

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

CA (IBC)/1159/PB/2020 A/W IA/5119/ND/2023

IN

C.P. IB No. 938/PB/2018

(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) along with an application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

INDIAN OVERSEAS BANK

.... Financial Creditor

VERSUS

RATHI TMT SARIA PRIVATE LIMITED

.... Corporate Debtor

AND

IN THE MATTER OF CA(IBC)/1159/PB/2020:

AJIT KUMAR

RESOLUTION PROFESSIONAL OF

M/S RATHI TMT SARIA PRIVATE LIMITED

1A, Sanskriti Apartments, GH-22

Sector-56, Gurugram- 122011

.... Applicant

AND IN THE MATTER OF IA/5119/ND/2023

INDIAN OVERSEAS BANK

Asset Recovery Management Branch Floor,

Rachna Building, Pusa Road Palace,

New Delhi-110008

.... Applicant

VERSUS

1. M/S RATHI TMT SARIA PRIVATE LIMITED

Through Mr. Ajit Kumar, Resolution Professional

1A, Sanskriti Apartments, GH-22,

Sector-56, Gurugram-122011

.... Respondent No. 1

2. MR. KAMAL KISHORE AGGARWAL

Proprietor NIFS Steel

Pearl Omaxe, Tower 1,
Netaji Subhash Palace, New Delhi-110034

.... Respondent No. 2

3. MS. PREMLATA YADAV

P-48, Ashiana Village, Harchandpur,
Bhiwari Ind. Area, Alwar, Rajasthan-301019

.... Respondent No. 3

4. MR. PRADEEP GUPTA

A-116, Phase I, Ashok Vihar,
New Delhi-110052

.... Respondent No. 4

Order Delivered On: 16.10.2025

CORAM:

**JUSTICE JYOTSNA SHARMA
HON'BLE MEMBER (JUDICIAL)**

**MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)**

PRESENT

For the Applicant

:Mr. Ajit Kumar, RP, Mr. Abhishek Anand, Mr. Karan Kohli and Ms. Palak Kalra, Advs.

For Indian Overseas Bank

: Sr. Adv. Kunal Tondon, Ms. Niti Jain, Ms. Natasha, Ms. Mahima Arora, Advs.

For the Respondents

: Adv. Manisha Chaudhary, Adv. Shravan Chandrashekhar for R-2 in IA/5119/2023 and Mr. Saurabh Kalia, Mr. S. Shishir, Advs. for R-3 and R-4 in IA/5119/2023

For the Suspended Management: Mr. Sumesh Dhawan, Ms. Vatsala Kak, Advs..

ORDER

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. Ajit Kumar, (hereinafter referred to as the 'Resolution Professional/Applicant') on behalf of M/s Rathi TMT Saria Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by consortium of NIFS Steels through Mr. Kamal Kishore Aggarwal, Ms. Premlata Yadav and Mr. Pradeep Gupta ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') with 98.61% votes in its 9th CoC Meeting through e-voting on 07.02.2020.

2. **Briefly stated, the facts as averred by the applicant in the application are stated as follows:**

- a) That by an order dated 16.04.2019, this Adjudicating Authority had initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor M/s Rathi TMT Saria Private Limited and Mr. Ajit Kumar was appointed as the Interim Resolution Professional (IRP) in the matter who was later confirmed as the Resolution Professional by the CoC in its 1st meeting held on 15.05.2019.
- b) That the IRP made the Public Announcement in Form-A on 19.04.2019 for inviting the claims from the creditors of Corporate Debtor. The IRP after verifying and collating the claims received, constituted the Committee of Creditors (CoC) comprising of Financial Creditors. Subsequently, the claims of Toyota Financial Services Private Limited were admitted by the Applicant and constitution of CoC was revised. The revised CoC of the Corporate Debtor comprised of the following Financial Creditors:

S. NO.	NAME OF FINANCIAL CREDITORS	VOTING SHARE (%)
1.	Indian Overseas Bank	98.61 %
2.	Jugantar Mercantiles Private Limited	0.69 %
3.	Pee Cee Merchants & Credits Private Limited	0.45 %
4.	Richimen Barter Private Limited	0.14 %
5.	Toyota Financial Services Private Limited	0.11 %

- c) In pursuance of Regulation 36A of the CIRP Regulations, the Resolution Professional published the Form-G inviting the Expression of Interest (EoI) from the Prospective Resolution Applicant(s) (PRAs) in Business Standard (English) and Business Standard (Hindi) edition on 25.06.2019. The Resolution professional received 3 EoIs from the following Resolution Applicants i.e. Prudent ARC Limited, NIFS Steels through Mr. Kamal Kishore Aggarwal (nominated as lead applicant) and Mr. Ashok Garg, Mr. Kamal Beriwal, Mr. Amit Gupta & Mr. Ajay Kumar Agarwal (Joint Applicants). Subsequently, Resolution Plans were received from two Resolution Applicants.
- d) The CIRP period of 180 days was to end on 13.10.2019. Therefore, on 07.10.2019, an application bearing CA No. 2452/2019 was filed seeking extension of CIRP period by 90 days in accordance with decision of CoC passed

in 5th meeting held on 27.09.2019. The same was allowed by the Adjudicating Authority vide Order dated 08.11.2019.

- e) In the 6th CoC meeting held on 14.11.2019, the two Resolution Plans were put before CoC for consideration. However, the members of the CoC opined that in order to seek maximization of assets of the Corporate Debtor, a fresh Form-G shall be published. Accordingly, a fresh Form-G was published by the Resolution Professional on 19.11.2019 whereby, the last date for submission of Resolution Plan was 06.01.2020. Thereafter, the Resolution Professional received Resolution Plans from the two PRAs i.e. NIFS Steels through Mr. Kamal Kishore Aggarwal jointly with Ms. Premlata Yadav & Mr. Pradeep Gupta and second Plan from Shrishti Alloys Private Limited jointly with Committed Trading Private Limited. The two Resolution Plans were put before the CoC for consideration in 7th meeting convened on 10.01.2020.
- f) It is submitted by the Resolution Professional that the Resolution Plan of NIFS Steels through Mr. Kamal Kishore Aggarwal jointly with Ms. Premlata Yadav & Mr. Pradeep Gupta was submitted before the CoC on the basis of combined net worth of the consortium of NIFS Steels through Mr. Kamal Kishore Aggarwal jointly with Ms. Premlata Yadav & Mr. Pradeep Gupta. As per the eligibility criteria, the minimum net worth for submission of Resolution Plan was Rs. 5 Crores. The net worth of constituents of Consortium of NIFS Steel (Proprietor of Mr. Kamal Kishore Aggarwal) with Ms. Premlata Yadav and Mr. Pradeep Gupta was as follows:
- i. NIFS Steels (Proprietor of Mr. Kamal Kishore Aggarwal – Rs. 2.38 Crores
 - ii. Ms. Premlata Yadav- Rs. 4.44 Crores
 - iii. Mr. Pradeep Gupta- Rs. 8.00 Crores
- g) In the 8th meeting held on 27.01.2020, the Applicant apprised the members of CoC that revised Resolution Plans have been received from NIFS Steels through Mr. Kamal Kishore Aggarwal jointly with Ms. Premlata Yadav & Mr. Pradeep Gupta and from Shrishti Alloys Private Limited jointly with Committed Trading Private Limited.
- h) In the 9th CoC meeting convened on 01.02.2020, the revised Resolution Plans were put for voting before the members of CoC and the members of CoC declared consortium of NIFS Steels through Mr. Kamal Kishore Aggarwal jointly with Ms. Premlata Yadav & Mr. Pradeep Gupta as H1 Resolution

Applicant. The results of the e-voting was finalized on 07.02.2020 whereby the Resolution Plan of NIFS Steels through Mr. Kamal Kishore Aggarwal jointly with Ms. Premlata Yadav & Mr. Pradeep Gupta was approved with a majority of 98.61%.

i) Subsequently, the Resolution Professional filed an application bearing No. CA/1159/PB/2020 before this Adjudicating Authority seeking approval of the Resolution Plan approved by the CoC in its 9th meeting.

