letter vide an email from M/s. Bholenath Vincom Private Limited (hereinafter “BVPL”) wherein it was stated that that the said company had deposited the EMD of Rs. 5,00,00,000 (Five Crores) to the Punjab National Bank, without any intimation to the RP.
- 21.** Subsequently, the RP conducted due diligence as per provision of Section 29A of the Code, 2016, and discovered that BVPL was disqualified under Section 29A of the Code, 2016, as it was considered a connected person and acting in concert with the previous management of the Corporate Debtor. The information regarding the ineligibility of BVPL was communicated to the CoC, along with a copy of the report under Section 29-A.
- 22.** The RP convened the 11th COC on 27.09.2021 for the following purpose: -

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 12 of 96

-Sd-

-Sd-



- a. To Ratify withdrawal of Form G issued on 08.09.2021 and 09.09.2021 by issuing of corrigendum dated 10.09.2021; and
- b. To approve/ Reject already negotiated Resolution Plan.
- c. To re-publish Form G or to liquidate the Corporate Debtor, (If required)

Copy of Minutes of 11th Meeting of CoC dated 27.09.2021 has been annexed as **Annexure-11** with the Application. On the aforesaid issue, the CoC decided as under:

- a) Ratified the withdrawal of Form G.
- b) Rejected the Revised Resolution Plan submitted by M/s. Kumari Durga Memorial Sansthan.
- c) Further CoC decided to publish the fresh Form G (Invitation for Expression of Interest) again.
- d) Further, the CoC also decided to file an application for the extension of CIRP of Corporate Debtor for 90 more days beyond 180 days, in order to complete the timeline for republication of Form G within the CIRP period.

23. The RP again published the Form-G on 30.09.2021 and

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 13 of 96

-Sd-

-Sd-



filed an application bearing no. IA No. 316 of 2021 seeking for extension of CIRP for further period of 90 days' u/s 12 (2) of IBC, 2016 before this Tribunal and the same was allowed by this Tribunal extending the CIRP period by 90 days further vide its order dated 03.11.2021.

24. RP had received 04 Expression of Interest from following Prospective Resolution Applicants (PRAs) in response to issuance of fresh Form-G on 30.09.2021:

- i.** M/s Kumar Durga Memorial Sansthan (under protest)
- ii.** M/s PCR Buildtech Pvt. Ltd.
- iii.** Mrs. Upma Jaiswal
- iv.** Mrs. Savitri Devi

25. The Resolution Professional issued provisional list on 15.10.2024 to the CoC and PRAs. Further, on 20.10.2021 Resolution Professional proceeded with issuance of Information Memorandum (IM) along with Request for Resolution Plan (RFRP) to all the prospective resolution applicants as per the timeline mentioned in Form-G after getting approval from the CoC in their 12th meeting held



on 20.10.2021.

26. The final list of prospective resolution applicants was issued on 25.10.2021 to the CoC and PRAs by the RP as per timeline mentioned in Form-G. The final list contained the name of the following PRAs: -

- i.** M/s Kumar Durga Memorial Sansthan (under protest)
- ii.** M/s PCR Buildtech Pvt. Ltd.
- iii.** Mrs. Upma Jaiswal
- iv.** Mrs. Savitri Devi

27. Amongst the aforesaid PRAs, only three PRAs namely M/s Kumar Durga Memorial Sansthan, M/s PCR Buildtech Pvt. Ltd., Mrs. Upma Jaiswal submitted the resolution plan before the deadline i.e 20.11.2021 as mentioned in RFRP. The Resolution Professional placed all the three plans in the 13th CoC meeting held on 24.11.2021. RP also appointed M/s Lever up Consultancy for conducting Due Diligence as per Section 29A of the Code, 2016.

28. In the 14th CoC Meeting held on 24.12.2021, the RP submitted the Due Diligence Report u/s 29A of the Code of all the three PRAs along with Compliance Report of the

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 15 of 96

-Sd-

-Sd-



Resolution Plan before the CoC. As per both the reports of RP, Mrs. Upma Jaiswal was declared to be ineligible u/s 29A of the Code to submit resolution plan for the Corporate Debtor.

29. In the 15th Meeting of the CoC held on 17.01.2022, the CoC not agreeing with the due diligence report submitted by the RP , decided to take independent opinion from a law firm regarding the eligibility of Resolution Applicants. For this purpose, the Law Firm, Khaitan & Company was appointed as Legal Consultant by the CoC to submit the due diligence report on the eligibility of PRAs as per section 29A of the Code. The Law Firm, M/s Khaitan & Company submitted the Memorandum of Opinion dated 11.01.2022 which was placed before the CoC in the same meeting. As per the opinion of the legal consultants, Mrs. Upma Jaiswal has been found to be eligible to submit the Resolution plan along with other PRAs without the provision of section 29A getting attracted to make her ineligible.

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 16 of 96

-Sd-

-Sd-



- 30.** After the above report of the Legal Consultant appointed by the CoC, Mrs. Upma Jaiswal filed an interim application before this tribunal for seeking direction to put up her resolution plan before the CoC for voting. This tribunal vide order dated 02.03.2022 directed the RP to place the resolution plan of the Mrs. Upma Jaiswal before the CoC for voting.
- 31.** In the 17th Meeting of CoC held on 05.4.2022, all the resolution plans were submitted for voting by the RP. During the deliberations of CoC in the meeting, when the open bidding was conducted among the PRAs, the value of the resolution plan with the efforts put in by the CoC to maximise the value of Resolution Plan, the value got increased to Rs. 38.10 crores. The highest bid was placed by Mrs. Upma Jaiswal at Rs. 38.10cr. as the final value of the Resolution Plan offered in open bid. The relevant extract from the 17th CoC Meeting has been reproduced below:-



(A). UPMA JAISWAL

Mr. Bharat Pandey the representative of Financial Creditor communicated the concerns about the Resolution Plans to the Mr. Sudhir Jaiswal and Mr. Mahesh Kumar (representative of Ms. Upma Jaiswal) in respect of following clauses of the Resolution Plans:-

(i) Amount of Resolution Plan:- *requested to enhance the Resolution Plan Amount to the higher side;*

(ii) Time Period of Payment Resolution Plan Amount:- *to reduce the time period of payment of Resolution Plan amount from 90 Days to 60 Days;*

(iii) Source of funds:- *to clarify the source of the funds to be used in the payment of Resolution Plan Value. It was discussed that there are 4 investors who will deploy the funds in the plan on behalf of Ms. Upma Jaiswal. The COC requested to clarify the same and asked for the removal of all the investors from the Resolution Plan.*

(iv) Relief and Concession:- *The COC requested to amend the head of relief and concession because COC do not want any condition on the payment of Resolution Plan Amount due to the relief and concession to be provided to Resolution Applicant specifically clause 12 (b) of the Plan which deals with lifting of attachment and possession of the assets.*

(v) Implementation of Resolution Plan:- *the COC requested that payment of Resolution Plan Amount shall not be subject to the implementation of Resolution Plan because Section 32A of IBC, 2016 itself talks about this provision. Therefore, no conditional specific provision shall be specified for payment of Resolution Plan Amount. The COC also appraised that approval regarding free of*



attachment of the Assets of CD from the office of Enforcement Directorate shall be provided to Resolution Applicant which may take some time period in actual handover to the RA. Therefore payment of Resolution Plan Amount shall not be deferred due to detachment of Assets of CD from the office of Enforcement Directorate. The time period for payment of Resolution Plan amount should commence immediately after the Approval of Resolution Plan from AA.

32. The 17th CoC Meeting was adjourned for 08.4.2022 for further deliberations on the plans. On 08.4.2022, the CoC continued the discussions on the resolution plans submitted by all three PRAs and result of the open bidding has also been discussed. The CoC in the same meeting approved the Resolution Plan of Mrs. Upma Jaiswal with 100% Voting Share after its value has been increased to Rs. 38.10 crores. Certain terms of the resolution plan has been further clarified/improved by the representative of Mrs. Upma Jaiswal which are stated as under:

1. MS. UPMA JAISWAL

2. Time Period of Payment of Value of Resolution Plan:- 90 Days which was later reduced to 75 days

3. Clarification over the source of Investment / investors: - The representative of Ms. Upma Jaiswal i.e. Mr. Raghvendra Mishra

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 19 of 96

-Sd-

-Sd-



had clarified that Ms. Upma Jaiswal shall be the only investor in the Resolution Process.

4. Clarification over Relief and Concessions and Statutory Approvals:- *The representative of Ms. Upma Jaiswal i.e Mr. Raghvendra Prasad Mishra had clarified that there is no specific relief and concessions and there is no condition over clearance of ED attachment for the Resolution Plan Value.*

- 33.** Accordingly, Mrs. Upma Jaiswal was declared as Successful Resolution Applicant (hereafter to be referred as “SRA”). The addendum to the Resolution Plan was submitted in the 17th CoC Meeting itself by the SRA along with the Resolution Plan of increased value of Rs. 38.10cr. which consisted of change in payment schedule with respect to secured financial creditor making it 90 days from the date of approval by the Adjudicating Authority.
- 34.** In the 18th CoC meeting held on 18.04.2022, the SRA was asked by RP to clarify as to how this amount of Rs. 38.10 cr. proposed by the Resolution Applicant in the Resolution Plan is to be dispensed keeping in view the fact that said plan value exceeds the admitted claims of the Financial Creditor. As regards to the CIRP cost, it was Rs.



