

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

**I.A. 4630/2021  
in  
C.P. No. IB- 937/PB/2018**

[An application under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

**IN THE MAIN MATTER OF:**

CORPORATION BANK

.... PETITIONER

***VERSUS***

M/s UNITECH MACHINES LIMITED

[A Company Under Corporate Insolvency Resolution Process]

..... CORPORATE DEBTOR

**AND IN THE PRESENT MATTER OF:**

MR. VIVEK RAHEJA, RESOLUTION PROFESSIONAL

JD-2C, 2<sup>nd</sup> Floor, Pitampura, New Delhi - 110034

[IBBI/IPA-001/IP-P00055/2017-18/10133]

Email: [vivek@vgps.in](mailto:vivek@vgps.in)

.... APPLICANT

**CORAM:**

**SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**PRESENT**

**For the RP:** Mr. Abhishek Anand, Mr. Karan Kohli and Ms. Komal Harlalka, Advocates.

**For the SRA:** Mr. Krishnendu Datta, Senior Advocate and Mr. Rajat Sinha, Advocate.

**ORDER**

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

**PRONOUNCED ON: 13.09.2024**

1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by Mr. Vivek Raheja, Resolution Professional of M/s Unitech Machines Limited seeking approval of the Resolution Plan submitted by M/s Ankit International (Successful Resolution Applicant) as approved by the Committee of Creditors in their 13<sup>th</sup> CoC Meeting (initially held on 21.08.2021, adjourned and resumed on 25.08.2021) with 89.79% voting share.

2. **BRIEF BACKGROUND OF PARTIES**

**CORPORATE DEBTOR**

M/s Unitech Machines Limited [U34300DL1986PLC023498] is a company incorporated on 28.02.1986 which was engaged in the business of manufacturing of parts and accessories for motor vehicles and their engines [brakes, gear boxes, axles, road wheels, suspension shock absorbers, radiators, silencers, exhaust pipes, steering wheels, steering columns and steering boxes and other parts and accessories etc.

**SUCCESSFUL RESOLUTION APPLICANT**

M/s Ankit International is a proprietorship concern of Mr. Pranav Jain. The SRA is in the business of steel trading, scrap trading and dismantling of old/obsolete plant and machinery. The SRA is based out of Mumbai.

3. **The brief background of the case is as follows: -**

a) That the Corporate Insolvency Resolution Process was initiated against M/s Unitech Machines Limited (Corporate Debtor) by The Hon'ble Principal Bench, NCLT, New Delhi vide its order dated 01.03.2019 at the instance of a petition filed

**I.A. 4630/2021**

**in**

**C.P. No. IB- 937/PB/2018**

Page 2 of 23

by Corporation Bank (Financial Creditor) u/s 7 of the IBC. Further, vide the said order, the applicant herein namely Mr. Vivek Raheja [IBBI/IPA-001/IP-P00055/2017-18/10133] was appointed as Interim Resolution Professional (IRP).

- b) Subsequently, the IRP's appointment as Resolution Professional was approved by the Committee of Creditors in the 2<sup>nd</sup> CoC meeting held on 22<sup>nd</sup> April, 2019, the intimation of which was taken on record by this Adjudicating Authority vide its order dated 06.05.2019.
- c) Thereafter, upon factoring in the various extensions and exclusion of time granted in the matter by this Adjudicating Authority and The Hon'ble NCLAT respectively, the CIRP of the Corporate Debtor was to be completed by 20.10.2021.
- d) That a Resolution Plan was received from M/s Ankit International (Prospective Resolution Applicant) which was placed by the RP before the members of the CoC for their consideration. However, in the 10<sup>th</sup> CoC meeting held on 28.11.2019, the CoC decided not to vote upon the said Resolution Plan submitted by the aforementioned PRA, as it was considered unviable by the Coc. The CoC resolved to proceed ahead with Liquidation of the Corporate Debtor.
- e) Accordingly, the Resolution Professional, on instructions of the CoC members, had moved an application for liquidation under Section 33(1) of the IBC.
- f) Meanwhile, an application bearing CA No. 2748(PB)/2019, was filed by the PRA for reconsideration of the resolution plan and/or submission of a revised resolution plan. However, the said application was dismissed by this Adjudicating Authority vide its order dated 29.01.2020.
- g) That during pendency of the liquidation application before this Adjudicating Authority, the PRA had preferred an appeal before Hon'ble National Company Law Appellate Tribunal, New Delhi (Principal) Bench under Section 61 of the

Code against the order dated 29.01.2020 passed by this Adjudicating Authority.

