

BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD

IA 350 of 2019 in CP(IB) 285 of 2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)  
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 30.09.2019

Name of the Company: Pinakin Shah RP For AUM Structbuild Pvt Ltd

Section of the I & B Code: Section 30 (6) of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	PAVANS GODIAWALA	Adv.	Petitioner	<u>N.J.Mody</u>
	NAISHAL J. MODY			
2.	PAVAN. S. GODIAWALA			


**ORDER**

The Petitioner is represented through their respective Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

  
[PRASANTA KUMAR MOHANTY]  
MEMBER (TECHNICAL)

  
[HARIHAR PRAKASH CHATURVEDI]  
MEMBER (JUDICIAL)

Dated this the 30th day of September, 2019.

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

**Interlocutory Application No. 350 of 2019**

**Under section 30(6) OF IBC for the acceptance of Resolution Plan**

**In C.P. (I.B.) No. 285/9 /NCLT/AHM/2018**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)  
Hon'ble Mr. Prasanta Kumar Mohanty, Member (Technical)**

**In the matter of:**

**Mr.Pinakin Shah, Resolution Professional for :**

**Corporate Debtor, AUM Structbuild Private Limited in the  
matter of CP(IB) No.285/9/NCLT/AHM/**

**M/s.Venus Furnitures  
Plot no .15, Girnar House,  
Adarsh Society, Near Bank of Baroda,  
Market Yard Road, Pune - 411 037  
Maharashtra State**

**....Applicant/Operational Creditor**

**Versus**

**AUM Structbuild Private Limited,  
Having its registered office at:  
Office No.6 to 12, 2<sup>nd</sup> Floor,  
Subhash Park Shopping Centre,  
Sangam Char Rasta, Harni Road,  
Vadodara - 390018  
Gujarat State**

**....Respondent /Corporate Debtor**

**Appearance:**

**Mr. Pavan Godiawala, Learned Advocate and  
Mr. Ishan Shah Learned Advocate for RP.  
PCS Mr. Rahul Shahasrabuddhe, for OC and**

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Advocate Shri Piyush Luctuke representing the PCS Mr. Rahul Sahsrabuddhe.

**ORDER Pronounced and Delivered on**

**Dated : 30/09/2019**

**[Per: Mr. Prasanta Kumar Mohanty, Member (Technical)]**

**I.A. 350 of 2019**

1. This I.A. No. 350 of 2019 has been filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional, **Mr. Pinakin Shah before this** Tribunal, seeking approval of Resolution Plan, which has been duly approved by 100% voting of CoC, from this Adjudicating Authority under section 31(1) of the Insolvency and Bankruptcy Code, 2016.
2. As observed this application has been filed by the Resolution Professional under Section 30(6) enclosing -
  - a) Affidavit relating to the process undertaken by the Resolution Professional (Page 11-14)
  - b) Copy of minutes of the first CoC Meeting dated 10/12/2018 (Page 27-34)
  - c) Invitation for Expression of Interest under Regulation 36A of the Insolvency and Bankruptcy Board of India, 2016(Page 35-38)
  - d) Copy of minutes of the 3<sup>rd</sup> CoC Meeting held on 22/04/2019(Page 39-42)
  - e) Copy of minutes of the 4<sup>th</sup> CoC Meeting held on 06/05/2019(Page 52-103)
  - f) Resolution Plan approved by the CoC(Page 52-103)
3. It is stated that the Applicant, Mr.Pinakin Shah, Resolution Professional (hereinafter referred as RP) was appointed as Interim Resolution Professional vide order of this Bench in CP 285/9/NCLT/AHM/2018 dated 12/11/2018.