26,90,995.00/- . The unpaid CIRP Cost remains to be paid is Rs. 20,00,000/- by the SRA. The Resolution Plan compliances with the Regulations 37,38 & 39 of the CIRP Regulations has been asked to be ensured. Therefore, the total plan value of Rs. 38.10 cr takes into account the admitted claim of the Financial Creditor, CIRP Cost and the certain amount in excess thereof.

- 35.** As per the “FORM H” dated 23.4.2022, the fair value of the corporate debtor is Rs. 29,52,81,719 Crores and the liquidation value is Rs. 21,37,93,250 Crores as per the registered valuers report.

Details of Resolution Plan/Payment Schedule

- 36.** The Successful Resolution Applicant i.e. Mrs. Upma Jaiswal is practicing Gynecologist and proprietor of the Swastik Marigold Hospital situated at Gorakhpur, Uttar Pradesh with experience of 14 years as an OBG. Details of Profile of SRA is provided from pg 07 to 09 of the Resolution Plan annexed with the present IA 131/2022 under consideration in this order.

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 21 of 96

-Sd-

-Sd-



37. The Resolution Plan states the cause of the default of Corporate Debtor being due to the following factors: -

- i.** Project planning suffered from various infirmities such as high outlay on construction of building.
- ii.** Mismanagement and lack of proper timeline to implement the project;
- iii.** Lack of resources and also funds to complete the construction and repay the secured creditors; and
- iv.** Poor management.

38. Overview of the Corporate Debtor and details of the proposed resolution transaction structure are provided from page no.07 to 18 of the Resolution Plan Vol. III of the Application.

39. Initially, the SRA proposed to make a payment of a Total Amount of Rs. 25,00,00,000/- (Rupees Twenty-Five Crores only) plus unpaid CIRP costs under Resolution Plan but the same was further revised in the 17th Meeting of the COC to Rs. 38.10 crores. The details of proposed plan are as under: -

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 22 of 96

-Sd-

-Sd-



Financial proposal of the Resolution Plan for “Total Resolution Amount’ as proposed by the SRA and further amended on 17.04.2022 are as under:

S. No.	Types of debts	Claim Admitted in Cr. Rupees	Resolution Amount (in Rs.)	Payment Term
1.	CIRP Cost	-	20,00,000	The unpaid CIRP Cost shall be paid within seven days from the Effective Date.
2.	Secured Financial Creditor (Punjab National Bank)	29,56,90,62 7.72	37,90,00,000	The Lump sum amount (minus outstanding CIRP Cost) shall be paid to the secured creditor within 75 days from the date of order for approval of Resolution Plan.
3.	Unsecured Financial Creditors	-	-	
4.	Operational Creditors (Trade payables)	-	-	
5.	Workmen/ Employees			
6.	Contingent Liabilities (Non Statutory)			

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 23 of 96

-Sd-

-Sd-



7.	Statutory Dues as per Information Memorandum			
	Total		38,10,00,000	

(b) Estimated Total Amount Proposed to be brought in the Corporate Debtor for the turnaround of the Corporate Debtor:-

S. No	Particulars	Amount (in Rs.)
A	CIRP Cost	Rs.20,00,000 or The actual amount whichever is more
B	Upfront cash payment to the Secured Financial Creditors to be paid within 75 working days from effective date	37,90,00,000
C	Upfront cash payment to the Unsecured Financial Creditors to be paid within 50 working days from effective date	-
C	Total Upfront Cash Payment as part of Resolution Plan (A+B)	
D	Operational Creditor	-
E	Statutory Dues	-
F	Workman /Employee	-
G	Total Fund Required	38,10,00,000

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 24 of 96

-Sd-

-Sd-



40. Sources of Fund

i. In the Resolution Plan, Successful Resolution Applicant has stated that she is supported by four individual investors who have committed to provide investments to the Resolution Applicant. However, in the addendum, the SRA has removed the four investors, by holding 99% equity shares in her name of Resolution Plan application. (at Page 395 Vol-III).

ii. Resolution Professional has submitted that the Net Worth Certificate as submitted by Mrs. Upma Jaiswal states that Mrs. Upma Jaiswal has net worth of Rs. 18 Crore, whereas she has provided the Resolution Plan of Rs. 38.10 crore. SRA has also submitted a letter of comfort issued by the Bank of Baroda vide letter bearing no.GORMAN/DECEMBER/2024 dated 12.12.2024 wherein it is stated that bank will provide loan for a sum of Rs. 25 cr for taking over the land and building of the Corporate Debtor. In this regard, Resolution Professional has contended that the



banks will only grant any person loans on the basis of collateral assets, such assets has not been found reflected in the said Net Worth Certificate submitted by Mrs. Upma Jaiswal. Furthermore, the Comfort Letters as relied upon by Mrs. Upma Jaiswal are not binding in nature and the same does not bind any Bank to grant loan to Mrs. Upma Jaiswal. However, the SRA in its affidavit filed on 16.12.2025 contended that the comfort letter dated 12.12.2025 issued by Bank of Baroda as well as another bank i.e. Union Bank of India issued earlier on 05.12.2025 establish and reaffirm her financial capability to fund the resolution plan. It is also contended that these comfort letters were issued on the basis of the creditworthiness and financial capacity of the SRA. The Ld. Counsel representing the CoC also contended that the CoC approved the resolution plan of the SRA after satisfying itself about the financial capability of the SRA to implement the resolution



plan.

Compliance of the successful Resolution Plan with various provisions: -

41. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to as follows:

(a) Compliance with Section 30(2) of the Code:

Section 30(2) of Insolvency and Bankruptcy Code, 2016	Compliance under Resolution Plan	Relevant Page Number of Section 30 Application
(a) Plan must provide for payment of CIRP cost in priority to repayment of other debts of the CD in the manner specified by the Board.	Provided in Clause 4(A) of the Resolution Plan.	At Page No. 18 of the Resolution plan and Page No. 258 of the Application.
(b) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than (b)(i) the amount payable to them in the event of liquidation u/s 53; or	Clause 4(B) of the Resolution Plan	At Page No. 18 of the Resolution plan and Page No. 258 of the Application.

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 27 of 96

-Sd-

-Sd-



(b)(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be not less than 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 subsection (1) of section 53, whichever is higher and	Clause D of the Resolution Plan	Page 29-30 of the Resolution Plan and Page 269-270 of the Resolution Plan.
b (iii) provides for 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.	Not provided in the Resolution Plan	Not provided in the Resolution Plan
(c)Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Provided in clause 4(E) and 10 of the Resolution Plan.	Page No.19 and 41-43 of the Resolution Plan and page 259 and 281-283 of the Application.
(d) Implementation and Supervision.	Provided in clause 8 and 9 of the resolution plan	Page Nos. 35-41 of Resolution Plan and Page No. 275-281 of the Application.

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 28 of 96

-Sd-

-Sd-



(e) Plan does not contravene any of the provisions of the law for the time being in force.	Provided in Clause G of Point 4 of the Resolution Plan	Page 19 of the Resolution Plan and Page no. 259 of the Application.
(f) Conforms to such other requirements as may be specified by the Board.	Provided in Clause G of the Resolution Plan	Page 19 of the Resolution Plan and Page no. 259 of the Application.

(b) Measures provided in Resolution Plan in terms of Regulation 37 of CIRP Regulations.

Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Compliance under Resolution Plan	Relevant Page Number of Application
a) transfer of all or part of the assets of the corporate debtor to one or more persons;	The Resolution Applicant has not proposed to transfer/sale of all or part of the assets of the Corporate Debtor to one or more person. However, the Resolution Applicant has stated that all assets including moveable and immovable properties whether	Not Applicable in the instant case.

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 29 of 96

-Sd-

-Sd-



	freehold, leasehold or license basis and intangible assets including technical know-how, licenses, patents, copyrights, logo, knowledge, brand, franchise agreement, etc;) held by the Corporate Debtor shall be re-vested with the new management of the Corporate Debtor from the closing date, free and clear of all encumbrances.	
b) sale of all or part of the assets whether subject to any security interest or not;	The Resolution Applicant has not proposed to transfer/sale of all or part of the assets of the Corporate Debtor to one or more person. However, the Resolution Applicant has stated that all assets including moveable and immoveable properties whether freehold, leasehold or license basis and intangible assets including technical know-how, licenses, patents, copyrights, logo, knowledge,	Not Applicable in the instant case

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 30 of 96

-Sd-

-Sd-



	brand, franchise agreement, etc;) held by the Corporate Debtor shall be re-vested with the new management of the Corporate Debtor from the closing date, free and clear of all encumbrances.	
ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Provided in clause 7 of the Resolution Plan.	Page Nos. 34-25 of the Resolution Plan and Page No. 274-275 of the Application.
c) the substantial acquisition of shares of the corporate debtor, or the merger or the consolidation of the corporate debtor with one or more persons;	After capital reduction, the Resolution Applicant proposes to extinguish all the equity and preference shares, if nay held by the existing promoters/ promoter group/ shareholders immediately without payment of any price to them. Further, the Resolution Applicant and her investors shall infuse Rs. 10,15,00,000/- in the form of share capital and/or shareholders loan within 15 days from the effective date. The	Page 38 of the Resolution Plan and Page No. 278 of the Application.