3. During the course of hearing of the Resolution Plan Approval Application, this Adjudicating Authority observed that the Successful Resolution Applicant has not complied with Regulation 36B(4A) of the CIRP Regulations as regard the submission of Performance Security. This Adjudicating Authority vide its Order dated 22.04.2022 directed the Applicant to take approval of the CoC for submission of Performance Bank Guarantee. Accordingly, the Applicant convened the 10th meeting of CoC on 06.05.2022 whereby the CoC members were apprised that the SRA had not deposited the complete amount of Performance Bank Guarantee as only Ms. Premlata Yadav and Mr. Pradeep Gupta provided their share of Performance Bank Guarantee and Mr. Kamal Kishore Aggarwal failed to provide his share leading to inner conflicts among the members of Consortium.
4. The Applicant/Resolution Professional submits that one of the members of consortium of Successful Resolution Applicant ie. Mr. Kamal Kishore Aggarwal sent emails dated 10.05.2022, 26.09.2022 and 09.11.2022 to the Resolution Professional conveying his willingness to withdraw from the consortium and to individually resolve the Corporate Debtor by offering a higher bid of Rs. 35 Crores for the resolution of the Corporate Debtor. The Applicant places its reliance on the decision of the Hon'ble NCLAT in the matter of **Myotic Trading Pvt. Ltd. v. Deepak Maini (RP) & Ors., Company Appeal (AT) (Insolvency) No. 859 of 2025 and Company Appeal (AT) (Insolvency) No. 877 of 2025** whereby the Hon'ble NCLAT has held that where one partner of a consortium withdraws, the eligibility of the consortium cannot be transposed to the remaining member unless expressly permitted by the RFRP, and absent such provision, the consortium ceases to exist in law. Accordingly, it is the submission of the Applicant that the internal disputes and breakdown within the present consortium have the legal effect of extinguishing its status as an eligible SRA.

5. During the pendency of the Plan Approval application, the lead member of the CoC i.e. Indian Overseas Bank having majority shareholding of 98.61% filed an application bearing No. 5119/ND/2023 seeking rejection of the Resolution plan filed on behalf of NIFS Steels through Mr. Kamal Kishore Aggarwal jointly with Ms. Premlata Yadav and Mr. Pradeep Gupta. It was pointed out that subsequent to the filing of the Plan Approval application before this Adjudicating Authority, internal disputes had arisen between the members of consortium thereby, rendering the Resolution Plan unimplementable in its present form. The reliefs sought by the Indian Overseas Bank in IA No. 5119/ND/2023 are stated as under:

- a) *Pass appropriate orders thereby allowing the present application/objections and dismissing I.A. 1159/2020 filed in CP (IB) 938/2018 by the Resolution Professional and reject the Resolution Plan filed on behalf of NIFS Steels through Kamal Kishore Aggarwal, Ms. Premlata Yadav and Mr. Pradeep Gupta.*
- b) *Pass any such order(s) as this Hon'ble Tribunal deems fit.*

5.1 On 22.11.2022, the Indian Overseas Bank filed an application bearing IA No. 5801 of 2022 seeking directions to convene a CoC meeting for deciding the pending issues amongst the members of the consortium for proper or due implementation of the Resolution Plan or in alternate to cancel the approved Resolution Plan and call for fresh bids for the value realization of the Corporate Debtor.

5.2 The said application was dismissed by this Adjudicating Authority vide Order dated 18.07.2023 for being filed at a belated stage when the Resolution Plan has already been submitted for approval before this Adjudicating Authority. Indian Overseas Bank filed an appeal against the Order dated 18.07.2023 before the Hon'ble NCLAT. **The Hon'ble NCLAT vide Order dated 31.08.2023 dismissed the appeal while granting liberty to the Indian Overseas Bank, being the lead member of the CoC to raise issues qua the Resolution Plan.** Accordingly, the Indian overseas Bank has filed the present application bearing No. 5119/ND/2023 on 14.09.2023 raising objections against the proposed Resolution Plan seeking rejection of the Resolution Plan filed on behalf of NIFS Steels through Mr. Kamal Kishore Aggarwal jointly with Ms. Premlata Yadav and Mr. Pradeep Gupta and dismissal of C.A. No.