4. It is stated that the application is within the jurisdiction of the bench.
5. It is further stated that the Application is within time as provided under **Section 12** of the Insolvency and Bankruptcy Code, 2016, as the **last date of** completion of the Corporate Insolvency Resolution Process is 180 days from 13/11/2018 as mentioned in Order no.CP 285/9/NCLT/AHM/2018 dated 12/11/2018 and hence, **11/05/2019** is the last date.
6. It is stated that the Corporate Debtor was incorporated on 11/05/2010 under the Companies Act, 1956 with the Registrar of Companies, **Gujarat as a Private Limited Company** and is engaged in to carry on the business of execution of Government Contracts in relation to real estate. It is stated that the Applicant issued a **public announcement** on 16/11/2018 in daily newspaper, website and invited **claims from** the creditors of the Corporate Debtor. Accordingly, on receiving claims, the COC was constituted on 04/12/2018 and first meeting was called on 10/12/2018 and the Applicant was **confirmed** as the **Resolution Professional** of the Corporate Debtor thereon.
7. It is further stated that the Applicant has ensured **statutory compliance of all the provisions** of the Code and the Rules and Regulations made thereunder. Subsequent to collation of claims, the Applicant filed list of Creditors, which is as follows –
  - i. Name of the Financial Creditor - State Bank of India, Mandvi Branch, Baroda.
  - ii. Claim admitted – Rs.1,97,24,000.00
  - iii. 100% exposure and share in Committee of Creditors.

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8. It is further stated that as per the requirements of Section 25(2)(h) of the Code, the Applicant initiated the process of inviting prospective Resolution Applicants for submission of Resolution Plan(s) based on Information Memorandum prepared under Section 29 of the Code for the resolution of the Corporate Debtor, which was also published in daily newspaper dated 16.02.2019. Subsequently, **Mr.Sanjay Patel, Director** of the **Corporate Debtor, a person eligible under Section 29A** of the Code submitted Resolution Plan. Further, the Resolution Applicant in the third meeting held by the CoC on 22/04/2019, submitted **Resolution Plan before the CoC** and the Resolution Professional sought time to examine compliance under Section 30(2) of the Code read with Regulation 39. Further, in the fourth meeting held by the COC on 06/05/2019, the Resolution Plan submitted by the Resolution Applicant was **declared approved by a vote of 100% of the CoC**. Accordingly, four meetings of CoC were held and notice for the meeting of the CoC were sent to the Financial Creditor and Director(s) of the Corporate Debtor and in second CoC meeting the **original applicant Operational Creditor, Venus Furnitures was invited to substantiate its claim.**

9. The highlights of the Resolution Plan, attached at Annexure -f of the paper book as under:

The payment of the insolvency resolution process cost, dues of the financial (Secured & Unsecured) & operational creditor (contingent) shall be cost of resolution plan.

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### 9.1 Resolution Process Cost

Resolution Professional Cost :-Rs 2,26,000/-  
Going Concern Cost :- Rs 68,92,533/-  
Total Cost :- Rs 71,18,533/-

### 9.2 Means of financing:

Out of the realizable Trade Receivables and Other Current Assets of the Corporate Debtor

### 9.3 Financial Creditors

As on Information Memorandum Date, outstanding was Rs 1,90,02,554/- against the claim of Rs 1,97,24,000/-.

### 9.4 Means of financing

Fixed Deposits pledged with SBI Rs. 2,61,54,467/-  
No provisions relating to payment of dues equivalent to the liquidation value of dissenting financial creditors in priority to consenting financial creditors is required. There was no waiver, sought from the Financial Creditors.

### 9.5 Unsecured Financial Creditors.

As on information Memorandum date, outstanding amount of HDFC, TATA Capital and ICICI, stated as under, were accepted as liability.

HDFC	ICICI	TATA	Total
Rs.27,72,840/-	Rs.12,17,680/-	Rs.10,64,320/-	Rs.50,54,840/-

## 10. Means of Financing

Fixed Deposit with SBI (after discharging the Liabilities of SBI) and out of the realizable Trade Receivables and Other Current Assets of the Corporate Debtor.