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 31 of 96

-Sd-

-Sd-



	amount shall be utilized to make payments to the CIRP costs and upfront payment to financial creditors as per financial proposal.	
ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Provided in Clause 8(D)(ii) of the Resolution Plan	Page 38 of the Resolution Plan and Page 278 of the Application.
d) satisfaction or modification of any security interest;	The Resolution Applicant has stated in the Resolution Plan that by virtue of the approval of the Resolution Plan , on the effective date, all the assets of the Corporate Debtor that are subject to any encumbrance, security and/or lien, whether in favour of the lenders of the Corporate Debtor or in favour of the third party, shall stand released and/or extinguished.	Page 33 of the Resolution Plan and Page 273 of the Application.
e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	All existing and future claims of/by the Corporate Debtor and all its existing and future rights, entitlement, etc; with	Page 34 of the Resolution Plan and Page 274 of the Application.

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 32 of 96

-Sd-

-Sd-



	<p>Government Authorities or any other person (including third parties) shall not be affected and shall remain enforceable after effective date. Nothing in this Resolution Plan shall be deemed to affect the rights of the Corporate Debtor and/or the new management of the Corporate Debtor to recover from and /or asset claims or rights against any person and there shall be no set off of any such amounts recoverable by the Corporate Debtor or any liability of third party towards the Corporate Debtor extinguished pursuant to this Resolution Plan.</p>	
<p>f) reduction in the amount payable to the creditors;</p>	<p>Provided in Claus 6 of the Financial Proposal</p>	<p>Page 22 of the Resolution Plan and Page 262 of the Application.</p>



g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	-	-
h) amendment of the constitutional documents of the corporate debtor	The Resolution Applicant has stated in the resolution plan that the Resolution Applicant shall be free to change the name of the Corporate Debtor and also amend the MoA and AoA of the Corporate Debtor.	Not provided in the Resolution Plan.
i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;		
j) change in portfolio of goods or services produced or rendered by the corporate debtor;		
k) change in technology used by the corporate debtor; and		



l) Obtaining necessary approvals from Central and State Governments and other authorities	The Resolution Applicant has sought certain reliefs and concessions with regards to obtaining approvals from Government Authorities.	Page 43 of the Resolution Plan and Page 283 of the Application.
---	--	---

(c) Mandatory contents of Resolution Plan in terms of

Regulation 38(1) of CIRP Regulations:

Regulation 38(1) and (2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Compliance under Resolution Plan	Relevant Page Number of Resolution Plan and Application
38(1)(a) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors	Not Applicable	Not Applicable
38 (1) (b)The amount payable under a resolution plan - (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did		

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 35 of 96

-Sd-

-Sd-



not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.		
38 (1A) Shall include a statement as to how it has dealt with the interests of all the stakeholder, including financial creditors and operational creditors of the Corporate Debtor		
38 (1B) 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;		
38 (2)(a) shall provide for the term of the plan and its implementation schedule	Provided in Clause 8 (A) and (D) of the Resolution Plan	Page 35-40 of the resolution Plan and 275-280 of the Application.

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 36 of 96

-Sd-

-Sd-



38 (2)(b) shall provide for the management and control of the business of the Corporate Debtor during its term	Provided in clause 4(E) and 10 of the Resolution Plan.	Page No.19 and 41-43 of the Resolution Plan and page 259 and 281-283 of the Application.
38 (2)(c) Shall provide for the adequate means for supervising its implementation.	Provided in clause 9 of the Resolution Plan	Page No.40 and 41 of the Resolution Plan and page No. 280 and 281 of the Application.
38 (3) A resolution plan shall demonstrate that- (a) it addresses the cause of default;	Provided in clause (viii) of the Resolution Plan	Page no. 18 and 19 of the resolution plan and Page 258 and 259 of the resolution plan
(b) it is feasible and viable;	Provided in clause (J) of the Resolution Plan	Page no. 20 of the resolution plan and page 260 of the Application.
(c) it has provisions for its effective implementation;	Provided in Clause 8 of the Resolution Plan	Page No. 35-40 of the Resolution Plan and 275-280 of the Application.
(d) it has provisions for approvals required and the timeline for the same; and	Provided in clause 8 (B) and (vii) of the Resolution Plan	Page 36-37 & 39-40 of the Resolution Plan and 276-277 & 279-

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 37 of 96

-Sd-

-Sd-



		280 of the Application.
(e) the resolution applicant has the capability to implement the resolution plan.	Provided in clause 4(M) of the Resolution Plan	Page 20 of the Resolution Plan and Page no. 260 of the Application.

42. The Applicant RP submits that the SRA has submitted an affidavit with regard to the eligibility under section 29A of the Code, as required by Regulation 39(1) (a) of the CIRP Regulations. An undertaking has also been submitted by the SRA, as mandated in terms of regulation 39(1) (c) of the CIRP Regulations. The affidavit under section 29A is reproduced here under:-

“... ”

(i) I and any connected person as per the Explanation I provided under Section 29A of the IBC are not an undischarged insolvent, or

(ii) I and any connected person as per Explanation I provided under Section 29A of the IBC, are not identified as a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949; or (iii) At the time of

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 38 of 96

-Sd-

-Sd-



submission of the Resolution Plan, my accounts and any connected person as per Explanation I provided under Section 29A of the IBC or an account of the corporate debtor under the management or control of such person of whom such person is a promoter, are not classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or guidelines of a financial sector regulator issued under any other law at the time being more has lapsed from the date in force and at least a period of one year or of such classification till the date of commencement of corporate insolvency resolution process of the Corporate Debtor and that I have not failed to make the payment of any overdue amounts with interest thereon and charges relating to non-performing asset before submission of Resolution Plan; or

(iv) I and any connected person as per Explanation I provided under Section 29A of the IBC have not been convicted for any offence punishable with imprisonment for 2 years or more under any Act specified in the Twelfth Schedule or for seven years or more under any



law for the time being in force or a period of two years has expired from the date of release of such imprisonment; or

(v) I and any connected person as per Explanation I provided under Section 29A of the IBC have not been disqualified to act as a director under the Companies Act 2013; or

(vi) I and any connected person as per Explanation I provided under Section 29A of the IBC have not been prohibited by the Securities and Exchange Board of India. from trading in securities or assessing the securities markets; or

(vii) I and any connected person as per Explanation I provided under Section 29A of the IBC have not indulged in preferential transaction or undervalued transaction or extortionate credit transaction or fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under the IBC; or

(viii) I and any connected person as per Explanation I provided under Section 29A of the IBC have not executed a guarantee in favor of a creditor, in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under



the IBC and no such guarantee has been invoked by the creditor or remains unpaid in full or part; or

(ix) I and any connected person as per Explanation I provided under Section 29A of the IBC are not subject to any disability, corresponding to clauses mentioned above under any law in a jurisdiction outside India.

4. That I unconditionally and irrevocably agree and undertake that I have made full disclosure in respect of myself and all connected persons as required under Regulation 38(3) of the CIRP Regulations.

5. That I unconditionally and irrevocably agree and undertake that I have made full disclosure in respect of myself and all its connected persons as per the provisions of the CIRP and the rules and regulations framed thereunder to submit a resolution plan and that have provided all documents, representations and information as may be required by the Resolution Professional or the Committee of Creditors to substantiate to the satisfaction of the Resolution Professional and the Committee of Creditors that I am eligible under the IBC and the rules and regulations



thereunder to submit a resolution AR plan in respect of the Corporate Debtor.

6. That unconditionally and irrevocably undertake that I shall provide all data, documents and information as may be required to verify the statements made under this affidavit.

7. That I understand that the Committee of Creditors and the Resolution Professional yayate the Resolution Plan submitted by me or any other person acting jointly with it TAR PR and such evaluation shall be on the basis of the confirmations, representations and warranties provided by me under this affidavit.

8. That I agree that each member of the Committee of Creditors and the Resolution Professional are entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility and assessing, agreeing and approving the resolution plan submitted by me.

9. That in the event any of the above statements are found to be untrue or incorrect, then I unconditionally agree to indemnify and hold harmless the Resolution Professional and each



member of the Committee of Creditors against any losses, claims or damages incurred by the Resolution Professional and / or the members of the Committee of Creditors on account of such ineligibility of the Resolution Applicant.”

