

IN THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I,
AHMEDABAD

Item No. 302

IA (Plan)/22(AHM) 2024 in
CP (IB)/29(AHM) 2020

Order under Section 30(6) & 31 of IBC, 2016

Sejal Ronak Agrawal
RP of Octagon Communications Pvt. Ltd.

.... Applicant

Order Delivered on: **02.07.2024**

Coram:

Mr. Shammi Khan, Member (Judicial)
Mr. Sameer Kakar, Member (Technical)

PRESENT:

For the Applicant : Nipun Singhvi, Adv. a.w. Pragati Tiwari, Adv.
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is being pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH COURT-1**

**IA(Plan)/22 (AHM)/2024 in
CP(IB)/29(AHM)/2020**

[An application under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India, Regulations, 2016]

In the matter of ***M/s. Octagon Communications Private Limited***

Ms. Sejal Ronak Agrawal,
Resolution Professional of
M/s. Octagon Communications Private Limited
Having registered address at:
Bhairavnath Road, Nilima Park Society,
Near Ashutosh Society, Maninagar,
Ahmedabad, Gujarat - 380008

... Applicant

Order Pronounced On: 02.07.2024

CORAM:

**SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)**

Appearance:

For Applicant(s) : Nipun Singhvi, Advocate
: Pragati Tiwari, Advocate

ORDER

[Per:Bench]

1. This application is filed by the Resolution Professional of Octagon Communications Private Limited (Corporate Debtor) under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (**"Code"**) r.w. Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Process of Corporate Persons) Regulations, 2016 seeking the following prayers:

- a. *Allow the present application;*
- b. *This Hon'ble adjudicating authority may be pleased to approve the Resolution Plan under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 by submitting Thirdeye Tradelink Private Limited, the successful Resolution applicant and be further pleased to order and declare that such an approved Resolution Plan is binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, the State Government, the Local Authority and other authorities, the guarantors and all the other shareholders involved in the Resolution Plan;*
- c. *This Hon'ble Adjudicating Authority may be pleased to extend the CIRP period from 07.12.2022 to 16.05.2024 in view of various revision in resolution plan in the interest of all the stakeholders;*

- d. *Your lordship may be pleased to allow the present application and condone the delay of 9 days in filing of application;*
- e. *Pass any such other order(s) as this Hon'ble Tribunal may deem fit in the interest of justice.*

2. **CIRP Admission**

It is stated that this Tribunal vide its order dated 16.03.2022 admitted the Corporate Debtor – Octagon Communications Private Limited, to Corporate Insolvency Resolution Process (“**CIRP**”) in Company Petition No. 29 of 2020 filed by the Operational Creditor –Jugal Hansal Brothers under Section 9 of the Code and thereby appointed the Applicant herein as the Interim Resolution Professional (“**IRP**”) of the Corporate Debtor.

3. **Public Announcement:**

It is stated that the public announcement inviting the claims from all creditors of the Corporate Debtor was made in Form-A on 22.03.2022 wherein the last date for submission of claims was 02.04.2022.

4. It is stated that pursuant to the publication of Form-A dated 22.03.2022, the Applicant did not received any

claims from the Creditors of the Corporate Debtor till the last date for submission of claims. Pertinent to mention that the Applicant had also sent letters and intimation to all the banks and thereafter till 04.04.2022, the Applicant received a claim of Rs.1,51,39,792/- (Rs. One Crore Fifty-One Lakhs Thirty-Nine Thousand Seven Hundred and Ninety-Two Only) i.e., from one Financial Creditor and one Operational Creditor.

5. **Constitution of CoC:**

That upon the collation of claims the Applicant constituted a Committee of Creditors (“CoC”) and filed report certifying the Constitution of CoC before this Hon'ble Tribunal on 11.04.2022. The constitution of CoC along with their amount(s) admitted is as follows:

S.No.	Financial Creditor	Amount Admitted(in Rs.)	Voting Percentage
1.	ICICI Bank Ltd. (Secured FC)	2,67,95,282	92.82%
2.	Shriram City Union Finance Limited (Unsecured FC)	20,74,164	7.18%

6. It is also submitted that the Applicant pursuant to her appointment as IRP also visited the Registered Office of the Corporate Debtor and intimated the suspended management of the Corporate Debtor regarding initiation of the CIRP and sought requisite information.

7. **1st CoC Meeting:**

It is stated that the 1st meeting of CoC was held on 18.04.2022 wherein the Applicant herein was appointed as Resolution Professional ("**RP**") with a voting share of 100%.

8. **2nd CoC Meeting:**

It is stated that the Applicant convened 2nd CoC meeting dated 31.05.2022 wherein the CoC members were apprised about the publication of Form-G under Regulation 36A of CIRP Regulations, inviting Expression of Interests ("**EOI**") for submission of Resolution Plan(s) from the Prospective Resolution Applicant ("**PRA**") for the revival of Corporate Debtor. Pursuant to same, the Applicant presented draft of Form-G and the same draft was approved by CoC with a voting share of 100%.

9. It is submitted that accordingly, the Applicant in compliance of Regulation 36A (1) of CIRP Regulations published Form-G on 10.06.2022 inviting EOI from PRAs. The last date for submission of Resolution Plan was 25.06.2022. Pursuant to publication of Form-G, the Applicant received one EOI along with the Earnest Money Deposit ("**EMD**") on 24.06.2022 from PRA namely "**Third Eye Trade Link Private Limited**".

