



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

I.A/1334/ND/2023 A/W I.A/5241/ND/2023
IN

CP IB-190/PB/2017

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

IN THE MATTER OF

UNION BANK OF INDIA

Industrial Finance Branch M-11,
1st Floor, Middle Circle, Connaught Circus,
New Delhi-110001

... Financial Creditor

Versus

M/S ERA INFRA ENGINEERING LIMITED

B-292, Chandra Kanta Complex, Shop No. 2 & 3,
Near metro pillar No. 161, New Ashok Nagar,
New Delhi-110096

... Corporate Debtor

AND

IN THE MATTER OF I.A. 1334/ND/2023:

Rajiv Chakraborty
Resolution Professional of
M/s Era Infra Engineering Limited

... Applicant

AND

IN THE MATTER OF I.A. 5241/ND/2023:

Suraksha Asset Reconstruction Limited

...Applicant

Versus

Rajiv Chakraborty
Resolution Professional of
M/s Era Infra Engineering Limited

...Respondent



Order Delivered on: 11.06.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

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

APPEARANCES:

For the Applicant : Ms. Pranati Bhatnagar, Ms. Disha Chauhan, Adv. in IA/5241/2023
For the Respondent :
For the SRA : Adv. Harshit Khare, Adv. Prafful Saini in IA 1334/2023
For the Promoters : Mr. Apoorv Agarwal, Adv.
For the RP : Mr. Sunil Fernandes, Sr. Adv. Mr. Ajay Bhargava, Ms. Wamika Trehan, Mr. Siddhant Kumar, Mr. Rajiv Chakraborty, RP, Ms. Diksha Dadu, Adv.
For the CoC : Mr. P. Nagesh, Sr. Adv., Mr. PBA Srinivasan, Mr. V. Aravind, Ms. Srishti Bansal, Mr. Sumit Swami, Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The Present application i.e., I.A/1334/2023 has been filed under Section 30(6) read with section 31(1) of the Insolvency and 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 ('CIRP Regulations') on behalf of Mr. Rajiv Chakraborty, Resolution Professional ('Applicant') of M/s Era Infra Engineering Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by SA Infrastructure Consultants Private Limited ('Successful Resolution Applicant') and approved by the Committee of Creditor ('CoC') in its 32nd meeting through e-voting on 25.01.2023 with 87.08% voting in favor.

2. Facts as averred by the Applicant in I.A./1334/ND/2023

a) The Applicant submits that the Corporate Insolvency Resolution Process was initiated against M/s Era Infra Engineering Limited ('Corporate Debtor') by



this Adjudicating Authority vide order dated 08.05.2018 in C.P IB-190/PB/2017, an application filed by Union Bank of India under Section 7 of the Code and Mr. Rajiv Chakraborty was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor. This Adjudicating Authority vide its order dated 18.12.2018 confirmed the appointment of the IRP as the Resolution Professional of the Corporate Debtor.

- b) The Applicant submits that a public announcement was made by the IRP inviting claims from all the creditors of the Corporate Debtor in Form A under Regulation 6 of the CIRP Regulations, in the manner prescribed under the Code and was published on 15.05.2018. The last date for submission of the claims by the creditors was 28.05.2018.
- c) The Applicant submits that pursuant to its appointment, the Applicant appointed two Registered Valuers namely GAA Advisory LLP and BDO India LLP as per Regulation 27 of the CIRP Regulations, to carry out the process of determining the fair value and liquidation value of the assets of the Corporate Debtor. The report given by the registered valuers is as under: -

NAME OF THE VALUER	FAIR VALUE (INR Crores)	LIQUIDATION VALUE (INR Crores)
GAA Advisory LLP	503.43	185.72
BDO India LLP	307.27	212.79

- d) The Applicant submits that as on 25.01.2023, the Resolution Professional has admitted total claims worth INR 22,200.98 Crores.
- e) The Applicant submits that the Resolution Professional had invited Expression of interest (EoI) from the PRAs and in this regard, advertisements/Form G was published multiple times on 13.08.2018, 01.07.2019 and 25.02.2022. In response to the latest Form G published on 25.02.2022 14 EoIs were received out of which 5 resolution plans were submitted. Out of the 5 plans, 4 were Code compliant.



