

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH, JAIPUR**

**CORAM: SHRI DEEP CHANDRA JOSHI,  
HON'BLE JUDICIAL MEMBER**

**SHRI RAGHU NAYYAR,  
HON'BLE TECHNICAL MEMBER**

**IA No. 41/JPR/2021**  
**In Company Petition No. (IB)-59/7/JPR/2019**

*Under Section 7 of Insolvency and Bankruptcy Code, 2016*

**IN THE MATTER OF:**

**Punjab National Bank  
(Formerly Oriental Bank of Commerce)**

**... Financial Creditor**

**Versus**

**Super Shiv Shakti Chemicals Private Limited**

**...Corporate Debtor**

**MEMO OF PARTIES**

**IA No. 41/JPR/2021**

**Rishabh Chand Lodha Resolutional  
Professional of Super Shiv Shakti  
Chemicals Private Limited**

Address: E-5, Shraman Basant Vihar,  
Gandhi Nagar, Bhilwara-311001,  
Rajasthan

**... Applicant**

**For the Applicant** : R.C. Lodha, RP  
Prashant Agrawal, CA  
Saurav Agarwal, Adv.

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**Order Pronounced On: 29.04.2022**

**ORDER**

**Per: Shri Raghu Nayyar, Technical Member**

1. This Application is filed by Mr. Rishabh Chand Lodha, Resolution Professional ('RP' / 'Applicant') of M/s Super Shiv Shakti Chemicals Private Limited ('Corporate Debtor') under Sections 30(6), Section 31 and 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 ('CIRP Regulations') seeking approval of resolution plan as approved by the Committee of Creditors.
2. The Financial Creditor namely M/s. Punjab National Bank (Formerly Oriental Bank of Commerce, now merged) filed an Application under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') against Corporate Debtor which was admitted by this Adjudicating Authority and Mr. Brajesh Kumar Varma was appointed as Interim Resolution Professional vide order dated 10.01.2020
3. In the present application, the Applicant has submitted that on 15.01.2020, public announcements were issued in accordance with Section 15 of the Code read with Regulation 6(1) of the CIRP Regulations. The said public announcement was made in prescribed Form A in two newspapers, i.e.,

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Indian Express (English) and Danik Navjyoti (Hindi), whereby claims from the creditors of the Corporate Debtor were invited till 27.01.2020, as envisaged in the Code.

4. Thereby, the claim(s) from one Financial Creditor i.e. Punjab National Bank and 137 Operational Creditors (including 114 from Workmen & Employees and 23 other Operational Creditors) were received and provisionally admitted. The Applicant constituted the Committee of Creditors ('CoC') on 03.02.2020 with only one Financial Creditor namely Punjab National Bank holding 100% of the voting rights.
5. The details of the CoC meetings as and when held are as follows:
  - a. The First CoC meeting was convened on 10.02.2020 wherein the CoC passed resolution in respect of initial CIRP activities.
  - b. In the 2<sup>nd</sup> CoC meeting convened on 27.02.2020, the CoC proposed to replace the IRP i.e. Mr. Brajesh Kumar Varma with the present Applicant, i.e. Mr. Rishabh Chand Lodha, as the Resolution Professional of the Corporate Debtor to carry out the CIRP activities. The resolution to replace the IRP was passed by the CoC with 100% vote in favour of the resolution. An application for the aforesaid change, numbered as IA No. 115/2020, under Section 22(3)(b) of the Code was moved before the Adjudicating Authority which came to be allowed on 28.04.2020.

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- c. In the 3<sup>rd</sup> CoC meeting held on 21.03.2020, the CoC rejected the resolution for appointment of Registered Valuers for each class of assets i.e. Land & Building; Plant & Machinery; and Securities and Financial Assets with 100% votes.
- d. In the 4<sup>th</sup> meeting of CoC held on 16.05.2020, the CoC approved the appointment of 6 Registered valuers (2 each for a particular class i.e. Land & Building; Plant & Machinery; and Securities and Financial Assets) with 100% vote. Further the CoC also approved eligibility criteria and evaluation matrix with respect to Form 'G' and also directed/instructed/asked the Resolution Professional to publish the form after lifting of lockdown as publication during lockdown period would not elicit adequate response.
- e. In the 5<sup>th</sup> meeting held on 15.06.2020, the CoC approved the appointment of M/s. Komandoor & Company LLP, as the Forensic/ Transaction Auditor to assist the Resolution Professional. Further the Applicant published the Form G inviting expression of Interest ('EOI') for submission of resolution plan on 11.08.2020 in Indian Express (English) and Dainik Navjyoti (Hindi).
- f. In the 6<sup>th</sup> meeting of CoC held on 27.08.2020, the resolution qua issuance of request for Resolution Plan ('RFRP') was approved vide 100% vote. The amount to be deposited as Earnest Money Deposit