- h) The Hon'ble NCLAT vide its order dated 12.02.2020 stayed the liquidation proceedings of the corporate debtor which were pending before this Adjudicating Authority.
- i) Further, the Hon'ble NCLAT vide its order dated 03.06.2021, set aside the order dated 29.01.2020 passed by this Adjudicating Authority and issued further direction to the RP to place the revised resolution plan of the Appellant therein (PRA) before the CoC for their re-consideration.
- j) Thereafter a series of negotiations occurred between the CoC and the Prospective Resolution Applicant and finally, the CoC in their 13<sup>th</sup> CoC Meeting (initially held on 21.08.2021, adjourned and resumed on 25.08.2021) approved the Revised Resolution Plan submitted by the PRA with a majority of 89.79% voting share.
- k) Pursuant to approval of the Resolution Plan by the CoC, the RP vide a common letter dated 18.09.2021 had declared the PRA as the Successful Resolution Applicant ("SRA") and issued the Letter of Intent (LOI). It is contended that the LOI was accepted unequivocally by the SRA.
4. That some key features of the Resolution Plan submitted by the SRA are as follows: -

#### **A. FINANCIAL PROPOSAL OF THE RESOLUTION PLAN**

The Resolution Applicant has proposed to acquire the corporate debtor as a going concern, and has proposed a financial outlay of **Rs. 67.35 crore**, payable as follows:

<b>Financial Outlay</b>	<b>Amount (in crores)</b>
CIRP cost	4.85
Claims of financial creditors	57.50
CAPEX and WC – Fresh infusion	5.00
Operational Creditors	NIL
<b>TOTAL</b>	<b>67.35 Crores.</b>

**B. PAYMENT SCHEDULE**

“E” implies the Effective Date which means the date on which the Resolution Plan is granted approval by this Adjudicating Authority.

The term of the Resolution Plan is 24 months as per following schedule: -

<b><u>Installment with Respective Timeline</u></b>	Amount Disbursed (in crores)
1 <sup>st</sup> tranche within <b>60 days</b> of Effective Date.	10.00
2 <sup>nd</sup> tranche within <b>6 months</b> of Effective Date.	6.85
3 <sup>rd</sup> tranche within <b>9 months</b> of Effective Date.	6.00
4 <sup>th</sup> tranche within <b>12 months</b> of Effective Date.	6.00
5 <sup>th</sup> tranche within <b>15 months</b> of Effective Date.	8.00
6 <sup>th</sup> tranche within <b>18 months</b> of Effective Date.	8.00
7 <sup>th</sup> tranche within <b>21 months</b> of Effective Date.	9.00
8 <sup>th</sup> tranche within <b>24 months</b> of Effective Date.	8.50
CAPEX within 12 months of Effective Date.	5.00
<b>TOTAL</b>	<b>67.35 Crores</b>

**C. CAPEX INFUSION** - The SRA proposes to infuse an amount of Rs. 5 Crores as CAPEX within 12 months of the Effective date as a long-term investment in the future of the company which shall be taken over by it on a going concern basis.

**D. FAIR VALUE AND LIQUIDATION VALUE OF THE CORPORATE DEBTOR**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (in Rs.)</b>
1.	Fair Value of Assets of the corporate debtor	43,66,11,620.50
2.	Liquidation value of assets of the Corporate Debtor	30,37,98,167.50
3.	Estimated Liquidation Cost (not approved by the CoC)	1,89,50,000.00