10. **4th CoC meeting:**

The same was apprised to the members of CoC during the 4th CoC meeting held on 14.07.2022 and deferred meetings held on 15.07.2022 and 18.07.2022. In said meeting the Applicant apprised the members that the Provisional List of PRAs was issued on 05.07.2022. However, since there were some discrepancies in the documents submitted by the PRA a request was made to provide documents/ clarification on such discrepancies on or before 10.07.2022 for finalization before the release of final list of PRAs on 20.07.2022.

11. It is stated that in the said 4th meeting of apprised members that on 28.06.2022 a mail was received from Mr. Sandip Patel (suspended director of Corporate Debtor) showing his interest to submit EOI and Resolution Plan, being eligible under MSME. But, since the last date for submission of EOI was 25.06.2022, the said issue was placed for consideration before the CoC members. Thereafter, with consent of members, the CoC meeting was adjourned to 15.07.2022 for discussing the offer to be proposed by Suspended Director. However, on 15.07.2022 the suspended director did not come with any offer and stated of him being unaware of type of proposal and requested more time. Accordingly, the CoC meeting was again adjourned for 18.07.2022. On 18.07.2022, the Suspended Director mentioned he will make all endeavours to gather funds to repay the creditors in instalments from September 2022 and requested the creditors to divide his debt amount to 50-55 instalments, making it feasible for the Corporate debtor to repay debt.

12. It is submitted by the applicant that however, it was mutually agreed by the CoC members that the preliminary offer submitted by Suspended Director is not acceptable and there shall be no fresh publication of Form -G. Further, the CoC members stated they wish to go through the Resolution Plan submitted by Tradelink.

13. **5th CoC Meeting:**

Thereafter, it is stated that in 5th Meeting of CoC convened on 17.08.2022, the Applicant apprised CoC that a resolution plan from PRA was received in sealed envelope. The same was presented in the meeting and sealed envelope was opened during the presence of CoC members under video recording. After the opening of Resolution Plan, the financial bid was announced in meeting. Further, the RP informed that pursuant to meeting the password protected file (after procuring the password) shall be circulated to all members of CoC.

14. **180 days of CIRP expired and 6th CoC Meeting:**

It is stated that since the period of CIRP was to expire on 12.09.2022 and the CIRP was at stage for considering

Resolution Plan, the Applicant recommended an extension for time period of the CIRP by 30 days, in the 6th CoC Meeting held on 12.09.2022 and the same was approved with 92.8% voting share. Accordingly, the Applicant filed an application on 13.09.2022 seeking extension of 30 days beyond 180 days w.e.f. 12.09.2022 and the same was allowed by this Tribunal vide order dated 23.14.2022.

15. **7th CoC Meeting:**

It is submitted that the Applicant on 04.10.2022 convened the 7th CoC Meeting wherein the members were apprised of receiving comments/ observations from M/s India Juris, Legal firm appointed for vetting the Resolution Plan and the same was sent to PRA for making relevant changes in the revised Resolution Plan. Further, the RP apprised that last date of CIRP is 12.10.2022 and further action has to be taken with respect to the received Resolution Plan. The members of CoC submitted they require more time to comment upon the Resolution Plan and sought for extension of CIRP by

30 days. Accordingly, a resolution for extension of CIRP by 30 days was approved with a voting 92.8% share.

16. It is stated that accordingly, the Applicant again filed an application seeking extension of CIRP by 30 days beyond 12.10.2022 and the same was allowed by this Tribunal vide order dated 23.11.2022.

17. **8th CoC Meeting:**

It is stated that the applicant convened 8th CoC meeting on 20.10.2022 but at request of one CoC Member the meeting was adjourned to 21.10.2022 for discussions/ negotiations with the Resolution Applicant. On 21.10.2022, the representative of Resolution Applicant was present and the CoC members stated that financial bid in the Resolution Plan does not consider the minimum liquidation value of the Corporate Debtor, further it is not in compliance with the provisions of Code.

18. It is therefore stated that the members suggested the RA to submit a revised resolution plan for consideration. The RP informed the members that a Resolution Plan

can be revised only once. The Resolution Applicant requested further time till 28.10.2022 to submit Revised resolution plan, in compliance with the provisions of Code and to revise the financial Bid as per negotiations after due discussion with the management.

19. **9th CoC Meeting – Resolution Plan approved:**

It is stated that the Applicant convened the 9th Meeting of CoC on 05.11.2022, wherein she apprised the members that a revised resolution plan was received from the PRA on 01.11.2022 i.e., within the timeline stipulated and the same was circulated to members via email on 02.11.2022. Further, the Applicant apprised members that in accordance with Section 33 of the Code, in event no plan is approved by CoC the natural outcome will be liquidation of the Corporate Debtor. Considering the possibilities of same, the Applicant discussed the compliances of Regulation 39B, 39C and 39D of the CIRP Regulations. Thereafter, CoC decided to put the Resolution Plan received from the RA to voting. The said resolution was approved with a voting of 92.82% votes.

20. **10th CoC Meeting:**

It is further stated that on 25.07.2023, the RP conducted the 10th meeting of CoC wherein it was resolved that upon approval of the Resolution Plan Application, pending PUFE applications being IA No. 1139/2022 and IA No. 1140/2022 filed by the RP shall be pursued by the SRA. Further, an affidavit in support of same was also filed by the RP.