- f) The Applicant submits that the Request for Resolution Plan (RFRP) dated 03.03.2022 including the evaluation matrix was given to all the Prospective Resolution Applicants (PRAs).
- g) The Applicants submits that the 4 resolution plans submitted by (a) SA Infrastructure Consultants Private Limited; (b) Consortium of Navneet Garg and Rishi Aggarwal; (c) Prudent ARC and RKG Fund I; and (d) Khyati Realtors & LIF Private Limited were put to vote in the 29th CoC meeting held on 29.09.2022.
- h) The SRA i.e. Successful Resolution Applicant (and other Resolution Applicants) had submitted their resolution plans on 02.05.2022. the SRA (and other Resolution Applicants) submitted the revised resolution plan by 27.05.2022 and further as per the direction of this Adjudicating Authority vide order dated 02.09.2022, the SRA (and other Resolution Applicants) submitted another revised plan on 20.09.2022.
- i) The 4 Code compliant Resolution Plans were put to e-voting on 26.09.2022 and the Resolution Plan submitted by SA Infrastructure Consultants Private Limited was approved by the CoC on 25.01.2023 with 87.08% votes in its favor in terms of Section 30(4) of the Code.
- j) The Applicant further submits that one of the CoC member i.e., Bank of India having 11.05% voting share, voted in favor of the Resolution Plan after closing of the e-voting line by way of e-mail dated 06.02.2023.
- k) The Applicant submits that the Resolution Professional sent a Letter of Intent dated 27.01.2023 to the SA Infrastructure Consultants Private Limited (SRA), thereby, intimating that the Resolution Plan submitted by it in the CIRP of the Corporate Debtor has been approved by the CoC. The said Letter of Intent was acknowledged by the SRA.
- l) The Applicant submits that the performance security for total of INR 15,00,00,000 in favor of Union Bank of India (Financial Creditor) dated 01.02.2023, respectively from HDFC Bank Limited and Axis Bank Limited was sent to the Applicant on 01.02.2023.



- m) The applicant further submits that the approved Resolution Plan meets all requirements envisaged under the Code and hence, placed on record Compliance Certificate in Form H, as required under Regulation 39(4) of the CIRP Regulations.
- n) Hence, the Applicant seeks before this Adjudicating Authority the approval of the Resolution Plan submitted by SA Infrastructure Consultants Private Limited which was approved by the CoC on 25.01.2023.

3. Objections to the Resolution Plan bearing I.A./5241/ND/2023

While the Applicant sought approval of the Resolution Plan submitted by SA Infrastructure Consultants Private Limited so approved by the CoC in its 32nd COC meeting through e-voting on 25.01.2023 with 87.08% voting, the dissenting Financial Creditor of the Corporate Debtor i.e., Suraksha Asset Reconstruction Limited (“Objector”) having 1.41% voting share who is an assignee of the loan availed by a subsidiary of the Corporate Debtor had raised objections against the approval of the Resolution Plan vide I.A. 5241/ND/2023. The objections raised by the dissenting Financial Creditor are as under: -

- i) The Objector submits that the Resolution Applicant has by-passed the commercial wisdom of the CoC by reserving its right to modify the resolution plan as mentioned in clause 2.1 and 2.2 of the plan which is in violation of the Ebix case. Further, the Resolution Applicant has omitted to mention when these clauses could be invoked.
- ii) The Objector submits that the Plan includes the assets of the subsidiaries in the CIRP of the parent company. Clause 8.2.1 to 8.2.4 of the Plan bind the subsidiaries and Clauses 8.3.1 and 13.13 allow the Resolution Applicant to amend the management of subsidiaries.
- iii) The Objector submits that the Plan interferes with the right of Financial Creditor against the third- party collaterals and securities. Hence, Clause 13.1.2, 13.1.3, 13.1.4, 13.1.6, 13.1.7 and 13.1.10 are ultra vires breaching the power of Resolution Applicant and even COC.