- 43.** The Applicant RP has filed a Compliance Certificate in prescribed Form, i.e. Revised “Form H” in compliance with Regulation 39(4) of the CIRP Regulations. As per clause 1.9.1 of the Request for Resolution Plan (RFRP) annexed with Vol. IV of IA 131 of 2022, the SRA shall provide within 07 business days of the date of approval of the Successful Plan by the CoC, a Performance Guarantee of INR 2,50,00,000/- or 10% of negotiated plan value, whichever is higher, in favor of Punjab National Bank, (“Performance Guarantee”). The Performance Guarantee should be payable at Gorakhpur and should be executed from a Scheduled Bank located in India.
- 44.** As per Para No.64 at Page No.31 of Vol. I of IA 131 of 2022, a Compliance Certificate in terms prescribed Form-H under Regulation 39(4) of the CIRP Regulations along with



the receipt of performance security BG No. 305201GLO000522 dated 18.04.2022 issued by Union Bank of India of Rs. 3.81 Crore in favour of Punjab National Bank towards Performance Security as required under Regulation (4A) of Regulation 36B of the CIRP Regulations is provided. However, on scrutiny and perusal of the record, it was noticed that performance security as required under sub-Regulation (4A) of regulation 36B which is mandatory under Regulation 39(4) of IBBI (CIRP) Regulations, 2016 is not found to be annexed with the instant application. Therefore, the matter was relisted to clarify on behalf of the SRA/RP/CoC as to the availability of Performance Security in the record submitted in the instant case. Ld. Counsel, representing the CoC submits that there is already a Performance Bank Guarantee (hereinafter referred as “**PBG**”)prepared in the year 2023 which has further been extended in 2025 and is valid till date. This tribunal vide order dated 05.03.2025 directed the RP/CoC to submit the said PBG on record.

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 44 of 96

-Sd-

-Sd-



- 45.** In compliance of the order dated 05.03.2025, the Ld. Counsel representing the RP has filed the supplementary affidavit attaching therewith the copy of the PBG, which is valid until 12.08.2025 and the claim period provided therein is until 12.11.2025.
- 46.** Ld. Counsel representing the RP further submits that as per the clarification sought by this tribunal, the PBG meets the requirement.

FACTS, DISCUSSION & FINDINGS REGARDING SECTION 29A COMPLIANCE.

- 47.** The Resolution Professional while submitting the affidavit of eligibility of Successful Resolution Applicant opined that Resolution Applicant i.e Mrs. Upma Jaiswal is ineligible u/s 29A of the Code. The relevant para 59 of the Application is reproduced below:-

“...
66. *The Applicant confirms that since the Resolution Applicant have submitted separate affidavit of eligibility under Section 29A of IBC as per the requirement of sub section(1) of Section 30 of the IBC. However,*



in the opinion of the Applicant the Resolution Applicant is ineligible u/s 29A of the Code.

...”

48. In addition to the above averment, Resolution Professional while submitting the Form-H as per Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Person) stated that *“the Resolution Applicant Ms. Upma Jaiswal proprietor of M/s Sawatik Marrigold Hospital has submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of Code to submit resolution plan. The content of the said affidavit are in order. However, in opinion of the Resolution Professional the Resolution Applicant was ineligible to submit the Resolution Plan.*

The due diligence of the RP with regard to the eligibility of Ms Upma Jaiswal, one of the Resolution Applicant has been based on the basis of following facts and circumstances which occurred from 01/09/2021 till submission of opinion of the Resolution Professional to the COC in respect of the eligibility of Ms. Upma Jaiswal:

Date	Event happened	Upma Jaiswal/her Husband Involvement
20/10/2021	Objection by one of the PRAS that Ms. Savitri Devi and MS Upma Jaiswal should not be	Ms Upma Jaiswal has provided financial support of Rs. 1 Crore to

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 46 of 96

-Sd-

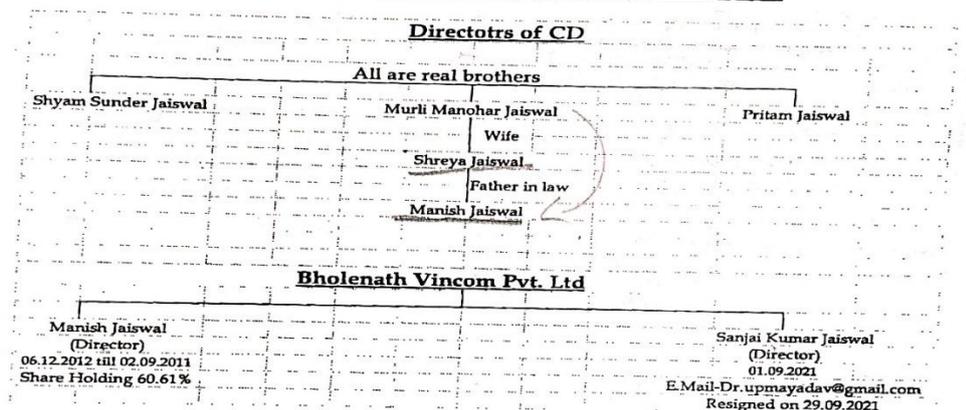
-Sd-



	<p>included in Provisional and Final List of PRA</p>	<p>an ineligible party (full name)(BVPL).</p> <p>Mr. Sanjay Jaiswal also provided financial support of Rs. 1 crore to Bholenath Vincom Pvt Lt (BVPL).</p> <p>Ms Upma Jaiswal is connected person as per clause “j” of S. 29A.</p> <p>Since BVPL has been declared ineligible u/s 29A, the management of CD trying to enter in the CIRP through Ms Upma Jaiswal</p>
--	--	--

Relationship Charts of Mr. Manish Jaiswal, Promoter of M/s Bholenath Vincom Private Limited and Murli Manohar Jaiswal, Director of CD as alleged by the Resolution Professional.

Relationship Charts of Mr. Manish Jaiswal, Promotor of M/s Bholenath Vincom Pvt Ltd and Murli Manohar Jaiswal, director of CD:



IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ



**REPLY ON BEHALF OF RESPONDENT NO.1- COMMITTEE
OF CREDITORS**

49. The Respondent No.1 has filed its reply on 25.7.2023 in the instant IA with regard to the objections raised by the Resolution Professional on the eligibility of Mrs. Upma Jaiswal wherein it has made the following averments in support of their claim: -

- i.** It is submitted by the Respondent No.1 that in terms of provisions of Section 29A of the Code, specifically under Regulation 36A (8) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, the Resolution Professional has conducted the Due Diligence of all the Resolution Applicants through an entity named M/s Lever Up Consultancy. M/s Lever Up Consultancy vide its report dated 08.12.2021 has declared the Successful Resolution Applicant as ineligible in terms of Section 29A of the Code. The findings stated in report is reproduced below: -



“ ...

Based on the verification of each provision of Sec-29A with respect to Mrs. Upma Jaiswal and its connected person, we find that resolution applicant is potentially ineligible based as per Section-29A of Insolvency and Bankruptcy Code, 2016 and there is possibility of back door entry.”

- ii.** The findings of the said report are inconclusive in declaring successful resolution applicant as ineligible under section 29A(c) & 29A(g) of the Code.
- iii.** As per CoC which comprises of only one Financial Creditor viz Punjab National Bank, the only reason for invoking Section 29A(c) is an affidavit dated 30.11.2021 from one of the former Director of the Corporate Debtor, Mr. Shyam Sundar Jaiswal, stating that his younger brother, Mr. Murli Manohar Jaiswal's father-in-law, is managing the resolution plan through Mrs. Upma Jaiswal. Mr. Murli Manohar Jaiswal was also a former director of the Corporate Debtor. So, the Report suggests that Respondent No. 3 is acting in concert with Mr. Murli Manohar Jaiswal, a member of Corporate Debtor's



management whose account has been classified as a non-performing asset for more than a year since the Corporate Debtor's CIRP began, and thus Respondent No. 2 is subject to section 29A(c) of the IBC.

- iv.** Another ground of ineligibility of Respondent No. 2 Mrs. Upma Jaiswal is Section 29A(g) of IBC which states as under:

“ ...

Section 29A. Person not eligible to be resolution applicant. --A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person-

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:”

- v.** It is further submitted by the CoC (Respondent No.1) that, in order to invoke ineligibility under Section 29A(g) of IBC, there must exist an order of



Adjudication Authority in respect of a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction involving the resolution applicant. In the instant case, it evidently does not exist. In absence of such an order of the Adjudicating Authority, ineligibility of Respondent No. 2 i.e. SRA Mrs. Upma Jaiswal under Section 29A(g) of IBC cannot be invoked. Therefore, there remains no basis to consider Respondent no. 2 Mrs. Upma Jaiswal as potentially ineligible under Section 29A(c) and Section 29A(g) of the IBC.

- vi.** Respondent also submits that Mr. Shyam Sundar Jaiswal submitted an affidavit dated 20.12.2021 wherein it was stated that para 5& 6 of the previous affidavit dated 30.11.2021 is denied by him. The affidavit dated 30.11.2021 does not establish any nexus between Respondent No.2 (Mrs. Upma Jaiswal) and any person connected to the Corporate Debtor. This affidavit is merely based on hearsay.



- vii.** With respect to Due Diligence Report submitted by the M/s Lever Up Consultancy, it is averred by the Respondent No.1 that such report is inconclusive and merely declares Mrs. Upma Jaiswal as potentially ineligible to submit resolution plan, under section 29A(c) and 29A(g). The basis of invoking Section 29A(c) is the affidavit dated 30.11.2021 of Mr. Shyam Sundar Jaiswal which is merely a hearsay.
- viii.** Furthermore, Respondent No.1 contends that in order to obtain final Independent Report on the eligibility of the SRA, Mrs. Upma Jaiswal, the Final Due Diligence Report was obtained from the law firm, named Khaitan & Co.. Copy of the Report of the law Firm has been annexed as Annexure No. CA-2 with the Reply.
- ix.** With regard to the declaration of the eligibility of Mrs. Upma Jaiswal, the Respondent No.1 contends that it is the responsibility of the CoC not of the RP to decide



the eligibility under Section 29A. Reliance is placed upon the judgement of Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta***, which inter alia, held as under:

"The Resolution Professional is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the Committee of Creditors, who may or may not approve it. The fact that the Resolution Professional is also to confirm that a resolution plan does not contravene any of the provisions of law for the time being in force, including Section 29-A of the Code, only means that his prima facie opinion is to be given to the Committee of Creditors that a law has or has not been contravened. Section 30(2)(e) does not empower the Resolution Professional to "decide" whether the resolution plan does not contravene the provisions of law. Regulation 36-A of the CIRP Regulations.."