21. **17th CoC Meeting – CoC approved Revised Resolution Plan:**

It is submitted that the Applicant conducted 17th meeting of CoC on 29.04.2024 whereby the RP apprised CoC members that SRA had submitted addendum to the Resolution Plan wherein the revised financial proposal was presented. The COC Members deliberated upon the distribution of the funds allocated to unsecured financial creditors and the operational creditors and concurred with the revised financial proposal submitted by the SRA to re-allocate the funds equally as per their admitted claims. After discussion CoC approved the revised Resolution Plan along with addendum submitted

by Thirdeye Tradelink Private Limited & Others with 92.82% of voting rights and CoC further resolved that the resolution plan of SRA is feasible and viable. Below mentioned table is placed to exhibit the voting held upon the resolution pertaining to present Application:-

S. No.	Description	Agree	Disagree
1.	“RESOLVED THAT the revised Resolution Plan along with addendum submitted by Thirdeye Tradelink Private Limited and Others, the Successful Resolution Applicant in the matter of Octagon Communications Private Limited is and be hereby approved by the COC Members.”	92.82%	0
2.	“RESOLVED THAT the consent of the CoC members be and is hereby accorded that the resolution plan of Thirdeye Tradelink Private Limited and Others is feasible and viable.”	92.82%	0
3.	“RESOLVED FURTHER THAT in pursuant to the provisions of Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the COC Members be and is hereby approved,	92.82%	0

	the re-allocation of the proposed resolution plan amounting to Rs. 1,65,000/- between operational creditors and unsecured financial creditors equally.”		
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22. Key Features of the Resolution Plan:

Amount of claim	Amount proposed in resolution plan (in Rs.)	Timeline	Recovery %	Clause of Resolution Plan
Payment of CIRP Cost Actual CIRP cost till 31.05.2024	Rs. 60,50,000/- CIRP cost shall be adjusted from the payment made to secured financial creditor. Total amount has been capped by the SRA at Rs. 74,75,000/-	E + 60	100 %	Clause 10.1 (pg. 33 of resolution plan)
Payment to the Secured Financial Creditors Total claim of secured financial creditor- Rs. 2,67,95,282/-	Rs. 74,75,000/- (subject to adjustment of CIRP cost capped by the SRA at Rs. 74,75,000/-)	E + 60	5.31% (excluding CIRP cost till 31/05/2024)	Clause 10.2.1 at pg. 36 of resolution plan
Payment to the Unsecured Financial Creditors Total claim of unsecured financial creditor- Rs. 20,74,164	Rs. 43,840/-	E + 60	2.11%	Clause 10.2.9 at pg. 41 of resolution plan
Payment towards the Operational Creditors (excluding workmen & Employee) Total claim of operational creditors Rs. 57,32,330/-	Rs. 1,21,160/-	E + 60	2.11%	Clause 10.4 at pg. 43 of resolution plan
Payment towards the Govt. Dues Total admitted claim of Govt Dues- Nil	—	—	—	Clause 10.4 at pg. 43 of resolution plan
Payment toward Employees and workmen) Total claim of workmen and employee- Nil	—	—	—	Clause 10.5.1 at pg. 44 of resolution plan
TOTAL CLAIMS (3,46,01,776)	Rs. 76,40,000/-		4.59% (Excluding CIRP Cost)	-

23. It is stated that as per the Valuation Report, the Fair Value and Liquidation Value of the Corporate Debtor is **Rs. 1,03,40,037/-** and **Rs. 80,10,557/-** respectively.

24. **Monitoring Committee:**

The monitoring committee as stated in clause 5.1 at pg. no. 25 of resolution plan as SRA proposes to settle the dues of the secured financial creditor, Operational Creditors and other stakeholders as upfront payment. Accordingly, Resolution Applicant does not propose any monitoring Committee. However, for supervision of payments to the stakeholders of the Corporate Debtor, in the manner contemplated in the Resolution Plan, it is proposed that same shall be supervised by independent person who shall be appointed by RA on NCLT approval in consultation with secured financial creditor.

25. **Proposal for all Stakeholders:**

A. CIRP Costs:

The outstanding CIRP cost (not more than Rs. 74,75,000/-) shall be paid on actual basis as upfront payment on trigger date. CIRP costs payment at

actual shall be adjusted from the payment made to secured financial creditor to keep proposed plan amount intact.

B. Proposal for Financial Creditors:

The Resolution Applicant proposes to make payment of INR 74,75,000. (Indian Rupees Seventy Four lakhs Seventy Five Thousand Only) to secured financial creditors as upfront payment on trigger date. It is to be note that CIRP cost shall be adjusted in making payment to secured financial creditors. Upon approval of the plan by the committee of creditors, entire secured financial debt of CD shall deemed to be automatically converted into the "Optionally Convertible Debentures" (OCD) in books of accounts of CD. The Optionally convertible debentures shall also deemed to be assigned/transferred by the Secured Financial Creditors in favour of Resolution Applicant upon approval of the plan by the committee of creditors and be effective from the date of upfront payment made by Resolution Applicant to secured financial creditors without any further act, deed or

instrument. Upon such assignment, any type of claim from Secured Financial Creditors will be considered released, discharged, extinguished and all such rights will be taken over by the resolution applicant or its nominee. Any duty, taxes, fees etc. payable on such assignment is deemed to be extinguished, waived and discharged. The same is an integral part of this Resolution Plan. Implementation of the Resolution Plan in terms of the NCLT order shall be deemed to be due compliance of all provisions of Applicable Law in this regard and no separate process or approval shall be required to be made for issuance and transfer of Optionally convertible Debentures and by virtue of Section 238 of Insolvency and Bankruptcy Code, 2016, provisions of Insolvency and Bankruptcy Code, 2016 will prevail over all other laws for the time being in force including the Companies Act, 2013.