- iv) The Objector submits that the submitted Resolution Plan is a contingent plan in which there is no proper projections and infusion of the funds is majorly from contingent/conditional/ambiguous sources and majorly done by liquidating the Assets of the Corporate Debtor and thereby, relying on anticipated refunds from other statutory bodies as mentioned in Annexure -9 of the Resolution Plan.
 - v) The Objector submits that the Resolution Plan failed to mention about the tenure of the Performance Bank Guarantee under clause 8.1 of the Plan. However, under clause 9, the Resolution Applicant mentions the term of the plan as 7 years from the closing date.
 - vi) The Objector submits that the Resolution Applicant by way of clause 12 of the plan has attempted to indemnify itself from any future repercussion.
 - vii) The Objector submits that the Resolution Plan is in breach of Regulation 32 which does not prevail beyond moratorium as the Resolution Applicant has failed to mention under Clause 8.3.1(v) of the plan that the Corporate Debtor shall continue to receive supply of essential goods and services on the basis of Regulation 32 even after moratorium is lifted.
 - viii) The Objector submits that the Resolution Applicant through clause 13.5.1 of the plan is trying to reverse the set-offs done on part of Operational Creditors in respect of transactions done before the commencement of CIRP and then stating that amount after reversal of set-off will be Operational Debt which will be given treatment under the Resolution Plan, while on the other hand amount payable by such Operational Creditor will continue to stand and will be recoverable in term of subsequent clause 13.5.2.
4. We have heard the submissions made by the Ld. Counsel for the applicant and have carefully gone through the documents produced on record. Before, examining the Resolution Plan vis-à-vis with the mandatory compliance under the Code and the Regulations made thereunder, the objections raised against the approval of resolution plan need to be determined.



The Applicant (Resolution Professional) responded to the objections raised by the objector vide its reply dated 22.11.2023, wherein the applicant had explained in detail about all the measures and safeguards adopted by the applicant in the entire Corporate Insolvency Resolution Process to ensure transparency and it is also submitted that the objector had been a participant in every CoC meeting and have witnessed the entire Corporate Insolvency Resolution process.

6. With regard to the objection (i) raised by the objector that clauses 2.1 and 2.2 of the plan are in violation of the judgment of the Hon'ble Supreme Court in the case of Ebix Singapore Private Limited Vs Committee of Creditors of Educomp Solutions Limited (2022) 2 SCC 401 (Ebix Case), the Applicant (Resolution Professional) has stated that in the Ebix Case, an application for withdrawal of the Resolution Plan was submitted before the Adjudicating Authority which was allowed by an order dated 02.01.2020. The order of the Adjudicating Authority was subsequently set aside by the Appellate Tribunal by an order dated 29.07.2020. However, in the present case, no such application has been preferred by the SRA. In no manner do the aforesaid clauses provide for a unilateral right to modify the resolution plan. Further, the SRA in its clarifications to the Resolution Plan, has clearly stated that the resolution plan shall be binding upon it in line with the law laid down by the Hon'ble Supreme Court in the Ebix Case. The clarifications provided by the Resolution Applicant are reproduced hereinbelow:

“It is clarified that the Resolution Applicant is aware of the judgement of the Hon'ble Supreme Court in the case of Ebix Singapore Private Limited Vs Committee of Creditors of Educomp Solutions Limited & Anr and understands that the law laid down by the said judgement will override the said clause the Material Adverse Effect clause.”

“The Resolution Applicant confirms that the Plan shall be binding on it in line with the provisions of the Code and the law laid down by the Honourable Supreme Court in the matter of Ebix Singapore Private Limited. Vs Committee of Creditors of Educomp Solutions Limited &Anr.

It is observed that the clarifications given by the Successful Resolution Applicant are duly affirmed by an affidavit dated 28.11.2022, wherein, the SRA has agreed that in the event there is any conflict between the proposals contained in the



resolution plan and the clarifications, the contents of the clarifications shall prevail. The relevant extract of the affidavit is reproduced hereunder as:

“In the event of any contradiction between the proposals contained in the Resolution Plan of the Resolution Applicant and the Clarifications, the contents of the Clarifications shall prevail, and the provisions of the Resolution Plan of the Resolution Applicant will be construed in the light of the Clarifications and explanations as provided and submitted by the Resolution Applicant.”

Based on the clarifications given by the SRA and the reply filed by the Applicant, we observe that the aforesaid clauses 2.1 and 2.2 of the plan only enables the resolution applicant to comply with the provisions of the Code. Hence, the objection raised by the Objector in this regard does not stand substantiated.