**E. DEBTS OF SECURED AND UNSECURED FINANCIAL CREDITORS**

<b>Sr. No.</b>	<b>Name of FC</b>	<b>Admitted Claim</b>	<b>Voting Share (%)</b>
<u>Secured Financial Creditors</u>			
1.	Corporation Bank	173,37,59,016	71.58
2.	Bank of India	29,26,90,504	12.08
3.	State Bank of India	17,54,41,925	7.24
4.	Karnataka Bank	12,80,75,790	5.30
5.	Yes Bank	5,90,36,616	2.44
6.	Standard Chartered Bank	80,74,445	0.33
<u>Unsecured Financial Creditors</u>			
7.	Nohmi Bosai (India) Private Limited	2,01,16,351	0.83
8.	DIV Realtors Private Limited	48,51,500	0.20
<b><u>TOTAL FINANCIAL DEBT</u></b>		<b>2,42,20,46,147</b>	<b>100</b>

**F. VOTING RESULTS**

<b>Sr. No.</b>	<b>Name of FC</b>	<b>Voting Share (%)</b>	<b>Voted</b>
1.	Corporation Bank	71.58	In favour
2.	Bank of India	12.08	In favour
3.	State Bank of India	7.24	Not in favour
4.	Karnataka Bank	5.30	In favour
5.	Yes Bank	2.44	Not in favour
6.	Standard Chartered Bank	0.33	Not in favour
7.	Nohmi Bosai (India) Private Limited	0.83	In favour
8.	DIV Realtors Private Limited	0.20	Not Voted
<b>TOTAL</b>		<b>100</b>	-

**G. SOURCES OF FUNDS**

<b>Sr. No.</b>	<b>Source of Funds</b>	<b>Amount (in Rs.)</b>
1.	Net worth of Ankit International (Sole proprietorship firm of Mr. Pranav Jain)	36,01,28,467.00
2.	30% shareholding in M/s HR Commercials	<b>Turnover:</b> 200 crores <b>Net worth:</b> 53 crores
3.	47% shareholding in M/s SMH Shipping Private Limited	<b>Turnover:</b> 50 crores
4.	50% shareholding in M/s ARS Enterprises Private Limited	<b>Net worth:</b> 35 crores
5.	Disposal of Non-Core Assets (Chennai Office)	3.50 Crores (approximately)

## **H. PERFORMANCE SECURITY**

The SRA has furnished a Performance Bank Guarantee (PBG) equivalent to 10% of the financial proposal (10% of 67.35 crores) after adjusting an amount of 50 Lakhs already paid by way of Earnest Money Deposit (EMD), details of which are mentioned below as follows: -

- (i) Name of the Issuing Bank: Punjab National Bank
- (ii) Letter of Guarantee Number: 12320ILG009121
- (iii) Date of Issue: 22.09.2021
- (iv) Amount: Rs. 6,24,00,000/- (Rupees Six Crores and Twenty-Four Lakhs)
- (v) Valid for a period up to: 21.03.2022.
- (vi) Claim period up to: 21.03.2023.

## **I. BANK GUARANTEE PROTECTION FOR LIVE, UNINVOKED, UNDISPUTED BG's**

The SRA has extended bank guarantee protection in case of live, uninvoked, and Undisputed Bank Guarantees (only for those Financial Creditors who have voted in favour of the Resolution Plan]. In the present case, Corporation Bank (now UBI) and State Bank of India had issued Bank Guarantees.

In so far as SBI has not voted in favour of the Resolution Plan, it does not enjoy BG protection under the Resolution Plan. For general context, it is observed that SBI had filed an objection to the Resolution Plan by way of an Interlocutory Application bearing No. IA No. 211/2023, which was dismissed by this Adjudicating Authority vide its order dated 03.06.2024.

BG protection to be operational from the date of approval of the Resolution Plan by the CoC.

BG's payable within fifteen (15) days of BG invocation and the SRA has allotted an amount of Rs. 9.67 Crores in that respect, under the Resolution Plan.