- x.** Even after the settled legal position as mentioned above , the RP refused to place the Resolution Plan of the Respondent No.2 Mrs. Upma Jaiswal before the CoC. Having left with no other option, Respondent No.2 filed an interim application before this tribunal



ie IA No. 59/ of 2022 which relied upon the judgment of Hon'ble Supreme Court in in the case of ***Arcelor Mittal India Private Limited v/s Satish Kumar Gupta (2019) 2 SCC 1***. This tribunal disposed of the said application vide order dated 02.03.2022 directing as under:

“When these provisions are read together along with the judgment of the Hon'ble Supreme Court cited above, what appears is that the RP is a facilitator and not a gatekeeper. In these circumstances, the ends of justice would be met if we direct the RP to place all Resolution Plans along with his opinion on the contravention or otherwise of the various provisions of law before the CoC which should take a considered view in the matter, if not already done.”

- xi.** RP filed an appeal before the Hon'ble NCLAT numbered Company App (AT) (INS) No. 371/2022 challenging the aforesaid Order dated 02.03.2022 passed by this Tribunal. Further, one of the PRAs i.e., Kumari Durga Memorial Sansthan also preferred an appeal before the Hon'ble NCLAT Company App (AT) (INS) No. 374/2022 challenging the aforesaid Order



dated 02.03.2022. A three Judge Bench of the Hon'ble NCLAT vide a Common Order dated 05.4.2022 dismissed both the aforesaid appeals and upheld the Order dated 02.03.2022 passed by this Tribunal.

xii. In this respect, on 28.12.2021, the CoC sought the legal opinion from M/s Khaitan & Co. with respect to queries pertaining to the eligibility of Mrs. Upma Jaiswal as a Resolution Applicant under Section 29A of the Code. Accordingly, M/s Khaitan & Co. shared its Legal Opinion dated 11.01.2022 on the eligibility of the aforesaid SRA i.e. Mrs. Upma Jaiswal. After considering the Second Affidavit dated 20.12.2021 filed by Mr. Shyam Sunder Jaiswal denying his earlier allegation of Mrs. Upma Agarwal being a connected person as alleged in the first affidavit. The Legal Opinion dated 11.01.2022 of M/s Khaitan & Co. observed that there does not appear to be sufficient cause and reason to hold that Mrs. Upma



Jaiswal is ineligible in terms of Section 29A(j) read with Section 29A(c) of the Code.

- 50.** Another interim application I.A No. 328 of 2021 and 524 of 2023 are filed by the Unsuccessful Prospective Resolution Applicant whose resolution plans were rejected by the CoC. In the said applications, applicant namely, Kumari Durga Memorial Sansthan has prayed multiple relief including disapproval of resolution plan submitted by the Mrs. Upma Jaiswal on the ground of ineligibility under section 29A of the Code.
- 51.** The SRA has responded to the aforesaid applications filed by the Unsuccessful Resolution Applicant which are relevant to be discussed here.
- 52.** In response to the said applications, the Respondent No.2 i.e SRA namely, Mrs. Upma Jaiswal has also filed reply vide dairy no. 351 dated 07.02.2024 wherein followings averments have been made:-
- i.** The Respondent No.2 contends that this application has been filed after the period of 18 months from the



approval of the Resolution Plan.

- ii.** The Respondents No.2 also contends that upon issuance of Form G on 25.08.2021, the Applicant (Kumari Durga Memorial Sansthan) vide an email dated 01.10.2021 submitted EOI for submitting a Resolution Plan for the Corporate Debtor. On 09.10.2021, R-2 submitted all the necessary documents along with the Declaration under section 29A declaring her eligibility for submission of Resolution Plan.
- iii.** As per Regulation 35(10) of Insolvency Resolution Process for Corporate Persons, Regulations 2016, RP issued final list of the Prospective Resolution Applicants which comprised of the four Resolution Applicants. The Respondent No.2 vide an email dated 19.11.2021 submitted the Resolution Plan for the Corporate Debtor of Rs. 24,95,00,000 to the Resolution Professional.
- iv.** Mr. Shyam Sundar Jaiswal submitted an affidavit on 20.12.2021 to Respondent No. 1, asserting that the affidavit dated 30.11.2021, is fraudulent. He denied the claims made in the affidavit that Mr. Manish Jaiswal was allegedly overseeing the Resolution Plan through the Applicant.
- v.** Subsequently, on 13.12.2021, Respondent No. 2

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 57 of 96

-Sd-

-Sd-



received a notice from Resolution Professional regarding the 14th meeting of the CoC of the Corporate Debtor, scheduled for 18.12.2021. The notice included copies of the Resolution Plan Compliance Report and a Due Diligence Report dated December 8, 2021, in accordance with Section 29A of the Code, which had been obtained from M/s Level Up Consultancy. As per the Due Diligence Report, Respondent No. 2 discovered that she was ineligible to submit a resolution plan under Section 29A of the Code. This conclusion was based on the forged affidavit of Mr. Shyam Sundar Jaiswal. Such decision was illegal and contrary to the provisions of the Code.

- vi.** Upon reviewing the Notice dated 21.12.2021, it came to the knowledge of Mrs. Upma Jaiswal that M/s. Kumari Durga Memorial Sansthan, had sent an email dated 20.10.2021 to the RP, raising objections to the eligibility of Respondent No. 2 under Section 29A(j) of the Code. In its objection, M/s. Kumari Durga Memorial Sansthan referred the Due Diligence Report prepared by M/s Level Up Consultants. It is puzzling how the M/s Kumari Durga Memorial Sansthan, had access to the Due Diligence Report in October 2021, considering Resolution Professional provided it to prospective Resolution Applicants



through its notice on 13.12.2021.

- vii.** Respondent No. 2 addressed a letter dated 18.12.2021 to the Respondent No. 1 wherein she raised the following points:-

“...

a. raised objections to the Due Diligence Report wherein the Respondent No. 3 had been wrongly held to be ineligible to submit a resolution plan under Section 29A of the Code;

b. submitted that the reliefs claimed in the Resolution Plan submitted by her were not contrary to law, and were in fact the same as claimed by other prospective resolution applicants;

c. stated that in fact it was M/s Kumari Durga Memorial Sansthan which was a related party to the Corporate Debtor inasmuch as Mr. Murli Manohar Jaiswal, a suspended director of the Corporate Debtor was still a director of the Corporate Debtor; Kumari Durga Memorial Sansthan was ineligible to submit a Resolution Plan.”

Copy of the letter dated 18.12.2021 has been annexed as

Annexure No. CA-5 with the Reply Affidavit.



- viii.** Further, Respondent No. 2 also obtained an independent legal opinion on her eligibility to submit a Resolution Plan under Section 29A of the Code from a reputed law firm named Legalics Law Offices, New Delhi. According to the opinion of the independent legal expert, the Respondent No. 2 was eligible under Section 29A for submitting a resolution plan. Copy of the opinion dated 18.12.2021 issued by Legalics Law Offices, New Delhi has been annexed as **Annexure No. CA-6** with the Reply Affidavit.
- ix.** After this, Respondent No. 2 received a notice on 21.12.2021 from the RP stating that the 14th meeting of the CoC of the Corporate Debtor, previously scheduled for 18.12.2021, is now rescheduled for 24.12.2021. The notice once again included copies of the Resolution Plan Compliance Report and a Due Diligence Report under Section 29A of the Code, which had been obtained from M/s Level Up Consultancy.
- x.** In the 14th meeting of the Committee of Creditors, the representatives of all the Prospective Resolution Applicant including the M/s Kumari Durga Memorial Sansthan were present. It was specifically stated out by RP that "*the RP had not declared Ms Upma Jaiswal*



as ineligible yet. RP had shared the Due Diligence Report along with Agenda and the report has now been placed before CoC for its consideration."