C. Proposal for Operational Creditors:

The Resolution Applicant proposes to pay the operational creditors an Upfront Amount of **INR 1,21,160/-** (Rupees One Lakh Twenty One thousand

One Hundred Sixty Only) in proportion to the aggregate of their claims (i.e. claims filed with the RP, without contesting the amount claimed by them (whether admitted by the RP or not or rejected by the RP) and + as appearing in the Balance Sheet as the case may be) The same shall be paid as upfront payment on trigger date from the Upfront Cash under this Resolution Plan shall be given priority in payment over the Financial Creditors. On NCLT Approval date, admitted claims of each of the respective OC, without any further act or deed, either on the part of respective OC or RA, shall be deemed to have been converted into fully paid Optionally Convertible Debenture (as defined in Resolution Plan) of face value of Rs. 10/- each. Such OCDs of each of the respective OC, without any further act or without executing any instrument /agreement by OC or RA, shall also be deemed to have been transferred to RA against the proportionate amount paid by RA to each of such OC as per the Plan approved by the NCLT.

For this purpose, admitted claim of respective OC shall be rounded up to the nearest ten.

D. With respect of Proposal for shareholders of Corporate Debtor, it is stated that:-

*“Shares of existing equity Shareholders **shall be extinguished** completely. Shareholders including preferential shareholders are not offered any payment. Further no payment is offered to the management/promoter/related party of the CD as they are the helm of the management of the corporate debtor.”*

26. With respect to the preferential, undervalued, fraudulent and extortionate (**“PUFE”**) **transactions**, it is stated that:-

“It is clarified that the existing promoters, shareholders, managers, directors, officers, or such other person in charge of the affairs and management of the Company (including any person who was an 'officer in default' or 'occupier') shall continue to be responsible and liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the Adjudicating Authority pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the IBC) or any acts or omissions in breach of applicable law (including but not limited to environmental laws, foreign exchange laws and regulations, labour and employment laws, and laws relating to anti-corruption and prevention of money laundering or diversion of funds) which

occurred prior to the Approval Date, whether civil or criminal, pending before any authority, court, tribunal or any other forum prior to the Approval Date or (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the Adjudicating Authority pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the IBC), whether civil or criminal, that may be initiated or instituted post the approval of the Resolution Plan by the Adjudicating Authority on account of any transactions entered into, or decisions or actions taken by, such existing promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of the company, and the Company, the Resolution Applicant and the Resolution Professional shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

For avoidance of any doubt, any proceedings, inquiries, Investigations, orders, show cause, notices, suits, litigation etc., whether civil or criminal, that are initiated or instituted pre or post of the approval of the Resolution Plan by any person on account of any transactions entered into, or decisions or actions taken by, such existing promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of the company with the said person, in such circumstances, the Resolution Applicant or the Company shall not be held liable in any manner and the previous promoters, management, officer, employees and any person related to previous promoters shall be held liable for the same.

In the event any transaction is avoided/set aside by the Adjudicating Authority in terms of Sections 43, 45, 47, 49, 50

or 66 of the Code, or any recovery done by Resolution professional or secured financial creditor in any manner including but not limited to selling of properties under Sarfaesi Act or private treaty /OTS proposal from corporate debtor/ old directors / personal guarantor/any third parties after the initiation of the CIRP of CD, whether prior to the NCLT Approval Date or after the NCLT Approval Date, such sums shall be solely for the benefit of the Resolution Applicant, and shall made be available to Resolution Applicant to discharge payment obligations under this plan and the Resolution applicant will have to right to recourse and recovery from secured Financial Creditors of the company of such amount received and if any such sum is received by the secured financial creditor, the same shall be adjusted while making payment to the secured financial creditor by the resolution applicant under this Resolution Plan.”

27. Belated Claim by GST:

At this juncture, it is mentioned by the applicant that during the pendency of resolution plan application being I.A. No. 75/2023 (Resolution plan approved by CoC on 14.07.2022 in 5th CoC meeting), the applicant on 27.12.2023 received a belated claim (with a delay of 525 days) dated 21.12.2023 in Form -B from the office of the Assistant Commissioner of State Tax for a total amount of Rs. 14,86,25,040/- i.e., Principal of Rs. 6,63,51,410/-

+ Interest of Rs. 7,56,38,489/- and Penalty of Rs. 66,35,141/-.