**I.A. 4630/2021**

**in**

**C.P. No. IB- 937/PB/2018**



**J. COMPLIANCE WITH RELEVANT PROVISIONS OF IBC & CIRP REGULATIONS**

Section/ Regulation	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(1)	A Resolution applicant may submit a Resolution Plan (along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.)	Clause 52 of the Resolution Plan. Affidavit u/s 29A of IBC has been annexed.
30(2)(a)	provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.	Clause 46 of the Resolution Plan.
30(2)(b) of IBC read with Regulation 38(1) of CIRP Regulations.	provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than- (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,  whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in	Clause 47-48 of the Resolution Plan read with Clauses 30-32, 34 And 37.12 of the Resolution Plan.

	accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.	
30(2)(c) of IBC read with Regulation 38(2) of CIRP Regulations.	Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clauses 43-45 of the Resolution Plan read with Clauses 38-39 of the Resolution Plan.
30(2)(d) of IBC read with Regulation 38(2)(a) & 38(2)(b) of CIRP Regulations.	The implementation and supervision of the Resolution Plan.	<u>Implementation</u> Clause 40 and 41  <u>Supervision</u> Clause 42 of the Resolution Plan.
30(2)(e) of IBC	Does not contravene any of the provisions of the law for the time being in force.	Clause 54 of the Resolution Plan.
30(2)(f) of IBC	Confirms to such other requirements as may be Specified by the Board.	Clause 55 of the Resolution Plan.

<p>Regulation 38(1A) of the CIRP Regulations</p>	<p>A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.</p>	<p>Clause 49 <i>read with</i> Clauses 16, 17, 20-32 and 37.12 of the Resolution Plan.</p>
<p>Regulation 38(1B) of the CIRP Regulations</p>	<p>A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.</p>	<p>Clause 61 of the Resolution Plan.</p>
<p>Regulation 38(3) of the CIRP Regulations</p>	<p>A resolution plan shall demonstrate that –</p> <ul style="list-style-type: none"> <li>(a) it addresses the cause of default;</li> <li>(b) it is feasible and viable;</li> <li>(c) it has provisions for its effective implementation;</li> <li>(d) it has provisions for approvals required and the timeline for the same; and</li> <li>(e) the resolution applicant has the capability to implement the resolution plan.</li> </ul>	<p><u>Cause of Default</u> Clause 56 <i>read with</i> Clauses 15, Resolution Plan.</p> <p><u>Feasible &amp; Viable</u> Clause 57 <i>read with</i> Chapter VII of the Resolution Plan.</p> <p><u>Effective Implementation</u> Clause 40-41 of the Resolution Plan.</p> <p><u>Approvals Required and</u></p>

		<p><u>timelines thereof</u></p> <p>Clause 59 read with Chapters VIII, IX, X &amp; XII of the Resolution Plan.</p> <p><u>Capability to Implement the Resolution Plan.</u></p> <p>Clause 60 read With Clause 7 of the Resolution Plan.</p>
Regulation 37(a) and (b) of the CIRP Regulations	<p>(a) transfer of all or part of the assets of the corporate debtor to one or more persons;</p> <p>(b) sale of all or part of the assets whether subject to any security interest or not;</p>	Clause 28.6 and 28.7 of the Resolution Plan.
Regulation 37 (ba) of the CIRP Regulations	Restructuring of the corporate debtor, by way of merger, amalgamation and demerger.	Not applicable.
Regulation 37(c) of the CIRP Regulations	the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons.	Clause 39 of the Resolution Plan.

Regulation 37(ca) of the CIRP Regulations	cancellation or delisting of any shares of the corporate debtor, if applicable.	Clause 39 of the Resolution Plan.
Regulation 37(d) of the CIRP Regulations	satisfaction or modification of any security interest;	Clause 28.6 <i>read with</i> Clause 37.10 of the Resolution Plan.
Regulation 37(e) of the CIRP Regulations	curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Clause 37 of the Resolution Plan.
Regulation 37(f) of the CIRP Regulations	reduction in the amount payable to the creditors;	Clause 26.2.1 <i>read with</i> Clauses 20-32 of the Resolution Plan.
Regulation 37(g) of the CIRP	extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not applicable.

Regulations		
Regulation 37(h) of the CIRP Regulations	amendment of the constitutional documents of the corporate debtor;	Clause 41.3 of the Resolution Plan.
Regulation 37(i) of the CIRP Regulations	issuance of securities of the corporate debtor, for cash , property, securities, or in exchange for claims or interests, or other appropriate purpose;	Fresh Equity Shares (1 Crore Shares @ Rs. 1/- each) to be issued as part of the Resolution Plan.  Clause 39 of the Resolution Plan.
Regulation 37(j) of the CIRP Regulations	change in portfolio of goods or services produced or rendered by the corporate debtor;	No such Change proposed.
Regulation 37(k) of the CIRP Regulations	change in technology used by the corporate debtor	No such Change proposed.