## 11. Operational Creditor

Claim of Rs.36,76,750/- received from the Operational Creditor, Venus Furnitures was not **substantiated by him and hence rejected.** Against rejection, appeal by way IA No 191/2019 was preferred by it and is pending before this **Hon'ble Tribunal for Adjudication.**

12. In order to close the CIRP of Corporate Debtor, without prejudice to right of the Corporate Debtor, the **liability being contingent in nature is provided** for in the resolution plan, **subject to admission of the claim by the Hon'ble NCLT.**

13. Means of financing:

The Resolution Applicant has agreed to place performance security of Rs.18,40,000/- by way of deposit with SBI and also agreed to bring the matching amount as mentioned at Annexure V of the Resolution Plan if required.

13.1 A provision relating to payment of dues **equivalent to the liquidation value** of Operational Creditors in priority to any Financial Creditor is not required.

13.2 No provision is required to be made for payment to the worker & employees, Income Tax and GST/VAT liability.

13.3 Mr.Sanjay Patel, Resolution Applicant to **look after the management and control** of the business during the term of Resolution Plan.

13.4 The implementation of resolution plan shall commence from date of approval of resolution plan by Hon'ble NCLT. **The Applicant shall hand over the charge of affairs of Corporate Debtor** to Mr.Sanjay Patel Resolution Applicant, of the Corporate Debtor. All the records, books of accounts, assets, documents and agreements shall be handed over to Mr.Sanjay Patel, Resolution Applicant of the Corporate Debtor. Shri Sanjay Patel is a Civil Engineer having experience in this field for more than 2 decades for running the business successfully.

14. "C. COST AND MEANS OF RESOLUTION PLAN:

1) Cost of Resolution Plan:

*Insolvency Resolution Process Cost Proposal for payment of the insolvency resolution process cost in priority to the payment of the other debts of the Corporate Debtor and identification of specific sources of funds for payment of the same.*

*Total cost incurred is Rs.3,03,89,272.00, out of which Rs.2,37,90,437.00 has been paid and Rs.65,98,835.00 towards Site and Project Expenses remains unpaid. The details are more particularly mentioned in Annexure – II of the application.(Page 95 of IA)*

*Total cost to be incurred for IRP/RP is Rs.2,26,000.00 and for Going Concern Cost is Rs.2,93,698.00, which aggregates to Rs.5,19,698.00. The details are more particularly mentioned in Annexure – II of the application. (Page 96 of IA)*

15. Identification of specific sources of funds for payment of the same.

*Out of the realizable Trade Receivables and other Current Assets of the Corporate Debtor as per Annexure III (Page 97)*

*A fund of Rs.5,36,83,065.00 is available with the Corporate Debtor, whereas Outstanding Debt is of Rs.5,08,22,651.00. The details are more particularly mentioned in Annexure – III of the application. (Page 97 of IA)*

16. Payment of secured financial creditors

i. State Bank of India

Overdraft	:	Rs.1,28,02,554.00
Bank guarantee	:	Rs.62,00,000.00
Total	:	Rs.1,90,02,554.00

ii. Waiver sought:-

Nil

iii. Details of concessions or reliefs to be sought from financial

creditor:-

Nil

iv. Any other terms:-

Nil

v. Payment schedule of the secured financial creditors:-  
As per their sanction letter dated 15/05/2015.

vi. Identification of specific sources of funds for payment of the same:-

Fixed Deposits Pledged Rs.2,61,54,467.00

Statement of Deposits attached at Annexure IV.

vii. Liquidation value Rs.465.64 lakhs.

**17.** Provisions relating to payment of dues equivalent to the liquidation value of dissenting secured financial creditors in priority to consenting financial creditors.

i. Amount- Nil No such secured Financial Creditor

ii. Payment schedule - N.A.

**18.** Proposal for payment of unsecured financial Creditors

a) Bank & Institution

HDFC	ICICI	TATA	Total
Rs.27,72,840/-	Rs.12,17,680/-	Rs.1,64,320/-	Rs.50,54,840/-

b) Directors and its relatives: Rs.1,59,69,975/-

c) Waiver sought :- Nil

d) Details of concessions or reliefs to be sought :- Nil

**19.** **Loan from Directors and its relatives shall be paid after Resolution plan is fully implemented.**

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1. Any other terms:- Nil
2. Payment schedule :- As per sanction letter
3. Identification of specific sources of funds for payment of the same:-

Out of the realizable Trade Receivables and other current assets of the corporate debtor as per annexure III.