1159/2020 filed for approval of Resolution plan before this Adjudicating Authority.

6. Submissions made by the Indian Overseas Bank, Financial Creditor in IA No. 5119/ND/2023:

The instances which affirm the existence of internal disputes amongst the members of consortium are stated as follows:

- i) Since the proposed Resolution Plan is filed on behalf of consortium of NIFS Steels through Mr. Kamal Kishore Aggarwal jointly with Ms. Premlata Yadav and Mr. Pradeep Gupta, therefore, Ms. Premlata Yadav and Mr. Pradeep Gupta executed a Power of attorney in favor of Mr. Kamal Kishore Aggarwal for acting as consortium lead and executing all necessary documents pertaining to SRAs. However, the said power of Attorney was revoked by Ms. Premlata Yadav and Mr. Pradeep Gupta vide Deed of Revocation of General Power of Attorney dated 23.09.2020.
- ii) Subsequent to revocation of general power of attorney, Ms. Premlata Yadav and Mr. Pradeep Gupta filed an FIR bearing FIR No. 272/2020 against Mr. Kamal Kishore Aggarwal alleging theft and misappropriation of raw materials by Mr. Kamal Kishore Aggarwal at the factory site of the Corporate Debtor. However, upon adjudication by the police officers, a Final Report dated 17.12.2020 was prepared observing that the aforesaid allegations are baseless.
- iii) Owing to the disputes amongst the consortium members, Ms. Premlata Yadav and Mr. Pradeep Gupta filed an application bearing IA No. 1007 of 2021 seeking expedited approval of the Resolution Plan by alleging that Mr. Kamal Kishore Aggarwal is selling the assets of the Corporate Debtor without following the process of law.
- iv) On 10.05.2019, a conversion agreement was entered into between the Corporate Debtor and Mr. Kamal Kishore Aggarwal and the same was extended by the CoC on 15.02.2020 and thereafter, on 01.02.2023 as well for keeping the Corporate Debtor as a going concern. It was agreed upon in the 2nd CoC meeting that Mr. Kamal Kishore Aggarwal shall run the plant of the Corporate Debtor. However, due to internal disputes amongst the

members of consortium, the factory of the Corporate Debtor is non-functional and is lying closed.

- v) In the 10th CoC meeting held on 06.05.2022 it was deliberated by the Resolution Professional that the conversion agreement shall be executed jointly by all the three members of SRA. However, Ms. Premlata Yadav and Mr. Pradeep Gupta declined the offer to work with Mr. Kamal Kishore Aggarwal. Further, in the 10th CoC meeting, Ms. Premlata Yadav and Mr. Pradeep Gupta undertook to withdraw IA No. 1007 of 2021. However, no subsequent action was taken by them in that regard.
- vi) Vide emails dated 10.05.2022, 26.09.2022 and 09.11.2022 sent to the Resolution Professional, Mr. Kamal Kishore Aggarwal conveyed his willingness to individually resolve the Corporate Debtor by offering a higher bid of Rs. 35 Crores for the resolution of the Corporate Debtor and undertaking to pay the entire amount within 30-day time period.
- vii) Ms. Premlata Yadav and Mr. Pradeep Gupta sent emails dated 05.10.2020, 11.11.2020 and 12.11.2020 raising allegations of theft and fraud against Mr. Kamal Kishore Aggarwal signifying the lack of trust amongst the members of consortium.