28. It is further stated that in furtherance to the receipt the said belated claim and the approval of Resolution Plan by the members of the CoC, the applicant on 22.01.2024 convened the 13th meeting of CoC to discuss the way forward of the said belated claim. In the said 13th meeting it was discussed and unanimously decided that the claim submitted by government authority ought to be Rejected as the same is a belated claim, submitted in December, 2023 however, the Resolution Plan was already approved by the CoC Members in the 9th CoC Meeting held on 05.11.2022. The relevant discussion of the meeting rejecting the claim submitted by GST Department is as follows:

"The RP apprised the COC Members that the RP is in receipt of the claims filed by the government authority in FORM B as per IBBI Regulations, 2016 after the filing of the Resolution Plan before the Hon'ble NCLT for the approval. The RP presented before the COC Members the chart depicting the name of the claimant along with the amount of its claims filed with the RP, before the COC Members in the present meeting. The COC members were of the opinion that the Claim submitted by

*government authority is a belated claim since the claim was submitted in the month of December, 2023, however, the Resolution Plan was approved by the COC Members in the 9th CoC Meeting held on 05.11.2022. **Hence, the RP will reject the claim submitted by the government authority since it is a belated claim.***

29. That accordingly, the applicant on 05.02.2024 duly sent an email to the GST Department, rejecting their claim as being a belated claim filed with a delay of 525 days.
30. It is submitted that the rejection of the claim submitted by GST Department on the ground of it being belated is based on the law settled by the Hon'ble Supreme Court of India in the matter of **"RPS Infrastructure Ltd. V. Mukul Kumar and Anr."** (Civil Appeal No. 5590 of 2021 dated 11.09.2023) whereby the Hon'ble Court has been pleased to hold that the delay in filing claim(s) cannot be condoned after the approval of the Resolution Plan from the members of CoC. The relevant Para of the said judgment of the Hon'ble Supreme Court is reiterated herein:

"19. The second question is whether the delay in the filing of claim by the appellant ought to have been condoned by respondent no. 1. The IBC is a time bound process. There are,

of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the appellant is of 287 days. The appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.

20. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.

21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, 8 the Court cautioned against allowing claims after the resolution plan has been accepted by the COC."

31. The applicant submits that resolution plan submitted by the successful Resolution Applicant was approved by the CoC members with requisite majority in favour of

the resolution plan and which is above the mandatory requirement under Section 30(4) of the Code which read as:

Section 30(4) of the Code

The committee of creditors may approve a resolution plan by a vote of not less than [sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 294 and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 294, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 294:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate

insolvency resolution process shall be completed within the period specified in that sub-section: Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.

32. With respect to the **Performance Security**, it stated that:-

(a) The Resolution Applicant has transferred an amount of INR 5,00,000/- (Indian Rupees Five Lakhs Only) by way RTGS in favour of the Corporate Debtor as EMD for EOI and necessary EMD for submitting resolution Plan. Resolution professional by mutual consent with Resolution applicant may set-off Earnest Money and Resolution Plan committed amount as mentioned herein above against the upfront amount committed by the RA.

(b) In the event this Resolution Plan is approved by the CoC, the Resolution Applicant will submit necessary EMD ("Performance Bank Guarantee" or "Cash PG") as per terms of RFRP.

33. The **amounts** provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs.)

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Claimed

						(%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors		2,67,95,282	2,67,95,282	74,75,000 (subject to adjustment of CIRP cost of Rs. 60,50,000)*	5.31%
2	Unsecured Financial Creditors	(i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	20,74,164/-	20,74,164/-	NA 43,840/-	2.11%
3	Operational Creditors	(a) Related Party of Corporate Debtor				
		(b) Other than (a) above: (i) Government (ii) Workmen (iii) Employees (iv) other operational creditor	57,32,330/- 14,86,25,040/-	57,32,330/-	1,21,160/-	2.11%
		Total[(a) + (b)]	15,43,57,370	57,32,330	1,21,160	2.11%
4	Other debts and dues	Contingent liabilities	-	-	-	-
Grand Total			18,32,26,816	3,25,27,612	76,40,000	

*CIRP cost is estimated to **Rs. 60.5 lakhs** till 31/05/2024, which shall be adjusted before making payment to secured financial creditors. The total amount has been capped by the SRA at Rs. 74,75,000 and the netting of CIRP expenses shall be made from the amount to be paid to Secured Financial creditors only.

34. Source of Funds:

The **source** of the above is as under:

It is submitted that IA 08 of 2024 was listed before this Tribunal on 05.04.2024 whereby, this Tribunal, directed the Deponent to file an Affidavit before this Tribunal, putting on record, the Financial Position of the Resolution Applicant to discharge its Payment Obligation as stated under the Resolution Plan.

35. Further it is stated that pursuant to the order dated 05.04.2024 applicant accordingly, sent email dated 15.04.2024 to Resolution Applicant to provide specific details regarding source of funds to discharge its Payment Obligation as stated under the Resolution Plan. That in response to the same, the Resolution Applicant replied vide Email dated 20.04.2024. The same mails applicant placed on affidavit dated 24.04.2024 before the Adjudicating Authority in IA 08 of 2024. That SRA also filed an affidavit in compliance of same order to provide a comprehensive and detailed overview of the sources of funds that will be utilized to fulfil its Payment Obligation, as stated in the Resolution Plan.

36. It is submitted by the applicant that SRA in its affidavit dated 25.04.2024 stated that the total commitment under the revised resolution plan proposed for Octagon Communications Pvt. Ltd. is Rs. 76.40 Lakhs. Out of total commitment, an aggregate amount of Rs. 22.50 Lakhs have already been deposited with the RP as EMD and Performance Security. That the SRA is having Net Worth of Rs. 8,19,52,870/- as on 31.03.2023. That SRA is having readily realisable assets of Rs. 1,00,00,000/- out of inter-corporate deposits advanced to M/s Earthstone Commodities Pvt. Ltd. to the tune of Rs. 5,91,77,740/- are proposed to be utilised to finance the acquisition under the present resolution plan.