**20.** Proposal for payment to Operational Creditor:

Amount - Nil

Claim subject to decision by NCLT in Interim Application number 191 of 2019, filed by M/s Venus Furniture and without prejudice our right to appeal. Rs.37,76,749/-

**21.** Proposal for payment to statutory Dues:

a. Income Tax:

The Company has not received any claim from Income Tax towards income tax Liability. no provisions is required to be made for payment of due on account of income tax. There is no legal case pending in income tax matter.

b. VAT:

The company has not received any claim from VAT Department towards VAT Liability. No Provisions is required to be made for payment of due on account of VAT liability. There is no appeal pending before VAT Authorities.

c. Claim Amount - Nil

**22.** Means of Resolution Plan

The Resolution Applicant is not required to induct any fresh fund immediately to discharge the liability. Infusion by way of deposit to Corporate Debtor a per Annexure V. 50% of the contingent liability of the contingent liability amount to be deposited with SBI, on approval of Resolution Plan. This amount to be considered as performance security within meaning of Regulation 36B(4A) to read with Regulation 39(4).

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23.

The Resolution Plan provides compliance of all the requirements of Section 30 of Insolvency and Bankruptcy Code, 2016 and main contents of the plan are as follows:

- a) Payment of Insolvency Resolution Process Cost in priority to all other debts of the Corporate Debtor;
- b) Payment to the Financial Creditors of Corporate Debtor;
- c) No Statutory dues deferred;
- d) Continued employment to all the workmen of the Corporate Debtor;

	Clas of Creditor	Protection	Remarks
1.	IRP/RP Cost	100%	Immediate on approval of Resolution Plan
2.	Secured Financial Creditors	100%	Repayment and interest as per terms of Sanction
3.	Unsecured Financial Creditors	100%	Repayment and interest as per terms of Sanction
4.	Operational Creditors (undisputed)	100%	As per terms of invoice
5.	Statutory Dues	100%	No outstanding dues
6.	Operational Creditor Disputed claim of M/s.Venus Furniture	100%	Time schedule as mentioned at Annexure V, Subject to admission of claim by the NCLT and without prejudice the right to appeal.
7.	Unsecured Loans from the Promoters	100%	Not to be repaid during the implementation of the Resolution Plan

e) Outstanding debt:-

Rs. 4,71,45,902/- divided as under:

Particulars	Amount Rs.
Resolution Process Cost-RP	2,26,000/-
Resolution Process Cost- Going Concern	68,92,533/-
SBI Fund & Non Fund	1,90,02,554/-
Unsecured Financial Creditors	50,54,840/-
Promoters Contingent liability	1,59,69,975/-
Total	4,71,45,902/-

24. The Resolution Professional has also submitted COMPLAINEE CERTIFICATE in form 'H' attached (Page no.104-112 of paper book)
25. The Resolution Professional prays for the following reliefs:
- (1) *To consider and approve the Resolution Plan as approved by the CoC.*
  - (2) *Consider closing of insolvency resolution process of the Corporate Debtor on approval of the Resolution Plan, under section 31 (1) of the insolvency & Bankruptcy Code,2016*
  - (3) *Consider declaring under section 31 (3) (a) of the Insolvency & Bankruptcy Code, 2016 that the moratorium order passed by the under section 14, shall cease to have effect from the date of approval of the Resolution plan, under section 31 (1) of the Insolvency & Bankruptcy Code,2016;*