7. With regard to the objection (ii) raised by the Objector that the Resolution Applicant has no right to deal with the subsidiaries of the Corporate Debtor in terms of the clause 8.2 of the plan, the Applicant has relied upon the clarifications to the approved Resolution Plan, where the SRA has clearly stated that it shall not proceed with utilizing the rights enumerated under Clause 8.2 of the Resolution Plan without the approval of the Adjudicating Authority. Based on the reply filed, we are of the view that the SRA shall exercise his right as to the subsidiaries of the Corporate Debtor under clause 8.2 of the Plan only to the extent of share of investment of the Corporate Debtor in its subsidiaries and the same has to be done as per the provisions of the Code. **We, further, make it amply clear that we are not inclined towards granting any relief sought by the Resolution Applicant under Clause 8.2 of the Plan.** The SRA may exercise his rights only in accordance with the express provisions of the Code.
8. With regard to the Objection (iii) raised by the Objector as to the infringement of the rights of the Financial Creditors against third party collaterals under clause 13.1.2 and 13.1.4 of the plan and also clauses 13.1.3,13.1.4,13.1.6 and 13.1.7 of the Resolution Plan, whereby, the Resolution Applicant is obligating dissenting financial creditors to also surrender/deal/extinguish third party collateral, the



Applicant has stated that the members of the CoC has sought clarifications from the Resolution Applicant qua treatment of third-party collateral. The SRA provided clarification vide its email dated 06.10.2022 in the following terms:

*“We understand that the obligations of the Third-party security providers and guarantors/personal guarantors are joint and several with the Corporate Debtor and **will survive the implementation of the Resolution Plan.***

***The Resolution Plan does not deal or intend to deal with the obligations of the guarantors/personal guarantors or restrict the rights of lenders on any securities provided by Third Parties as additional collateral for the debt of the Corporate Debtor in any manner whatsoever (other than the Noida asset which has been specifically deal with in the Resolution Plan). This clarity can be made a part of the Definitive Documents to be executed before the implementation of the Plan
.....”***

Based on the clarification given by the SRA dated 06.10.2022, we observe that the SRA has undertaken to not to deal with any third-party collateral in respect of any financial creditor including dissenting financial creditors of the Corporate Debtor. Hence, no case of extinguishment would arise. Consequently, the objection raised by the objector in this regard does not hold any ground.

9. With regard to the Objection (iv) raised by the Objector that the sources of funds in the approved resolution plan are contingent, the Applicant has submitted that the resolution plan adequately discloses the sources of funds in clause 2 of the part B (Financial Proposal) of the Plan and the same is elaborated hereunder:



Instruments	Amount (in INR Crores)	Remarks
Equity Share Capital	9.30	
Preference Share Capital/ Subordinate Debt	55.70	This amount shall be infused by the Resolution Applicant either through the SPC or through its affiliates or through any other non-banking financing company or bank, or any alternate investment fund, as may be feasible, subject to compliance with all Applicable Laws, including Section 29A of the IBC.
Non Fund Infusion	40.97	This amount shall be infused within one year from the Closing Date ¹ by the Resolution Applicant from its internal resources. The Resolution Applicant has a net worth of 68.36 crores in FY 20-21. The EBIDTA generated by the Resolution Applicant for FY 20-21 stood at 24.66 crores and the Resolution Applicant is confident of meeting the equity and subordinate debt from its internal accruals.
Cashflows/ Assets of the Corporate Debtor	428.99	This amount reflects the cashflows expected by the Corporate Debtor during five years from the Closing Date.
Total	534.96	

It is observed that in the present case, the approved resolution plan clearly provides for initial cash infusion of an amount of INR 65 crores along with another infusion of INR 40.97 crores as non-fund-based support into the Corporate Debtor adding upto an amount of more than INR 100 crores which the Resolution Applicant has committed towards the successful implementation of the Resolution Plan. Therefore, it would not be appropriate to say that the plan does not contain provisions as to infusion of the funds in the plan. It is also observed that the financial proposal forming subject matter of a resolution plan forms the core business decision of the committee of creditors. In this regard, in **India Resurgence ARC Private Limited Vs Amit Metaliks Limited and Anr. 2021 SCC OnLine SC 409**, the Hon'ble Supreme Court observed as under:



“13. It needs hardly any elaboration that financial proposal in the resolution plan forms the core of the business decision of Committee of Creditors. Once it is found that all the mandatory requirements have been duly complied with and taken care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction. In other words, in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal.”