- xi.** The Committee of Creditors considering the objections raised by Respondent No. 2 in terms of her letter dated 18.12.2021 and was of the view that "*the objections of are fairly detailed and need to be disposed of before taking any decision by the CoC on the due diligence report. And concluded that it will "get another independent due diligence report at its own cost and after getting the third party report and opinion from the consultants, CoC will decide on the eligibility of the Resolution Applicants"*.
- xii.** It is submitted that the RP was always aware that it was for the CoC to take a call on the issue of eligibility of the Resolution Applicants including determination of eligibility under Section 29A of the Code. Such observations were duly recorded in the minutes of the 13th meeting of the Committee of Creditors and no objections were raised by the Resolution Professional that such a decision had to be taken by the Resolution Professional and not the Committee of Creditors.
- xiii.** On 13th January, 2022, Respondent No. 2 received a Notice from the RP for the 15th meeting of the CoC



of the Corporate Debtor scheduled to be held on 17th January, 2021. Along with the aforesaid Notice dated 13th January, 2022, the RP annexed a note (at page 71) inter alia stating as follows:

"Resolution Professional on the basis of and in performance of his duty has prima facie found Smt. Upma Jaiswal as ineligible Resolution Applicant under the provisions section 29A of the IBC, 2016 based on the documents, facts and circumstances in this CIRP" (emphasis supplied)

xiv. In reference to the aforementioned note, RP concluded that SRA (Respondent No. 2 in IA 131/2022) was ineligible to submit a resolution plan under Section 29A of the Code. It is apparent that this decision was made hastily and with little consideration for RP own observations, as well as those of the CoC during the 14th CoC meeting. Clearly, the note containing this decision was circulated along with the Notice dated 13.01.2022 with the sole intent of obstructing any decisions that the CoC might make during their meeting, all at the instigation of M/s Kumari Durga Memorial Sansthan.

xv. The 15th meeting of the CoC was held on 17.01.2021 through virtual mode. It lasted for three consecutive



days, from January 17th to 19th, 2022. During this period, RP (Applicant in IA 131/2022) not only restrained the CoC from making any decisions, including on the eligibility of SRA (Respondent No.2 in IA 131/2022), but also supported M/s Kumari Durga Memorial Sansthan by allowing its representative to make extensive submissions on an issue where it had no *locus standi*. During the said meeting, the agenda: "*To consider and vote (if require) on the Resolution Plans: (A) Ms. Upma Jaiswal; (B) M/s Kumari Durga Memorial Sasnsthan; (C) M/S PCR Buildtech Pvt. Ltd.*" was taken up, the representative of Respondent No. 2 was permitted to make his submissions on the issue of eligibility of the Resolution Applicant under Section 29A of the Code. The Hon'ble Supreme Court in a catena of decisions and usurping the jurisdiction of the Committee of Creditors, proceeded to declare Respondent No. 2 as ineligible and stated as follows:

"5.To my view the RA Ms. Upma Jaiswal is ineligible and her plan cannot said to be compliant, hence RP cannot put the plan of ineligible resolution applicant for voting before the COC. 6. Under the circumstances, I am placing the only two compliant plans before the COC for voting thereon. Under the commercial wisdom the COC, the CoC may or may not approve any of the compliant

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 63 of 96

-Sd-

-Sd-



Resolution Plans. That cannot be challengeable to the RP."

xvi. Respondent No. 1 had arbitrarily and illegally:

a. usurped the domain and powers of the Committee of Creditors to take decision on the eligibility of a Resolution Applicant;

b. declared that Respondent No. 3 is ineligible under Section 29A to submit a Resolution Plan; and

c. refused to lay the Resolution Plan submitted by Respondent No. 3 before the Committee of Creditors for voting/consideration.

xvi. Further, SRA/Respondent No.2 herein also contends that this tribunal vide an order dated 02.03.2022 allowed the interim application filed by the SRA/Respondent No.2 against the refusal by the RP to place the resolution plan submitted by the SRA/Respondent No.2 before the CoC. This tribunal passed the following order:-

"5. When these provisions are read together along with the judgment of the Hon'ble Supreme Court cited above, what appears is that the RP is a facilitator and not a gatekeeper. In these circumstances, the ends of justice would be met if we direct the RP to place all Resolution Plans along with their opinion on the contravention or otherwise of the various provisions of law before the CoC which should take a considered view in the matter, if not



already done.”

xvii. Being aggrieved by the order dated 02.03.2022, Applicants herein i.e. RP (*in IA No.131/2022*) and M/s Kumari Durga Memorial Sansthan (*in IA No.328/2021 & 524/2023*) filed an appeal before the Hon’ble NCLAT, New Delhi bearing no. CA No. 371 of 2022 and CA No. 374 of 2022. The said appeals were dismissed by the Hon’ble NCLAT vide order dated 05.04.2022. Copy of the order dated 05.04.2022 passed by the Hon’ble NCLAT has been annexed as Annexure-CA-3 with the Reply Affidavit.

53. The Applicant has filed supplementary affidavit in compliance of order dated 15.03.2022 in IA No.328 of 2021 for placing on record the documents of the events which took place after the 10th CoC Meeting and publication of Fresh Form-G dated 30.09.2021. The said affidavit is taken on record for consideration by this tribunal.

ORDER ON 29A ELIGIBILITY OF SRA

54. The averments/contentions made herein above led to determination of two aspects involved in the present matter. Firstly, the Resolution Plan as contemplated by way of present application i.e 131/2022 is duly approved

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 65 of 96

-Sd-

-Sd-



by the CoC to the extent of 100% voting as PNB is the sole Financial Creditor/ member of the CoC.

- 55.** Second aspect is for the determination whether or not the SRA, Mrs. Upma Jaiswal, is eligible and entitled to submit the resolution plan and there is no bar operating against her in terms of provisions of Section 29A of the Code.
- 56.** We have examined the salient features of the Resolution Plan and that the plan meets the requirement of the provision of the Code and the Regulations made thereunder. However, as regards to the quantum of resolution plan of Rs. 38.10 Cr., it was put to SRA during the course of argument and the CoC to clarify as to how the amount which is in excess of the admitted claim of the Financial Creditor is going to be dealt with. It is settled that Financial Creditor cannot be paid in excess of the admitted claim and in this case, the plan meets the 100% payment to the Financial Creditor as per its admitted claim. It was submitted that the additional amount of Rs. 8,33,09,373/- shall be infused for the growth and



development of the Corporate Debtor as a going concern.
Therefore, the revised distribution of plan money as agreed during the discussion would come as under:-

S. No	Particulars	Amount (in Rs.)
A	CIRP Cost	Rs.20,00,000 The actual amount
B	Upfront cash payment to the Secured Financial Creditors to be paid within 75 working days from effective date	29,56,90,627.72
C	Upfront cash payment to the Unsecured Financial Creditors to be paid within 50 working days from effective date	-
C	Total Upfront Cash Payment as part of Resolution Plan (A+B)	
D	Operational Creditor	-
E	Statutory Dues	-
F	Capital Expenditure	8,33,09,373
G	Total Fund Required	38,10,00,000

57. The Hon'ble NCLAT held that the aforesaid provisions show that the following persons/ Authorities are empowered to decide whether a Resolution Applicant is ineligible being related party in terms of Section 29A or

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 67 of 96

-Sd-

-Sd-



not:

- 58.** Complying with the provisions of Section 29A of the Code, specifically under Regulation 36A (8) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, it may be noted that the Resolution Professional has conducted the Due Diligence of all the Resolution Applicants through an entity named M/s Lever Up Consultancy. M/s Lever Up Consultancy vide its report dated 08.12.2021 has declared the present SRA as being ineligible in terms of Section 29A of the Code.
- 59.** It is relevant to note that that Due Diligence Report obtained by the RP (Applicant in the present IA 131/2022 and Respondent No.1 in IA No. 524/2023) concludes potential ineligibility of SRA Mrs. Upma Jaiswal (Respondent No.2 in the present IA 131/2022 and Respondent No.3 in IA No. 524/2023) under Section 29A(c) and Section 29A(g) of the IBC. The only reason for invoking Section 29A(c) is an affidavit dated 30.11.2021 from the former Director of the Corporate Debtor, Mr.

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 68 of 96

-Sd-

-Sd-



Shyam Sundar Jaiswal, stating that his younger brother, Mr. Murli Manohar Jaiswal's father-in-law of Mr. Manish Jaiswal, is managing the resolution plan through Mrs. Upma Jaiswal. Mr. Murli Manohar Jaiswal was also a former director of the Corporate Debtor. So, the Report suggests that SRA, Mrs. Upma Jaiswal (Respondent No.2 in the present IA 131/2022 and Respondent No.3 in IA No. 524/2023) is acting in concert with Mr. Murli Manohar Jaiswal, a member of Corporate Debtor's management whose account has been classified as a non-performing asset for more than a year since the Corporate Debtor's CIRP began, and thus Respondent No. 2 herein is subject to section 29A(c) of the IBC.

- 60.** The alleged ineligibility of the present SRA u/s 29A of the Code is drawn by the RP on the basis of the affidavit given by Mr. Shyam Sundar Jaiswal on 30.11.2021. The said Shyam Sundar Jaiswal however, had given another 2nd Affidavit dated 20.12.2021 whereby the earlier affidavit dated 30.11.2021 was withdrawn. The Legal Opinion



however, had been obtained on 11.01.2022 based upon the 2nd Affidavit dated 20.12.2021.

61. Surprisingly, Mr. Shyam Sundar Jaiswal gave another 3rd Affidavit dated 26.09.2024 vide which the 2nd Affidavit was withdrawn and the contents of his 1st affidavit dated 30.11.2021 have been sought to be restored. It is also surprising to note that 3rd affidavit was given after 03 years of the 2nd Affidavit. Mr. Shyam Sundar Jaiswal is one of the former Director and real brother of Mr. Murli Manohar Jaiswal. Both of whom are the directors of the suspended management of the Corporate Debtor. Though, we are restraining ourselves from averting to the repeated affidavits given by Mr. Shyam Sundar Jaiswal one after the other, however, we also cannot remain oblivious of the fact that Mr. Shyam Sundar Jaiswal has been giving affidavits one after the other and no credence can be put to such affidavits, in which repeatedly diagonally opposite stands are taken, without any rhyme and reason, thus such affidavits do not inspire any confidence.