37. The **interests of existing shareholders** have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	10,000	Nil	100%	0%
2	Preference	-	-	-	-

38. The **compliances** of the Resolution Plan is stated to be as under:-

<i>Section of the Code / Regulation No.</i>	<i>Requirement with respect to Resolution Plan</i>	<i>Clause of Resolution Plan</i>	<i>Compliance (Yes / No)</i>
25(2)(h)	<i>Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?</i>	<i>Annexure to the Resolution Plan.</i>	Yes
Section 29A	<i>Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?</i>	<i>Affidavit along with Resolution Plan.</i>	Yes
Section 30(1)	<i>Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?</i>	Yes	Yes
Section 30(2)	<i>Whether the Resolution Plan-</i> <i>(a) provides for the payment of insolvency resolution process costs?</i> <i>(b) provides for the payment to the operational creditors?</i> <i>(c) provides for the payment to the financial creditors who did not vote in favour of the</i>	 (a) Clause 10.1 – Pg.34 (b) Clause 10.4 – Pg.41 (c) Clause 10.2.1(g) – Pg.36	 (a) Yes (b) Yes (c) Yes

	<p><i>resolution plan?</i></p> <p><i>(d) provides for the management of the affairs of the corporate debtor?</i></p> <p><i>(e) provides for the implementation and supervision of the resolution plan?</i></p> <p><i>(f) contravenes any of the provisions of the law for the time being in force?</i></p>	<p><i>(d) Clause 6 – Pg.27-28</i></p> <p><i>(e) Clause 5.1 – Pg.26</i></p> <p><i>(f) NO</i></p>	<p><i>(d) Yes</i></p> <p><i>(e) Yes</i></p> <p><i>(f) Yes</i></p>
<i>Section 30(4)</i>	<p><i>Whether the Resolution Plan (a) is feasible and viable, according to the CoC?</i></p> <p><i>(b) has been approved by the CoC with 66% voting share?</i></p>	<p><i>(a) Deliberation of Resolution Plan was made by CoC in 17th CoC meeting.</i></p> <p><i>(b) Yes, approved by 92.82% voting share.</i></p>	<p><i>(a) Yes</i></p> <p><i>(b) Yes</i></p>
<i>Section 31(1)</i>	<i>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</i>		<i>Yes</i>
<i>Regulation 35A</i>	<i>Where the resolution profesional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66,before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?</i>	<i>The Resolution Professional appointed CA Shivam Soni as the Transaction auditor on 05.05.2022.</i>	<i>Yes</i>

<i>Regulation 38 (1)</i>	<i>Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?</i>	<i>Clause 10.4</i>	<i>Yes</i>
<i>Regulation 38(1A)</i>	<i>Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?</i>	<i>Yes</i>	<i>Yes</i>
<i>Regulation 38(1B)</i>	<p><i>(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.</i></p> <p><i>(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?</i></p>	<p><i>(i) No the Resolution Applicant or any of its related parties have not failed to implement or have not contributed to the failure of implementation of any resolution plan approved under the Code.</i></p> <p><i>(ii) Yes, a declaration to that effect – Pg. 76-78.</i></p>	<i>Yes</i>
<i>Regulation 38(2)</i>	<p><i>Whether the Resolution Plan provides:</i></p> <p><i>(a) the term of the plan and its implementation schedule?</i></p> <p><i>(b) for the management and control of the business of the corporate debtor during its term?</i></p> <p><i>(c) adequate means for supervising its implementation?</i></p>	<p><i>(a) Clause 6- Pg. 26-27</i></p> <p><i>(b) Clause 6- Pg. 26-27</i></p> <p><i>(c) Clause 6- Pg. 26-27</i></p>	<p><i>(a) Yes</i></p> <p><i>(b) Yes</i></p> <p><i>(c) Yes</i></p>

38(3)	<p><i>Whether the resolution plan demonstrates that –</i></p> <p><i>(a) it addresses the cause of default?</i></p> <p><i>(b) it is feasible and viable?</i></p> <p><i>(c) it has provisions for its effective implementation?</i></p> <p><i>(d) it has provisions for approvals required and the timeline for the same?</i></p> <p><i>(e) the resolution applicant has the capability to implement the resolution plan?</i></p>	<p><i>(a) Pg. 77</i></p> <p><i>(b) Pg. 77</i></p> <p><i>(c) Clause 6 – Pg. 26-27</i></p> <p><i>(d) Yes</i></p> <p><i>(e) Yes</i></p>	Yes
39(2)	<i>Whether the RP has filed applications in respect of transactions observed, found or determined by him?</i>	No	Yes
Regulation 39(4)	<i>Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.</i>	Clause 5.2 – Pg. 27	

39. Lastly, it is submitted that applicant has preferred this Application in furtherance to his duties as the RP of the Corporate Debtor and has complied with all the applicable regulations towards discharge of his

functions as the RP of the Corporate Debtor. The Applicant further submits that the Resolution Plan has been approved by COC with requisite majority in favour of Resolution Applicant Thirdeye Tradelink Private Limited. The Applicant therefore requests this bench to make this application absolute.