7. Reply by Respondent No. 2 i.e. Mr. Kamal Kishore Aggarwal in IA No. 5119/ND/2023:

- a) That the Respondent No. 2 is the sole signatory of the Resolution Plan and Respondent No. 3 (Ms. Premlata Yadav) and Respondent No. 4 (Mr. Pradeep Gupta) have no locus or right to representation in the Plan.
- b) That the Respondent No. 2 is capable of upholding, maintaining and implementing the Resolution Plan and was already maintaining the Corporate Debtor as a going concern since May 2019 till 26.04.2023.
- c) That Mr. Kamal Kishore Aggarwal had executed a conversion agreement with the Resolution Professional to maintain the Corporate Debtor as a going concern. During its implementation, the husband and son of the Respondent No. 3 i.e. Ms. Premlata Yadav procured finished goods amounting to Rs. 1,25,00,000/- from the Respondent No. 2 i.e. Mr. Kamal Kishore Aggarwal. However, the payment of such goods was withheld by the family members of Respondent No. 3.

- d) That the Respondent No. 3 and 4 executed Deed of Revocation of General Power of Attorney due to which the Respondent No. 2 was restrained from appearing and executing necessary documents for appropriate adjudication of the Resolution Plan. Therefore, the Respondent No. 2 was constrained to offer for the implementation of the present Resolution Plan individually.
- e) That the Respondent No. 3 and 4 lodged a frivolous FIR No. 273/2020 dated 24.11.2020 alleging theft of machine parts of the Corporate Debtor. However, it was apprised that that the said machine parts were sent for repair. A final report dated 17.12.2020 from the police officers ascertained that the aforesaid allegations had no valid ground.
- f) That due to the frivolous FIR lodged by the Respondent No. 3 and 4, the Respondent No. 2 was subjected to huge embarrassment in the business market. Due to the baseless complaints, the Respondent No. 2 and his son suffered serious health issues and Mr. Kishore Kumar Aggarwal was required to undergo a liver transplant in December 2021. Pursuant to the same, the relationship between the members of consortium became sour and unworkable.
- g) That the Respondent No. 3 and 4 filed an IA bearing No. 1007 of 2021 against the Respondent No. 2 alleging theft and misappropriation. The Respondents No. 3 and 4 undertook to withdraw the said IA in 10th CoC meeting held on 06.05.2022. However, no subsequent action was taken by the Respondents No. 3 and 4.
- h) The Respondent No. 2 sent an email dated 09.11.2022 to the Resolution Professional conveying its willingness to enter into a new Conversion Agreement along with Respondents No. 3 and 4 for maintaining the Corporate Debtor as a going concern. However, the said offer was rejected by Respondents No. 3 and 4.
- i) It is therefore submitted that in view of the events mentioned, the Respondents No. 3 and 4 are creating hindrances in the resolution of the Corporate Debtor.

8. Joint Reply by Respondents No. 3 and 4 i.e. Ms. Premlata Yadav and Mr. Pradeep Gupta in IA No. 5119/ND/2023:

- a) That the Respondent No. 2 i.e. Mr. Kamal Kishore Aggarwal has cleared his stance in the 10th CoC meeting held on 06.05.2022 that he wishes to move out of the consortium of Successful Resolution Applicants and intends to place a higher bid of Rs. 35 crores independently for the resolution of the Corporate Debtor.
- b) In the 11th CoC meeting held on 04.01.2023, the Respondents No. 3 and 4 clarified their intention to the Resolution plan to implement the Resolution Plan unanimously and in its true letter and spirit and offered to run the unit of the Corporate Debtor at a higher monthly rent of Rs. 15,00,000/- (subsequently agreed to be increased to Rs. 16,00,000/-) as opposed to its existing monthly rent of Rs. 4,00,000/-. However, the same was not taken into consideration by the Objector Bank i.e. Indian overseas Bank prior to filing of the instant application.
- c) That Respondent No. 3 and 4 filed a Joint Affidavit dated 07.01.2025 stating that the majority members of the consortium of SRA are in no way seeking any modification/substitution in the composition of the consortium members who originally submitted the Resolution Plan which has been duly approved by the members of the CoC and that the Respondent No. 3 and 4 are willing to implement the Resolution plan unanimously for the maximisation of the value of the assets of the Corporate Debtor.