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 70 of 96

-Sd-

-Sd-



62. Another ground of ineligibility of Respondent No. 2 herein, SRA Mrs. Upma Jaiswal taken by the Resolution Professional is Section 29A(g) of the Code which states as under:

“ ...

Section 29A

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person-

....

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code.”

63. In order to invoke ineligibility under Section 29A(g) of the Code, there must exist an order of the Adjudication Authority in respect of a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction involving the resolution applicant. In the instant case, it evidently does not exist. In absence of such an order of the Adjudicating Authority, ineligibility of Respondent No. 2 Mrs. Upma Jaiswal under



Section 29A(g) of IBC cannot be invoked. Therefore, there remains no basis to consider Respondent no. 2 herein , SRA Mrs. Upma Jaiswal as potentially ineligible under Section 29A(c) and Section 29A(g) of the IBC.

- 64.** Section 29A of the Code, specifically under Regulation 36 A (8) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, it is the responsibility of the Resolution Profession ('RP') to conduct the due diligence and file the report in order to satisfy that the Prospective Resolution Applicant complied with the provisions of the Section 29A of the IBC, apart from the other conditions mentioned in Reg.36A(8).
- 65.** While considering the aforesaid aspect of the eligibility of Respondent No.2 i.e SRA Mrs. Upma Jaiswal, in the light of both the opinions, it is also relevant to analyse the Section 5(24) clause (a) and (b) read with Section 29A(j) clause(i) of the Explanation I below Section 29A(j) for the purpose of establishing that Successful Resolution Applicant is connected with an entity namely, M/s



Bholenath Vincom Pvt Ltd (BVPL) wherein relatives of the promoters of the Corporate Debtor are the Directors and it was earlier declared as ineligible u/s 29A by the RP when it informed to have paid Rs. 5 crore deposit on publication of second Form G which was later withdrawn by the RP.

- 66.** Referring to section 5(24) defines the related party in relation to the Corporate Debtor and the individual.

Section 5...

*(24) “**related party**”, in relation to a corporate debtor, means—*

(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

“29A. Person not eligible to be resolution applicant. --

...

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;

⁷[Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of



the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;]

(h) has executed [a guarantee] in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code 3[and such guarantee has been invoked by the creditor and remains unpaid in full or part];

(j) has a connected person not eligible under clauses (a) to (i)

[Explanation. I] -- For the purposes of this clause, the expression connected person means--

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

¹¹[Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression related party shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares ¹²[or completion of such



transactions as may be prescribed,] prior to the insolvency commencement date;]

...”

*[(24A) “**related party**“, in relation to an individual, means—*

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

...”

- 67.** Under Section 5(24A)(a) of the Code, for the purpose of declaring the SRA ineligible for submission of Resolution plan, it is necessary to establish the relationship between the Promoters of the Corporate debtor and the Successful Resolution Applicant or his/her spouse. The Resolution Professional has failed to demonstrate the nexus between the Successful Resolution Applicant or her Spouse i.e Mr. Sanjay Jaiswal with the promoters of the Corporate Debtor, who did not hold any beneficial position either with any of the related party or any of the related companies at the relevant time when the Resolution Plan was submitted by the Successful Resolution Applicant.
- 68.** Another objection taken by the Resolution Professional is that Mrs. Upma Jaiswal and BVPL has history of financial transaction for a sum of Rs. 1,00,00,000/- Mrs. Upma



Jaiswal has submitted in her reply that the said amount was granted to BVPL as a loan which was later on refunded by the BVPL to her. This transaction is evident from the Bank Statement.

69. On the facts of the present case so far discussed , following two issues are relevant as regards to decide the eligibility of the present SRA, Mrs. Upma Jaiswal , -

- (i) The Committee of Creditors is empowered to decide whether the Resolution Applicant is ineligible in terms of Section 29A. Thereby the Committee of Creditors is also required to decide whether Mrs. Upma Jaiswal is related party to the Corporate Debtor or not.
- (ii) The Adjudicating Authority while passing order under Section 31 can find out whether the Resolution Applicant fulfils the conditions under Section 30(2) which includes Section 30(2)(e) and in terms of Section 29A can decide whether the Resolution Applicant is a related party to the Corporate Debtor.

70. In this regard, it may also be relevant to refer to the order of Hon'ble NCLAT in the **CA No. 371 of 2022 titled as**



Sharavn Kumar Vishnoi versus Upma Jaiswal & Ors and CA No. 374 of 2022 titled as Kumari Durga Memorial Sansthan versus Shravan Kumar Vishnoi & Ors., wherein it has been held as under:

“....

6. Both the parties have placed reliance on the judgment of the Hon'ble Supreme Court in “**Arcelormittal India Private Limited vs. Satish Kumar Gupta- (2019) 2 SCC 1**” wherein in Paras 78, 79, 80 & 81 the Hon'ble Supreme Court observed and held as follows:

“78. What has now to be determined is whether any challenge can be made at various stages of the corporate insolvency resolution process. Suppose a resolution plan is turned down at the threshold by a Resolution Professional under Section 30(2). At this stage is it open to the concerned resolution applicant to challenge the Resolution Professional's rejection? It is settled law that a statute is designed to be workable, and the interpretation thereof should be designed to make it so workable. In *Commissioner of Income Tax, Delhi v. S. Teja Singh*, [1959] Supp. 1 S.C.R. 394, this Court said, at page 403:

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 77 of 96

-Sd-

-Sd-



“We must now refer to an aspect of the question, which strongly reinforces the conclusion stated above. On the construction contended for by the respondent, S.18- A(9)(b) would become wholly nugatory, as ss.22(1) and 22(2) can have no application to advance estimates to be furnished under s.18-A(3), and if we accede to this contention, we must hold that though the legislature enacted s.18-A(9)(b) with the very object of bringing the failure to send estimates under s.18-A(3) within the operation of s.28, it signally failed to achieve its object. A construction which leads to such a result must, if that is possible, be avoided, on the principle expressed in the maxim, “ut res magis valeat quam pereat”. Vide Curtis v. Stovin [1889] 22 Q.B.D.513 and in particular the following observations of Fry, L. J., at page 519:

“The only alternative construction offered to us would lead to this result, that the plain intention of the legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt this construction, we should be construing the Act in order to defeat its object rather than with a view to carry its object into effect”.



Vide also Craies on Statute Law, p. 90 and Maxwell on The Interpretation of Statutes, Tenth Edn., pp. 236-237. “A statute is designed”, observed Lord Dunedin in Whitney v. Commissioners of Inland Revenue [1925] 10 Tax Cas.88, 110, “to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable”.

79. Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster.

80. However, it must not be forgotten that a Resolution Professional is only to “examine” and “confirm” that each resolution plan conforms to what is provided by Section 30(2). Under Section



25(2)(i), the Resolution Professional shall undertake to present all resolution plans at the meetings of the Committee of Creditors. This is followed by Section 30(3), which states that the Resolution Professional shall present to the Committee of Creditors, for its approval, such resolution plans which confirm the conditions referred to in sub-section (2). This provision has to be read in conjunction with Section 25(2)(i), and with the second proviso to Section 30(4), which provides that where a resolution applicant is found to be ineligible under Section 29A(c), the resolution applicant shall be allowed by the Committee of Creditors such period, not exceeding 30 days, to make payment of overdue amounts in accordance with the proviso to Section 29A(c). A conspectus of all these provisions would show that the Resolution Professional is required to examine that the resolution plan submitted by various applicants is complete in all respects, before submitting it to the Committee of Creditors. The Resolution Professional is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the Committee of Creditors, who may or may not approve it. The fact that the



Resolution Professional is also to confirm that a resolution plan does not contravene any of the provisions of law for the time-being in force, including Section 29A of the Code, only means that his prima facie opinion is to be given to the Committee of Creditors that a law has or has not been contravened. Section 30(2)(e) does not empower the Resolution Professional to “decide” whether the resolution plan does or does not contravene the provisions of law. Regulation 36A of the CIRP Regulations specifically provides as follows:-

“36-A. (8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the prospective resolution applicant complies with-

(a) the provisions of clause (h) of sub-section (2) of section 25;

(b) the applicable provisions of section 29A, and

(c) other requirements, as specified in the invitation for expression of interest.

(9) The resolution professional may seek any clarification or additional information or document



from the prospective resolution applicant for conducting due diligence under sub-regulation (8).

(10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.

(11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.

(12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.”

81. Thus, the importance of the Resolution Professional is to ensure that a resolution plan is complete in all respects, and to conduct a due diligence in order to report to the Committee of Creditors whether or not it is in order. Even though



it is not necessary for the Resolution Professional to give reasons while submitting a resolution plan to the Committee of Creditors, it would be in the fitness of things if he appends the due diligence report carried out by him with respect to each of the resolution plans under consideration, and to state briefly as to why it does or does not conform to the law.