40. **ANALYSIS AND DIRECTIONS BY THIS TRIBUNAL**

I. It is seen that, the applicant RP has pleaded to extend the CIRP period from 07.12.2022 to 16.05.2024 in view of various revision in resolution plan in the interest of all the stakeholders. In interest of justice and keeping in view that resolution plan was remitted back for consideration of COC/amendment, this Tribunal allows the extension of the CIRP period from 07.12.2022 to 16.05.2024 which is pleaded by the applicant as Prayer (c).

II. It is seen from revised Form – H that the Liquidation value of the Corporate Debtor is arrived at **Rs. 80,10,557/-** and the corresponding Fair value is

arrived at **Rs.1,03,40,037/-**. The Resolution Plan is for an amount of **Rs. 76,40,000/-**.

III. With regard to the Belated Claim filed by the State Tax Department, Page 308 of the Application reflects the details of the demand by the State Tax Officer under Section 73 of the CGST/GGST Act, 2017. The date of demand is stated to be **30th September 2023**, which is the order under Section 73 of the CGST/GGST Act, 2017. The amount in the said order is for the period between July 2017 to March 2018 and aggregates to the sum of **Rs. 14.86 Crore**. However, no security has been stated to be held by the State tax Department against the said claim as per the claim form or the demand notice attached with the claim form. In view of the same, the applicant RP has treated the said claim as unsecured Operational Debt.

IV. The Claim of the State Tax Department is arising under the CGST/GGST Act, 2017 and in our view is not attracting the ratio of the Judgment passed by

the Hon'ble Supreme Court in the matter of ***Rainbow Papers Limited.***

- V. There is **one** secured Financial Creditor in the matter viz., ICICI Bank Ltd. The amount due of the secured Financial Creditor is **Rs. 2,88,69,446/-**. The Resolution Applicant proposes to make payment of **INR 74,75,000**. (Indian Rupees Seventy Four lakhs Seventy Five Thousand Only) to secured financial creditors as upfront payment on trigger date. It is to be noted that CIRP cost shall be adjusted in making payment to secured financial creditors. Upon approval of the plan by the committee of creditors, entire secured financial debt of CD shall be deemed to be automatically converted into the "Optionally Convertible Debentures" (OCD) in books of accounts of CD. The Optionally convertible debentures shall also be deemed to be assigned/transferred by the Secured Financial Creditors in favour of Resolution Applicant upon approval of the plan by the committee of creditors and be effective from the date of upfront payment

made by Resolution Applicant to secured financial creditors without any further act, deed or instrument.

VI. There is **one** Unsecured Financial Creditor in this matter, viz. Shriram City Union Finance Limited. The amount owed to the Unsecured Financial Creditor by the Corporate Debtor aggregated to the sum of **Rs. 20,74,164**. The Resolution Applicant proposes to make payment of **INR 43,840/-** (Indian Rupees Forty Three Thousand Eight hundred Forty Only) to unsecured financial creditors as upfront payment on trigger date in the proportion of their claims.

VII. The aggregate admitted claims of the operational creditors are to the tune of Rs. 57,32,330/-. The Resolution Applicant proposes to pay the operational creditors an Upfront Amount of **Rs.1,21,160/-** (Rupees One Lakh Twenty One thousand One Hundred Sixty Only) in proportion to the aggregate of their claims (i.e. claims filed with

the RP, without contesting the amount claimed by them (whether admitted by the RP or not or rejected by the RP) and + as appearing in the Balance Sheet as the case may be). The same is to be paid as upfront payment on trigger date from the Upfront Cash under this Resolution Plan shall be given priority in payment over the Financial Creditors. It is stated that on NCLT Approval date, admitted claims of each of the respective OC, without any further act or deed, either on the part of respective OC or RA, shall be deemed to have been converted into fully paid Optionally Convertible Debenture (as defined in Resolution Plan) of face value of Rs. 10/- each. Such OCDs of each of the respective OC, without any further act or without executing any instrument /agreement by OC or RA, shall also be deemed to have been transferred to RA against the proportionate amount paid by RA to each of such OC as per the Plan approved by the NCLT. For this purpose, admitted claim of respective OC shall be rounded up to the nearest ten.

VIII. Based on the averments submitted by the applicant RP with regards to the proposal given by the Resolution Applicant to the Operational Creditors, it is seen that the Resolution Applicant proposes to pay an upfront amount of **Rs.1,21,160** to the Operational Creditors. Further, should the plan be approved, each of the admitted claims of the Operational Creditors would be deemed converted into fully paid Optionally Convertible Debentures (OCDs) with a face value of Rs. 10/- each, which in turn constitutes a “debt instrument.”

Consequently, it is noticed that even if the plan is approved, the operational debt would persist on the books of the Corporate Debtor, however the debt will be payable to the RA who is going to hold the OCD's. In our considered view, this is in contravention of Section 30(2) of the Insolvency and Bankruptcy Code as cause of default, which was a Section 9 application remains un-addressed.

IX. Furthermore, RA has proposed issuance of debentures to the OCs which is for that portion of

the claim which remains unpaid by way of cash/bank. Further assignment of the new instrument being OCD is sought by way order of this Tribunal. However, no material has been placed before us to show that the various OCs whose claims were admitted have accented to the proposition of RA. It is to be noted that the plan was approved by COC where only the financial creditors of the Corporate Debtor voted and no voting was taken from the operational creditors. Hence, should the plan be approved, it would result in the forced consent of the Operational Creditors, thereby violating the principles of natural justice.

X. The cause of default has not been addressed by the applicant and the Operational Debt is will persist in new shape even if this plan is approved.