In view of the Financial Proposal provided under clause 2 of the part B (Financial Proposal) of the Plan and also the decision of the Hon’ble Supreme Court in **Amit Metaliks (supra)**, we are of the view that the objection raised by the Objector in this regard does not hold any ground.


10. With regard to the objection (v) raised by the Objector as to the tenure of Performance Bank Guarantee, the Applicant has stated that as per Explanation I to the Regulation 36B 4A of the CIRP Regulations, *“performance security” shall mean security of such nature, value, duration and source, **as may be specified in the request for resolution plans** with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.* Further, as per Clause 3.4.2 of the request for resolution plan, *“The period of performance bank guarantee **shall be initially 1 (one) year with an additional 30 days for making claims and thereafter any such period as may be requested by the Resolution Professional (on the instruction of the CoC), is referred to as the “PBG Validity”**.* The Successful Resolution Applicant, in compliance of the above clause, has given a letter dated 01.02.2023 to the Resolution Professional duly specifying that the tenure of the performance security will be till 28.02.2025 and the same will be extended by the SRA from time to time, as provided in the request for resolution plan. Based on the provisions of the Code and the reply filed by the Applicant, we are of the view that the SRA has duly stated the tenure of the Performance Security. Hence, the objection raised by the Objector in this regard is inconsequential.



With regard to the Objection (vi) raised by the Objector that the Resolution Applicant by way of clause 12 of the plan has attempted to indemnify itself from any future repercussion, the Applicant has stated that by virtue of the aforesaid provision, the Resolution Applicant is only protecting itself from any action initiated against the CoC/Resolution Professional of the Corporate Debtor and the above provision does not state that the Resolution Applicant will not comply/cooperate in any inquires initiated by any statutory authority. The clause only gives a limited protection to the Resolution Applicant to the extent that it shall not be liable for any acts done by third parties during the CIRP of the Corporate Debtor. We are satisfied with the submission made by the Applicant. Hence, we are of the view that the said clause is not invalid and unreasonable. We, however, make it clear that the Resolution Applicant shall at all times cooperate in any inquires initiated by any statutory authority. Therefore, the objection raised by the Objector in this regard does not hold any ground.

12. With regard to the Objection (vii) raised by the Objector that the Corporate Debtor continued to receive supply of essential goods and services under Clause 8.3.1(v) of the plan even after moratorium is lifted, the Applicant has stated that the Corporate Debtor is acquired on a “going concern” basis. The object of the aforesaid provision in the plan is to ensure that supply of essential goods and services is not interrupted during CIRP of the Corporate Debtor. Therefore, clause 8.3.1(v) of the Plan provides for an application to be filed by the Monitoring Agency before this Adjudicating Authority in order to seek the implementation of the Plan. We are satisfied with the submission made by the Applicant in so regards, the said provision seeks implementation of the plan on the basis of acquiring the Corporate Debtor as a ‘going-concern’. Hence, the objection raised by the Objector does not stand substantiated.

13. With regard to the Objection (viii) raised by the Objector as to the treatment of the Operational Creditors under Clause 13.5.2 of the Plan, it is observed that the Applicant is an unsecured Financial Creditor and is in no way effected by the payment proposed to be made to the operational creditors as a part of the resolution



plan. Therefore, we are of the view that the Applicant has no locus to challenge the aforesaid clause of the resolution plan.

14. Further, after hearing both the parties, it is evident that the objections raised by the objector to the Resolution Plan approved by the CoC do not merit any consideration by this Adjudicating Authority. Hence, **I.A./5241/ND/2023 stands dismissed.**

15. It is pertinent to mention that in the Clause 13.15.1 of the Plan submitted by the SRA, it is mentioned that the Resolution Applicant reserves its right to pursue any application for avoidance of a PUFÉ transaction. However, vide clarification dated 27.03.2024 filed by the Resolution Professional, it is clarified that the Resolution Professional/any other person authorized by the Assenting Financial Creditors to pursue proceedings in respect of avoidance transactions and the benefit of such applications shall be given to the Assenting Financial Creditors of the Corporate Debtor. The above said clarification was approved by the CoC in its 35th meeting held on 05.04.2024 by passing a resolution in this regard.