82. Take the next stage under Section 30. A Resolution Professional has presented a resolution plan to the Committee of Creditors for its approval, but the Committee of Creditors does not approve such plan after considering its feasibility and viability, as the requisite vote of not less than 66% of the voting share of the financial creditors is not obtained. As has been mentioned hereinabove, the first proviso to Section 30(4) furnishes the answer, which is that all that can happen at this stage is to require the Resolution Professional to invite a fresh resolution plan within the time limits specified where no other resolution plan is available with him. It is clear that at this stage again no application before the Adjudicating Authority could be entertained as there is no vested right or fundamental right in the resolution applicant to



have its resolution plan approved, and as no adjudication has yet taken place.”

7. The ratio of the judgment of the Hon’ble Supreme Court as is culled out from paras 80 & 81 is that the Resolution Professional is not to take a decision regarding the ineligibility of the Resolution Applicant. It has only to form its opinion because it is the duty of the Resolution Professional to find out as to whether the Resolution Plan is in compliance of the provisions of the Code or not the Resolution Professional can give his opinion with regard to each plan before the CoC and it is for the CoC to take a decision as to whether the plan is to be approved or not. In para 5 of the impugned order, we have noticed that the direction has been issued to the Resolution Professional to place all the Resolution Plans along with his opinion on the contravention or otherwise of the various provisions of law. The aforesaid direction clearly indicates that the Resolution Professional is free to submit his opinion with regard to contravention or otherwise of the various provisions of law. The aforesaid observations take care of the duties and responsibilities of the Resolution Professional. The Resolution Professional can give his opinion with regard to each Resolution Applicants and further steps are to be taken for the CoC as per the direction issued by the



Adjudicating Authority.”

- 71.** In this regard, it is to be noted that no substantial material is available to establish that there exists the connection between the Successful Resolution Applicant and the Promoters and Director of the Corporate Debtor as per Section 29A(j) read with section 5(24)A of the Code which define the term related party in relation to Corporate Debtor and individual respectively.
- 72.** In the instant case scenario, the connection between BVPL and the Corporate Debtor has already been established and as a result of which BVPL was declared ineligible to submit resolution plan. Now after analyzing the nexus between the SRA and the Promoters and the Directors of the Corporate Debtor in the light of the Section 29A(j) r/w section 5(24), it is established that Mrs. Upma Jaiswal does not exercise any control in the management of the Corporate Debtor. The Resolution Profession has failed to provide any cogent evidence establishing such a relation between the SRA and promoters and directors of the



Corporate Debtor.

- 73.** Further, with regard to decision of the COC, it is settled position of law that approval or rejection of Resolution Plan depends upon the commercial wisdom of the CoC, which involves evaluation of the Resolution Plan based on its feasibility. Such commercial wisdom of the CoC with the requisite voting majority is non-justiciable. The powers of the Adjudicating Authority under Section 31 of the Code is limited to the matters covered under Section 30(2) of the Code when the Resolution Plan does not conform to the stated condition. Therefore, the Applicant cannot question the commercial wisdom of the CoC in rejecting the Resolution Plan, with the requisite majority and in approving the Resolution Plan of Mrs. Upma Jaiswal.
- 74.** Considering the matter in entirety, we are of the view that there is no force in the contention that Successful Resolution Applicant is non-compliant of Section 29A as per the averment made by the Resolution Professional in Form-H.



75. We therefore, hold that Successful Resolution Applicant is 29A complainant as the SRA is not a related party and she has not acted in concert with anyone connected with the affairs of the Corporate Debtor.

Details of Resolution Plan/ Payment Schedule

76. The Applicant submits the relevant information about the amount claimed, the amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant, i.e Mrs. Upma Jaiswal under the said Resolution Plan which is tabulated as under:

S. No.	Types of debts	Claim Admitted in Cr. Rupees	Resolution Amount (in Rs.)	Payment Term
1.	CIRP Cost	NA	20,00,000 or actuals whichever is more	Within 07 days from the effective date
2.	Secured Financial Creditors	29,56,90627.72	29,56,90627.72	Within 75 days from the effective date
3.	Unsecured Financial Creditors	-	-	-

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 87 of 96

-Sd-

-Sd-



3.	Operational Creditors (Trade payables)			
4.	Workmen/ Employees			
5.	Contingent Liabilities (Non Statutory)			
6.	Statutory Dues as per Information Memorandum			
7.	Infusion of funds for Capex/ Working Capital	8,33,09,373*	8,33,09,373*	Within 75 days from the effective date

** The sum of Rs. 8,33,09,373 shall be infused for the growth and development of the Corporate Debtor as the going concern.*

77. The Resolution plan size is of **Rs. 38.10 crores/-** plus CIRP cost. The **“Effective Date”** will be the date on which the Adjudicating Authority approves the Resolution Plan.

Details on Management and Implementation as per the Resolution Plan.

78. The Resolution Plan also provides for details of

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 88 of 96

-Sd-

-Sd-



management and control, implementation and supervision of the Resolution Plan and term of plan as discussed in the Resolution Pan submitted in the instant IA under consideration at Page No.19.

Details of Monitoring Committee

Name of the proposed members of implementation and monitoring committee	Brief description of the proposed members(s) of the I&M Committee
	The CoC shall constitute the Monitoring Committee which may comprise one representative of the Resolution Applicant, representative of the CoC and a qualified insolvency resolution professional (which may or may not be the Resolution Professional) to be appointed by the CoC in consultation with the Resolution Applicant, which shall monitor the implementation of the Resolution Plan after the effective date and until the closing date.

Details on fraudulent and avoidance transaction

79. The RP has filed an application bearing no. IA No. 365 of 2021 under section 66 before this Tribunal which was later on dismissed as withdrawn by this Tribunal v.o.d. 20.12.2021.

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 89 of 96

-Sd-

-Sd-



Waivers, Reliefs and Exemptions.

80. The SRA has sought/prayed for the reliefs, waivers and concessions as enumerated under clause 12 of the Resolution Plan (Page 283 of the Application) approved by the CoC , namely, that from the Effective Date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, proceedings in connection with the Corporate Debtor or affairs of the Corporate Debtor (including those initiated by Governmental Authorities), pending or threatened, present or future in relation to any period prior to the Effective Date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed and all liabilities and obligations therefore, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters shall apply to the Corporate Debtor or



the Resolution Applicant. Upon approval of this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor and/or the new management in relation to any period prior to the Effective date.

Analysis & Findings

81. After considering the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC with 100% of the members voting in favour of the Resolution Plan submitted by Mrs. Upma Jaiswal. As per the CoC, the said Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

82. On perusal of the documents on record, we are satisfied that the above Resolution Plan as approved by the CoC



under sub-section (4) of Section 30 meets the requirements as referred in sub-section (2) of Section 30 of the IBC and also complies with regulations 37, 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- 83.** The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws for time being in force in the country.
- 84.** From the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorized to seek appropriate orders from respective authorities/courts/tribunals for renewal of licenses/withdrawal/dismissal or abetment of the proceedings as the case may be.

Orders on Resolution Plan

- 85.** Subject to the observations made in this Order, the Resolution Plan of **Rs 38.10 crores** (Rupees Thirty-Eight Crores and Ten Lakhs) (containing the mandatory contents of Resolution Plan in terms of Regulation 38(1),

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 92 of 96

-Sd-

-Sd-



is hereby approved as per Section 31(1). We have satisfied ourselves that the resolution plan as approved by the COC under sub-section (4) of Section 30 on 05.4.2022 meets the requirements as referred to in sub-section (2) of Section 30. Thus, entire Resolution Plan as presented before us by the RP is approved, however, out of total Resolution Plan of Rs.38,10,00,000, Rs.20,00,000/- (or actuals whichever is more) will be utilized for payment of CIRP cost. Rs.29,56,90627/- will be utilized for payment to Financial Creditor and balance amount of Rs. 8,33,09,373/- shall be infused for the growth and development of the Corporate Debtor as a going concern within the time period as per the chart given in para 76. In case of any amount of CIRP cost is coming in excess of Rs.20,00,000/- that will be met out of the excess amount of Rs.8,33,09,373/-. The Resolution Plan/Revised Resolution Plan shall form part of this order.

- 86.** We also order that litigations wherever pending against the Corporate Debtor would be governed by Section 32A of the



Code.

- 87.** The reliefs, concessions and waivers sought/prayed by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws including Companies Act, 2013 and Income Tax Act, 1961, etc.
- 88.** As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
- 89.** In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the Performance Bank Guarantee of Rs.3,81,00,000 cr/- submitted by the SRA.
- 90.** The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 91.** The Resolution Professional is further directed to hand

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 94 of 96

-Sd-

-Sd-



over all records, premises/ factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalise the further course of action required for starting of operations of the Corporate Debtor.

- 92.** The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- 93.** The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- 94.** Liberty is hereby granted for moving appropriate application if required in connection with implementation of this Resolution Plan.
- 95.** A copy of this Order shall be filed by the Resolution

IA NO.131/2022 IN CP (IB) NO.391/ALD/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

Page 95 of 96

-Sd-

-Sd-



Professional with the Registrar of Companies.

- 96.** The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 97.** The registry is further directed to send the copy of the order to the IBBI also for their record.
- 98.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
- 99.** **IA No. 131/2022** shall stand ***disposed of*** accordingly.
- 100.** File be consigned to the record.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

20th March, 2025