XI. It is also seen that, the applicant has filed multiple Interlocutory applications regarding the approval of the Resolution Plan vide IA No. 75 of 2023 and IA No. 08 of 2024, which have been remitted back by

this Tribunal for reasons recorded in those orders, meaning thereby that several opportunities were given to the applicant RP/COC and RA to modify the Resolution Plan. However they were not availed and the present Resolution Plan was presented before this Tribunal.

XII. This tribunal is fully conscious of the need to keep judicial intervention or innovation from NCLT at its bare minimum and should not disturb the foundational principles of the IBC, as the law laid down in catena of rulings of Hon'ble Supreme Court of India, however at the same time we cannot overlook or brush aside this glaring breach of compliance of a statutory mandatory provision by the successful resolution applicant when noticed.

XIII. Reliance in this regard can be placed on the ruling of Hon'ble Supreme Court of India, in ***M.K. Rajagopalan v. Dr. Pariasamy Palani Gounder & Another***, 2023 Live Law (SC) 403, on the aspect of

commercial wisdom of CoC in approval of resolution plan, the Bench observed that:

“The principles underlying the decisions of this Court respecting the commercial wisdom of CoC cannot be over-expanded to brush aside a significant shortcoming in the decision making of CoC when it had not duly taken note of the operation of any provision of law for the time being in force.”

XIV. This Tribunal therefore, proceed to see whether there is any significant shortcoming in complying any of the mandatory provision of law for the time being in force.

XV. **Section 30** of the Code states that:

“30. Submission of resolution plan. -

(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.

(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.]

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

*[(4) The committee of creditors may approve a resolution plan by a vote of not less than **[sixty-six]** per cent. of voting share of the financial creditors, after considering its feasibility and viability, **[the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor]** and such other requirements as may be specified by the Board:*

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding

thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of Period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that subsection]:

[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the Committee of creditors to the Adjudicating Authority.”

XVI. And, **Section 31(2)** of the Code states that:

(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.

XVII. In the above backdrop we have no hesitation to hold that the treatment as proposed under the plan as regards the operational creditors and issuance of

OCD's to the RA for residual portion of Debt, does not passes the mandate u/s 30 (2) (b) and (e) of IBC, 2016.

XVIII. Following the ruling in *re, M.K. Rajagopalan*, supra, this tribunal hereby hold that the resolution plan of the successful resolution applicant as submitted before us, being in breach of the statutory provision, is liable to be rejected.

XIX. Accordingly and in view of the discussion above, the relying on the provisions of Section 31(2) of IBC, 2016, the Resolution Plan in question is hereby **rejected** by this Adjudicating Authority.

XX. The provisions under Section 33(1)(b) of the Code are reproduced below:

(1) Where the Adjudicating Authority, -

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall -

- (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
- (ii) issue a public announcement stating that the corporate debtor is in liquidation; and*

*(iii) require such order to be sent to the authority
with which the corporate debtor is registered.*

- XXI. As a consequence to rejection of the Resolution Plan this Adjudicating Authority and as the CIRP period of the Corporate Debtor has expired on **16.05.2024**, the Tribunal relying on the provisions of Section 33(1) (b) is forced to order for Liquidation of the Corporate Debtor.
- XXII. In terms of the above, **we hereby order for liquidation of the Corporate Debtor.**
- XXIII. IBBI vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under section 34 (4) (b) of the Code, had recommended that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator (*read liquidation*) order is passed henceforth. In terms of the above circular of IBBI, we hereby appoint **Mr. Jigar Tarunkumar Bhatt** an IPA having registration no. IBBI/IPA-001/IP-P-01917/2019-2020/13005, as per the panel suggested by IBBI for this Bench for the

period of July, 1 to December 31, 2024, as the Liquidator of the Corporate Debtor to carry the liquidation process subject to the following terms of the directions: -

- a) The Corporate Debtor **M/s. Octagon Communications Limited** shall be ordered for liquidation in terms of the provisions of section 33(1)(b) of the Code r.w. Regulations made there under which shall be effective from the date of this order.
- b) The Moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of liquidation.
- c) As per section 34(4)(b) of the Code, **Mr. Jigar Tarunkumar Bhatt** an IPA having registration no. IBBI/IPA-001/IP-P-01917/2019-2020/13005 is hereby appointed as a Liquidator of the Corporate Debtor I.e. M/s. Octagon Communications Limited. The Liquidator so appointed shall complete the liquidation process as per the provisions of the Code r.w. the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d) All the powers of the Board of Directors, key managerial persons, and the partner of the

Corporate Debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the Liquidator.

- e) The personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- f) The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and same shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.
- g) Once the liquidation process is initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor. The Liquidator has the liberty to institute a suit and other legal proceedings on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of section 33 of the Code.
- h) This liquidation order shall be deemed to be notice of discharge to the officers, employees, and workmen of the Corporate Debtor except to the extent of the business of the Corporate

Debtor continued during the liquidation process by the Liquidator.

- i) This Adjudicating Authority directs the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.
- j) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations, and also file its response for disposal of any pending Company Applications during the process of liquidation.
- k) The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.

1) The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, IBBI, the resolution professional, and the Liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities.

41. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

42. **IA(Plan)/22/AHM/2024** shall stand **disposed off** accordingly.

43. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps. Files be consigned to the record.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

HG