16. Therefore, the resolution plan as approved by the CoC in its 32nd COC Meeting held on 12.01.2023 through e-voting, results of which were declared on 25.01.2023 and which has 87.08% voting by the members of CoC is placed before this Adjudicating Authority vide I.A./1334/ND/2023 is taken up for consideration. The salient features of the resolution plan submitted by SA Infrastructure Consultants Private Limited ('Successful Resolution Applicant') and approved by the Committee of Creditor ('CoC') in its 32nd meeting with 87.08% voting in favour, are as follows: -

- i) The plan proposes upfront payment amount of Rs. 46.88 Crores towards the Insolvency Resolution Process cost. The CIRP cost as on Effective Date shall be paid entirely and in priority to the payment of other debts. Further, any amount in excess of the said amount shall also be borne by the Resolution Applicant.



- ii) The amount proposed to be paid towards the Corporate Insolvency Resolution of the Corporate Debtor pursuant to the implementation of the proposed Resolution Plan is as under:

S. NO.	CREDITOR CATEGORY	COUNT	CLAIM SUBMITTED (INR) Crores	CLAIM ADMITTED (INR) Crores	CLAIM UNDER ADJUDICATION (INR) Crores
1	Financial Creditors	27	17,247.84	17,116.73	
2	Operational Creditors	1540	5,885.39	4,627.70	159.92
3	Employee and Workmen Claims	934	34.84	16.06	
4	Other Creditors Claims	24	2,610.86	185.78	2,417.82
5	Related Party Claims	6	686.56	254.71	
	Total	2531	26,465.48	22,200.98	2,577.74

- iii) The Corporate Debtor shall undertake a capital reduction, whereby all the equity shares and preference shares of the Corporate Debtor held by the Promoter Group on a fully diluted basis shall stand cancelled and extinguished, without any pay-out. The Equity Shares of the Corporate Debtor held by public shareholders shall stand reduced to 2,00,000 Equity Shares, at a face value of INR 10 only, which will constitute 2% of the total shareholding pattern of Corporate Debtor on a fully diluted basis.
- iv) Payments to assenting secured financial creditors of the Corporate Debtor are envisaged in a four-component manner in the plan: (1) Upfront Payment of INR 30 Crores, (2) restructuring of debt by way of issuance of NCDs amounting to INR 378 Crores, (3) sharing of proceeds received from arbitral awards (4) Conversion of balance debt to 4% common equity shareholding of the Corporate Debtor



- v) The average fair value and liquidation value of the Corporate Debtor is Rs. 405.35 Crores and Rs. 199.26 Crores, respectively.
- vi) That the final resolution plan and its addendum submitted by M/s SA Infrastructure Consultants Private Limited meets the requirements of Section 30(2) of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(a)	provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;	YES Part B, Clause 1(A) Page No. 20
30(2)(b)	provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than- (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53	YES Part B, Clause 1(A) Page No. 20



30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	YES Part A, Clause 6 Page No. 18-19
30(2)(d)	the implementation and supervision of the resolution plan;	YES Part B, Clause 8 Page No. 28-32
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	YES Part D, Clause 2.5 Page No. 54
30(2)(f)	conforms to such other requirements as may be specified by the Board.	YES Part D, Clause 2 Page No. 54

vii) That the Resolution Applicant has provided the indicative timeline of events for implementation of the Resolution Plan vide Additional Affidavit dated 27.03.2024, which is reproduced as under: -

Sr. No.	Corporate Resolution Step	Timeline linked to Effective Date
1.	The Resolution Applicant shall make / apply for changes in the constitution documents of the Corporate Debtor to reflect the terms as per the approved Resolution Plan.	Within 30 days of Effective Date
2.	Incorporation of an SPC in accordance with the agreement/ arrangement between the Resolution Applicant and its partners (if any) in compliance with all Applicable Laws including Section 29A of the IBC.	Within 60 days of Effective Date