### **ORDER**

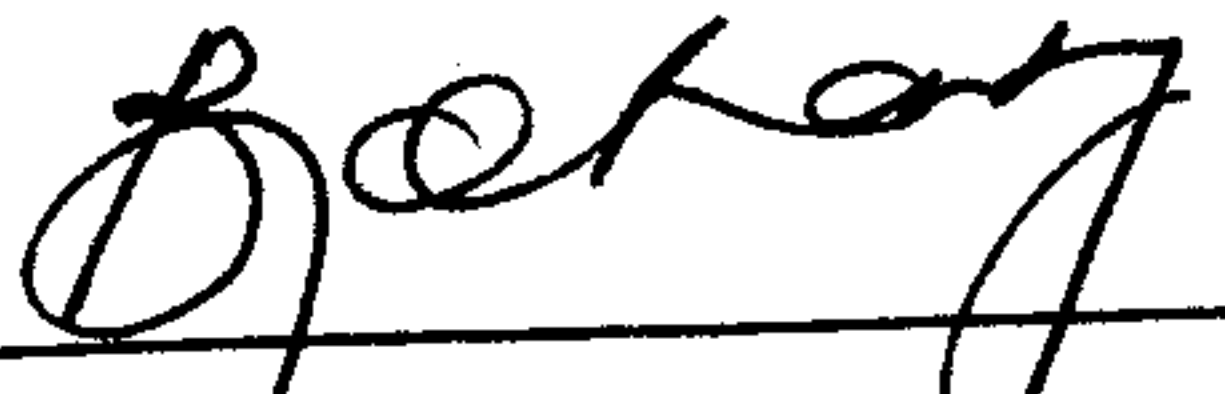
26. Having gone through the documents, papers, materials submitted and on record, this Adjudicating Authority is satisfied that the Resolution Plan as approved by the Committee of Creditors under Sub-Section (4) of Section 30 of Insolvency and Bankruptcy Code, 2016 meets the requirement as referred in Section 30 of Insolvency and Bankruptcy Code, 2016 Sub Section (1), (2), 2a, 2b, 2c, 2d, 2e, 2f, (3), (4), (5) & (6) and has provisions for its effective implementation.


Hence, this Adjudicating Authority **is hereby approved the Resolution Plan submitted by the Resolution Professional** as approved by the CoC. This Resolution Plan is now **binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders** involved in the **Resolution Plan from today.**

27. The moratorium order passed by this Adjudicating Authority on 12/11/2018 is **ceased to have effect** from today.
28. Since the IA 191 of 2019 filed by the Operational Creditor, Venus Furnitures is already disposed of by this Adjudicating Authority declining the claim made therein by the Operational Creditor, the Committee of Creditor/Resolution Professional /Resolution Applicant needs to exclude that amount shown as contingent liability/disputed liability in the Resolution Plan. Accordingly, the disputed/contingent liability shown in the Resolution Plan **is to be reduced to that extent before implementation of Resolution Plan.**
29. The Resolution Professional shall handover the charge of the Corporate Debtor to Mr.Sanjay Patel, Resolution Applicant of the Corporate Debtor immediately.  
All the records, books of accounts, assets, documents and agreements shall be handover to Shri Sanjay Patel, the Resolution Applicant for the Corporate Debtor.
30. The Resolution Professional is directed to forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency Bankruptcy Board of India for their record/database.
31. The Resolution Professional is also directed to file a compliance report of the above directions with this Registry at the earliest and thereafter the Resolution Professional is discharged from this Corporate Insolvency Resolution Process from the date of filing of the compliance report with this Registry.
32. The Registry is hereby directed to communicate the authenticate copy of this order to the Resolution Professional, Corporate Debtor, Resolution Applicant,

Operational Creditor and Registrar of the Company at the earliest through Speed Post/Registered Post.

33. Thus, the present **I.A. No. 350 of 2019 in C.P. (I.B.) No. 285/9/NCLT/AHM/2018** filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 for the acceptance of the Resolution Plan **stands disposed of with the above directions and observations.**

  
(Prasanta Kumar Mohanty),  
Adjudicating Authority  
Member (Technical)

  
(Harihar Prakash Chaturvedi),  
Adjudicating Authority  
Member (Judicial)