9. We have heard the submissions made by the Ld. Counsel for the Applicant/Resolution Professional, Indian Overseas Bank (Objector Bank) and the Respondents in IA/5119/ND/2023 and have gone through the documents produced on record.

10. It is noted that the instant application bearing no. CA/1159/PB/2020 was originally filed for approval of the Resolution Plan which was approved by the CoC in its 9th meeting on 07.02.2020 with 98.61% votes in favour. However, post the approval of the Resolution Plan by the CoC, subsequent developments had taken place which have been brought to the notice of this Adjudicating Authority.

11. It is noted that the CoC-approved Resolution Plan was submitted on behalf of consortium of NIFS Steels through Mr. Kamal Kishore Aggarwal jointly with Ms. Premlata Yadav and Mr. Pradeep Gupta and that the net worth of all the three members of the consortium was taken collectively to reach the threshold for submitting a Resolution Plan. Pursuant to the approval of the proposed Resolution Plan by the CoC and during the course of hearing of the Plan Approval application, this Adjudicating Authority vide its Order dated 22.04.2022 observed that the entire amount of Performance Bank Guarantee was not paid as only Ms. Premlata Yadav and Mr. Pradeep Gupta provided their share of Performance Bank Guarantee and Mr. Kamal Kishore Aggarwal failed to provide his share leading to violation of Regulation 36B(4A) of the CIRP Regulations.
12. In accordance with the Order dated 22.04.2022, the Applicant convened the 10th meeting of the CoC on 06.05.2022 for taking the approval of the CoC for the submission of Performance Bank Guarantee. In the 10th CoC meeting, it transpired that the non-payment of the Performance Bank Guarantee by Mr. Kamal Kishore Aggarwal led to inner conflicts among the members of Consortium. It was further noted in the 10th CoC meeting that Mr. Kamal Kishore Aggarwal expressed his willingness to withdraw from the consortium and offer to implement the Resolution Plan independently by offering a higher bid of Rs. 35 crores.
13. Pursuant to the 10th CoC meeting also, the disputes amongst the members of consortium could not be solved. Therefore, this Adjudicating Authority vide its Order dated 08.03.2024 directed the Resolution Professional to convene a meeting of the CoC and endeavour to arrive at a resolution to end the disputes among the Consortium of members. The relevant extract of the Order dated 08.03.2024 is reproduced hereunder for ready reference as:

“However, when the application was initially moved before this Adjudicating Authority, the arguments on the Resolution Plan had not commenced. Now, having heard the submissions of the RP, CoC members, and SRA who have submitted that one opportunity be provided to get the issue between the consortium members settled, we are of the view that one opportunity may be given to the members of the consortium (SRA) to amicably settle the issue amongst members of consortium.

Considering the submissions of the Counsels and the present facts & circumstances, we deem it appropriate to direct the RP to convene the meeting of CoC and try to arrive at a resolution to end the disputes among the consortium members. The RP is also directed to submit a report along with the minutes of the meeting within 7 days from the date of the meeting.”

14. Accordingly, in pursuance of the Order dated 08.03.2024, the Resolution Professional convened the 12th CoC meeting on 27.03.2024 wherein the Resolution Professional sought the stance of the Consortium members regarding the Resolution Plan approved by the members of CoC in the 9th meeting. However, Mr. Kamal Kishore Aggarwal sought clarification if the other two SRAs wanted to withdraw the FIR and withdraw I.A. No. 1007/2021 to which no positive response was received by Mr. Kamal Kishore Aggarwal and thus no consensus was reached between the members of the consortium of SRA. However, subsequently IA/1007/2021 stood dismissed as withdrawn, as recorded in the Order dated 21.07.2025.
15. Thereafter, this Adjudicating Authority while noting that no consensus has been arrived between the members of consortium and in order to seek resolution of the conflicts amongst the members of consortium of SRAs, again vide Order dated 06.05.2024 directed the members of the consortium to determine among themselves their respective roles, responsibilities and liabilities and further directed the Resolution Professional to file the same after placing it before the members of CoC. The relevant experience of the Order dated 06.05.2024 is reproduced hereunder for ready reference as:

“Ld. Counsel for the RP is present. Ld. Sr. counsel for one of the Members of Consortium and Ld. Counsel on behalf of the other consortium member is present. One of the majority CoC Member is also present. It was brought to our notice that the Resolution Plan has been submitted by a proprietorship firm along with two other individuals. In order to identify the roles, responsibility, and liability of each of the applicant in the Consortium, all three members of the consortium shall decide among themselves and the same shall be filed through the Resolution Professional after placing it before the CoC.”

16. In compliance of the Order dated 06.05.2024, the Resolution Professional sent an email dated 05.06.2024 to the members of consortium requesting a copy of the mutually agreed upon settlement in order to convene the next CoC meeting to which Mr. Kamal Kishore Aggarwal replied vide email dated 01.07.2024 stating that no consensus could be reached between the consortium of members and some issues remained pending for discussion among the members which required due consideration with respect to the implementation of the Resolution Plan. Accordingly, the Applicant convened the 13th CoC meeting on 01.07.2024 wherein Mr. Pradeep Gupta and representative of Ms. Prem Lata Yadav affirmed their commitment to the Resolution Plan. However, Mr. Kamal Kishore Aggarwal expressed his concerns about internal disagreements and refused to resume his responsibilities. The Applicant yet again informed the CoC members about the non-consensus between the consortium members regarding their roles, responsibilities and liabilities. Further, in compliance with Order dated 06.05.2024, the Applicant filed Additional Affidavit placing on record the non-consensus between the consortium members regarding their role, responsibilities and liabilities.
17. We note that the issue of inner conflicts amongst the members of the consortium arose for the first time in the year 2022. Since then multiple opportunities were granted to the members of consortium to resolve their inner conflicts amicably. This Adjudicating Authority vide its Orders dated 08.03.2024 and 06.05.2024 directed the Resolution Professional to convene a CoC meeting particularly for the purpose of resolving the internal disputes amongst the members of consortium and to arrive at a resolution for the implementation of the Resolution Plan. Accordingly, 12th and 13th CoC meetings were convened on 27.03.2024 and 01.07.2024, respectively. However, even after granting several opportunities, no consensus could be arrived at between the members of consortium.
18. With regard to the proposal of Mr. Kamal Kishore Aggarwal to withdraw from the consortium and to individually resolve the Corporate Debtor with a higher bid, the same cannot be considered as it will lead to change in the constitution of the Successful Resolution Applicant. We refer to the recent decision of the Hon'ble NCLAT in the matter of **Beeram Singh Vs. Pramod Kumar Sharma & Anr. [Company Appeal (AT) (Insolvency) No. 1415 of 2025]** and Appu Ghar

Gurgaon Shop Buyers Association Vs. International Recreation and Amusement Ltd. & ANR. [Company Appeal (AT) (Insolvency) No. 1471 of 2025] whereby the Hon'ble NCLAT has held as under:

“22.We have already noticed that the Adjudicating Authority has observed that any change or requirement of change in Resolution Plan as also reconstitution of the SRA need to be examined by the CoC. The question of eligibility of SRA to continue in the CIRP process on account of change in the constitution of the SRA which is an admitted fact goes to very root of the matter. We are of the view that the said issue need to be considered by the CoC before proceeding further.

23. In the facts of the present case, we are of the view that the question of eligibility of the Resolution Applicant in change form as per the SRA himself goes to very root of the eligibility of the Resolution Applicant to continue in the CIRP process. Whether the Resolution Applicant after such changes as has been noticed is still eligible to claim as a Resolution Applicant so as to consider its plan is in question which need to be first considered by the CoC before any consideration or voting on the Resolution Plan.”