3.	On and from the Closing Date, all existing directors of the Corporate Debtor shall be deemed to have resigned and vacated their office, and the board of directors of the Corporate Debtor shall be re-constituted by the Resolution Applicant in accordance with Applicable Law (including the applicable requirements of appointing independent directors).	Within 90 days of Effective Date
4.	Execution of definitive documents/ agreements with the Assenting Financial Creditors.	Within 90 days of Effective Date
5.	Necessary steps will be taken by the Monitoring Agency#, to file and communicate the Plan with various authorities, including governmental authorities, tax authorities/department, other government departments, and also before the various Courts, Tribunals and regulatory authorities where proceedings with respect to the Corporate Debtor are pending, for disposal of all such proceedings and for release of all such assets / encumbrances in accordance with the provisions of the Resolution Plan.	Within 90 days of Effective Date
6.	<u>Capital Reduction</u> The Corporate Debtor shall undertake a capital reduction, whereby all the equity shares (" Equity Shares ") and preference shares of the Corporate Debtor held by any Person on a fully diluted basis shall stand cancelled and extinguished, without any pay-out (other than as envisaged in this Plan) to the Financial Creditors, Operational Creditors, employees and workmen, statutory creditors, Other Creditors, other third parties, The Equity Shares of the Corporate Debtor held by public shareholders shall stand reduced to 2,00,000 Equity Shares, at a face value of INR 10 only, which will constitute 2%	Within 90 days of Effective Date



	of the total shareholding pattern of Corporate Debtor on a fully diluted basis. The balance face value of the Equity Shares so cancelled shall be transferred to the capital reserve of the Company.	
7.	<u>Capital Infusion</u> The SPC (incorporated and promoted by the Resolution Applicant and its partners (if any), all of which shall be compliant with Section 29A of the IBC) shall subscribe to 93,00,000 Equity Shares for an aggregate amount of Rs. 9.30 Crore (Indian Rupees Nine Crore and Eighty Lakhs only).	Within 90 days of Effective Date
8.	<u>Utilization of the Upfront Payment in the following priority:</u>	Within 90 days of Effective Date
	(i) Payment of unpaid CIRP Costs as on Effective date; (ii) Payouts to to Operational Creditors (including employees) and other creditors; (iii) Any amount required to be paid to Dissenting Financial Creditor as stated in Clause 1 of Part B of this Plan. (iv) Upfront Payment to Financial Creditors; Simultaneous with the payment of the Upfront Payment to Financial Creditors, the Designated Lender shall return the original of the Performance Bank Guarantee marked as cancelled and provide a letter confirming that they have no claims under the Performance Bank Guarantee.	
9.	The Admitted Financial Debt (reduced by the share of the Upfront Payment to the Financial Creditors received by the Financial Creditors) shall be restructured in the following manner: a. A sum of INR 378 Crores shall be converted into NCDs and issued to the Assenting Secured Financial Creditors as detailed in Part B of this Plan). b. The balance Admitted Secured Debt will be converted into 4% common equity of the Company and issued to the Assenting Secured Financial Creditors in the ratio of their Admitted Secured Debt.	Within 97 days of Effective Date



	c. The balance Admitted Unsecured Debt will be converted into 1% common equity of the Company and issued to the assenting Unsecured Financial Creditors in the ratio of their Admitted unsecured Debt.	
10.	Take over the management control of the subsidiaries and special purpose vehicles of the Corporate Debtor, replacement of the directors on their respective boards and completion the necessary statutory filings as per Applicable Law.	Within 97 days of Effective Date

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

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a)to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]	YES Part B, Clause 8.4 Page No. 31-32
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]	YES Part B, Clause 1-5, 7.3 and 21 Part D, Clause 2.6 Page No. 20-26, 28, 42-49, 54
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the	NO Part D, Clause 2.8 Page No. 54



	failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]	
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	YES Part B, Clause 9 and Clause 8.4 Page No. 31-33
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	YES Part A, Clause 6 Part B, Clause 8 Page No. 18-19, 28-32
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	YES Part A, Clause 6 Part B, Clause 8 Page No. 18-19, 28-32
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.	YES clarified vide 35 th CoC meeting dated 05.04.2024. Page No. 7-9
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	YES Part A, Clause 1.2 Page No. 4
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	YES Part D, Clause 2.4 Annexure 6 Page No. 54
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	YES Part A, Clause 6 Part B, Clause 8 Page No. 18-19, 28-32