Regulation 37(l) of the CIRP Regulations	obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 41.7.18 of the Resolution Plan.
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**K. TREATMENT OF AVOIDANCE TRANSACTIONS**

It is noted that certain Interlocutory applications in respect of ‘Avoidance Transactions’ are pending before this Adjudicating Authority.

In respect of the same, the resolution plan in Clause 28.12 mentions as follows: -

*“The RA has been informed by the RP that the Forensic and transaction audit has been carried out but no details pertaining to the same have been shared. Subsequently and in the event any preferential transaction is established in the report and the outcome of the decision of the appropriate authority in connection with the avoidance petition filed/to be filed in due course shall be acceptable to all the concern parties. The said applications shall be contested on behalf of the Corporate Debtor by the Resolution Applicant.”*

**L. MONITORING COMMITTEE**

The SRA has proposed the formation of a monitoring committee to oversee effective and timely implementation of Resolution Plan. As per the implementation schedule, a Monitoring Committee would be formed within an estimated timeline of “Effective Date + 10 days.”

**ANALYSIS & FINDINGS**

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

6. In view of Section 31 of the Code, this Adjudicating Authority before approving the Resolution Plan is required to examine whether the Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred to under Section 30 (2) of the Code. **Section 30 (2) of IBC is quoted below: -**

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

*(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;*

*(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*

*(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*

*(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,*

*whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.*

*Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*

*Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-*

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



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

*(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]*

*(c) provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan;*

*(d) The implementation and supervision of the Resolution Plan;*

*(e) does not contravene any of the provisions of the law for the time being in force*

*(f) conforms to such other requirements as may be specified by the Board.*

*Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”*

7. The applicant has prayed for number of waivers in Chapter XIII the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration the judgement of the Hon’ble Supreme Court of India in the matter of “Embassy Property Development Private Limited versus State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019”, we direct the Successful Resolution Applicant to file necessary application before the appropriate forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the said judgement is reproduced herein below: -

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

*“25. Duties of resolution professional –*

- (1) *It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*
- (2) *For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-*
- (a).....
- (b) *represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings.”*

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

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

8. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is duty bound to follow the judgement of the **Hon'ble Supreme Court in the matter of K. Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follows: -

*“35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the*

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

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

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

*of Creditors, for re-submission after satisfying the parameters delineated by the Code and exposted by this Court.' (emphasis supplied)*

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

10. The Hon'ble Supreme Court vide its order dated 21.11.2023 in the case of **Ramkrishna Forgings Limited Vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr. in Civil Appeal No. 1527/2022** held as follows (relevant extract): -

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

11. Also, the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows: -

*“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”*

12. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors. In the present case, it is observed that CoC had after conscious deliberation accorded approval to the Resolution Plan submitted by the SRA herein with 89.79% Voting Share.

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

- (i) I.A. No. 5065/2021 filed by M/s J.C Flower Asset Reconstruction Private Limited (assignee of Yes Bank) which was dismissed vide order dated 03.06.2024 passed by this Adjudicating Authority.
- (ii) I.A. No. 211/2023 filed by State Bank of India which was dismissed vide order dated 02.08.2024 passed by this Adjudicating Authority.
- (iii) I.A. No. 3822/2023 filed by IDBI Trusteeship Services Limited which was dismissed vide order dated 10.09.2024 passed by this Adjudicating Authority.

14. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. In view of the above, ***I.A. 4630/2021 in C.P.(IB) No. 937 (PB) 2018 stands allowed*** with such directions prescribed below:

- a) It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
- b) However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in the case of "**Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development.**"
- c) Accordingly, Memorandum of Association and Articles of Associations of the corporate debtor shall be amended and filed with the Registrar of Companies (NCT of Delhi & Haryana) for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
- d) The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises,

properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.

- e) The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.

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

-SD/-

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

-SD/-

**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**