19. It is noted that the CIRP of the Corporate Debtor commenced on 16.04.2019 and since then a substantial time has passed. Due to the internal disputes amongst the members of the consortium, the CoC-approved Resolution Plan has been put on hold. Multiple opportunities were granted to the members of consortium to settle their internal disputes. However, no amicable resolution has been arrived at till the present date. In view of the internal disputes amongst the members of the consortium, the Resolution Plan ceases to be enforceable and implementable. Section 30(2) of The I & B Code, 2016 provides that the Resolution Plan shall contain provisions for its effective implementation. Section 31 of the Code provides that where the Resolution Plan does not contain provisions for its effective implementation, then the Adjudicating Authority shall proceed to reject the Resolution Plan. Section 30(2) and 31 of the Code reads as under:

“Section 30: Submission of Resolution Plan

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan-

.....

(d) the implementation and supervision of the resolution plan;

.....

“Section 31: Approval of Resolution Plan

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

.....”

20. Further, Regulation 38 and Regulation 39 of the CIRP Regulations provides that the Resolution Plan shall contain provisions for its implementations and must be feasible and viable. Regulation 38 and Regulation 39 of the CIRP Regulations are reproduced hereunder as:

“Regulation 38. Mandatory Contents of the Resolution Plan

(2) A resolution plan shall provide:

(a) the term of the plan and its implementation schedule;

(b) the management and control of the business of the corporate debtor during its term; And

(c) adequate means for supervising its implementation.

(3) A resolution plan shall demonstrate that –

(a) it addresses the cause of default;

(b) it is feasible and viable;

(c) it has provisions for its effective implementation;

(d) it has provisions for approvals required and the timeline for the same; and

(e) the resolution applicant has the capability to implement the resolution plan.

Regulation 39. Approval of Resolution Plan

(3) The committee shall-

- (a) evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix;
- (b) **record its deliberations on the feasibility and viability of each resolution plan;** and
- (c) vote on all such resolution plans simultaneously.”

21. In light of the aforesaid provisions of the Code, it has to be established that the Resolution Plan is feasible and viable and whether it contains provisions for the effective implementation. However, in the instant case, due to the internal disputes amongst the members of consortium, who no longer wish to work together towards the implementation of the Resolution Plan, the proposed Resolution Plan becomes unenforceable and unimplementable and cannot be approved in its present form.

22. Having held that the Resolution Plan in its present form is not implementable due to the internal conflicts between the members of consortium, we note the submission of the Applicant that the Corporate Debtor is a going-concern and the factors leading to the non-implementation of the Resolution Plan are not attributable to any default on the part of the Corporate Debtor. We are conscious of the fact that the primary object of the Code is to attain the maximisation of value of the assets of the Corporate Debtor. The I&B Code, 2016 was enacted with an intent to secure resolution of the Corporate Debtor by following the principle that ‘Resolution is the rule and Liquidation is the exception’. The Hon’ble Supreme Court in the matter of **Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (2019) 4 SCC 17** has held that:

“12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests.....”

23. Keeping in view the legislative intent of the Code and the decisions passed in the afore-stated judicial decisions, we are of the view that in order to attain the maximization of the value of the assets of the Corporate Debtor, the proposed Resolution Plan needs reconsideration. We therefore deem it fit to remand the Resolution Plan to the CoC for its reconsideration. Since the CIRP of the Corporate Debtor commenced in 2019 and a long time has passed, therefore, the CoC is directed to take a decision in the best interest of the Corporate Debtor within a period of 90 days from the date of pronouncement of this Order.
24. In view of the above, the instant application bearing no. **CA (IBC)/1159/PB/2020 in CP IB-938/PB/2018 stands disposed of** in light of the aforesaid directions.
25. Further, in light of the aforesaid order passed in CA(IBC)/1159/PB/2020, the Interlocutory Application bearing **IA/5119/ND/2023 in CP IB-938/PB/2018 stands disposed of accordingly.**

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

Sd/-
(ANU JAGMOHAN SINGH)
MEMBER (TECHNICAL)

Sd/-
(JYOTSNA SHARMA)
MEMBER (JUDICIAL)