38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	YES Part B, Clause 8 Page No. 28-32
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	YES Part A, Clause 4 Part B, Clause 7.2 and 7.4 Page No. 6-18, 27 and 28

PLAN FOR REVIVAL:

ix) The Resolution Applicant is committed to pay upfront amount of INR 30 crore and also redeem the NCDs proposed to be issued towards the committed payments proposed for the Assenting Secured Financial Creditors for INR 378 crore, irrespective of the contingent/residual receivables from the arbitral awards. The Resolution Applicant has requisite experience and expertise and using the pre-qualifications of the Corporate Debtor, shall bid for new projects and ensure completion of on-going projects. The Resolution Applicant has a rich experience of supervising and advising with respect to EPC contracts for more than 17 years in the industry. The Resolution Applicant shall utilize the understanding of its infrastructure space to bid for new tenders/projects in the EPC sector by utilizing the existing pre qualifications of the Corporate Debtor. Further, the Resolution Applicant has experienced manpower and the necessary network to help ramp up the scale of the operations of the Corporate Debtor.

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



Section 30 (2) is quoted below: -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the



time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

18. In view of the Final Resolution Plan and its addendum submitted by the Successful Resolution Applicant along with the mandatory compliances filed by the Applicant herein, we are of the view that the mandatory requirements as laid down under Section 30(2) of the Code are complied with.
19. In respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the Applicant has filed a compliance certificate in Form-H annexed as Annexure A-20 at Page 250-255 of the application, certifying that the Resolution Plan submitted by the Successful Resolution Applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is eligible under the provisions of Section 29A of the Code, 2016.
20. As to the relief and concessions sought in the Resolution Plan more specifically set out in Section-11 (Other Provisions of Resolution/Reliefs) of the Resolution Plan, it is pertinent to refer to the decision of the Hon’ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors.** in **Civil Appeal No. 9170 of 2019**. The relevant part of the judgment is reproduced herein below: -

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

“25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-



(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings.”

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

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

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

21. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is not sitting on an appeal against the decision of the Committee of Creditors and this Adjudicating Authority is duty bound to follow the judgment of the Hon’ble Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follows: -

“35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2),



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

22. Further, the Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019**, vide its judgment dated 15.11.2019 has observed as follows:

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



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., 2022 SCC OnLine SC 2142.**

24. Thus, from the judgments cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.
25. In view of the above discussion, this Adjudicating Authority is satisfied that the Resolution Plan as filed and explained by the SRA meets the requirement of Section 30(2) of IBC.
26. It is pertinent to clarify that the Applicant (Resolution Professional) has filed certain Additional Affidavits such as affidavit dated 12.04.2024, respectively along with the Resolution Plan. Furthermore, the SRA has also provided certain clarifications to the Applicant vide Affidavit dated 28.11.2022, Email dated



06.10.2022 and a Letter dated 01.02.2023. It is clarified that all the documents mentioned hereinabove, shall form part and parcel of the Resolution Plan and shall be read along with the Resolution Plan. It is directed that the SRA shall perform all of its obligations and commitments made in clarifications/affidavits.

27. Therefore, in our considered view, there is no impediment to giving approval to the instant Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of the corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, Successful Resolution Applicant and other stakeholders involved.
28. 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.
29. While approving the resolution plan as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for in such law.
30. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded in its database in terms of Section 31(3) (b) of the Code. The Resolution Professional is further directed to hand over all the records, premises, and properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
31. The approved Resolution Plan shall become effective from the date of passing of this order. The Approved Resolution Plan shall be a part of this order, subject to our observations regarding concessions, reliefs and waivers sought therein.
32. The Monitoring Committee is directed to file the monthly status report with regard



to the implementation of the approved plan before this Adjudicating Authority.

In view of the above, the **I.A./1334/ND/2023 stands approved** in terms of the aforesaid discussion and is accordingly disposed off.

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

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

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)