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- (‘EMD’) with the Resolution Plan was fixed at Rs. 25,00,000/- (Rupees Twenty-Five Lakhs) and it was resolved that the Successful Resolution Applicant will provide a Performance Security of Rs. 100.00 Lakhs or 10% of the Resolution Amount, whichever is higher. Further, the Resolution Professional admitted the claim(s) of Two (2) Financial Creditors i.e., Punjab National Bank and Alfa Suiting Pvt. Ltd., Four (4) Workmen & Employees and Twelve (12) Operational Creditors. Revised and re-assigned voting percentage of the financial creditors as such i.e., Punjab National Bank was assigned 99.88% voting share and Alfa Suiting Pvt. Ltd. was assigned 0.12% voting share.
- g. In the 7<sup>th</sup> Meeting of the CoC held on 08.10.2020, in response to the publication of Form G inviting expression of Interest (‘EOI’) Thirteen (13) applications were received out of which Eleven (11) were found eligible and included in the final list of prospective Resolution Applicant (‘PRAs’) dated 15.09.2020. Thereafter, the Applicant received two resolution plans from Searock International Pvt. Ltd. (‘Resolution Applicant No. 1’) and Shubh Labh Contractor Pvt. Ltd. (‘Resolution Applicant No. 2’)
- h. In the 8<sup>th</sup> meeting of CoC held on 27.10.2020, Applicant opened sealed envelopes, containing resolution plans received from resolution

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applicants, to examine and evaluate the resolution plans.

- i. In the 9<sup>th</sup> meeting of the CoC held on 14.12.2020, both the Resolution Applicants presented their Resolution Plans before the CoC and clarified various issues regarding the same. Further the Resolution Applications of the Resolution Applicant No. 1 and Resolution Applicant No. 2 were scored as 74.41/100 and 58.18/100 respectively.
  - j. In the 10<sup>th</sup> meeting of the CoC held on 22.12.2020 and 23.12.2020 the financial bids received from both resolution applicants were discussed and after evaluation of the scores of the Resolution Plan, the CoC unanimously approved the Resolution Application of Resolution Applicant No. 1. In compliance of Regulation 39B of the CIRP Regulations and Section 33 of the Code, the CoC in its 10<sup>th</sup> meeting, estimated Liquidation cost of Corporate Debtor at Rs. 5,70,000/- (Rupees Five Lakhs Seventy Thousand Only) and estimated value of liquid assets available to meet the liquidation cost as NIL. Further in compliance of Section 33 of the code read with Regulation 39C of the CIRP Regulations, the CoC passed a resolution authorizing sale of Corporate Debtor as a “going concern” on standalone/in slump sale/collectively or assets in parcels in the event that the Adjudicating Authority does not approve the resolution plan.
6. As per the valuation reports of the six registered valuers appointed by the

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Applicant for particular class of the Corporate Debtor (Land & Building; Plant & Machinery; and Securities and Financial Assets), the fair value of the Corporate Debtor is Rs. 16,39,76,308.16 (Rupees Sixteen Cores Thirty-Nine Lakhs Seventy-Six Thousand Three Hundred and Eight and Sixteen Paise) and liquidation value of the Corporate Debtor is Rs.11,03,24,309.16 (Rupees Eleven Crores Three Lakhs Twenty-Four Thousand Three Hundred and Nine and Sixteen Paise).

7. The Applicant has also annexed Resolution Plan as Annexure 19 of the Application. As per the same, the Resolution Plan would be implemented from the date of communication of the Order of this Adjudicating Authority and the Resolution Plan value amounting to Rs. 27 Crores is proposed to be paid in the following manner:

Amount	Period
Rs. 11 Crores (including PBG)	Upfront payment i.e. within 30 days from the date of communication of the order of this Adjudicating Authority
Rs. 16 Crores	Within 90 days from the communication of the order of this Adjudicating Authority

8. It is further stated that the RP, in compliance with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, has prepared Form H.
9. The amounts of Rupees in Lakhs provided for the stakeholders under the

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Resolution Plan are as under:

Sr. 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	(a) Creditors not having a right to vote under subsection (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	3988.68	3988.68	2550.73	63.95%
		<b>Total[(a) + (b)]</b>	<b>3988.68</b>	<b>3988.68</b>	<b>2550.73</b>	<b>63.95%</b>
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of	34.97	4.76	1.00	2.86%

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		the resolution Plan				
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		<b>Total[(a) + (b)]</b>	<b>34.97</b>	<b>4.76</b>	<b>1.00</b>	<b>2.86%</b>
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) Government	1649.10	1649.10	65.96	4.00%
		(ii) Workmen &	192.39	1.06	1.06	0.55%
		(iii) Employees	1081.01	768.50	30.75	2.84%
		(iv) Goods and Services in day to day business				
		<b>Total[(a) + (b)]</b>	<b>2922.50</b>	<b>2418.66</b>	<b>97.77</b>	<b>3.35%</b>
4	Other debts and dues		30.97	30.97	0.50	1.61%
5	CIRP cost		50.00	50.00	50.00	100%
<b>Grand Total*</b>			<b>7027.12</b>	<b>6493.07</b>	<b>2700.00</b>	<b>38.42%</b>

\*If there are sub-categories in a category, please add rows for each sub-category. Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

\* Resolution Applicant proposes to pay 50% of the realized amount of the debtors to the secured Financial Creditors within One (01) year from the approval date.

10. The Resolution Professional issued a Letter of Intent dated 31.01.2021 to the Resolution Applicant, which was accepted unconditionally on 01.01.2021, who paid performance security to the tune of Rs. 2.70 Crores

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(including EMD of Rs. 25 Lakhs) through RTGS on 05.01.2021.

11. In compliance of Section 30(6) of the Code, the resolution plan submitted by the successful resolution applicant has been duly approved by the COC with 100 % vote cast in favour of the resolution plan pursuant to which the Applicant filed this Application seeking approval of Adjudicating Authority.
12. It is further stated that the Resolution Plan has been approved taking into consideration all the stakeholders as well as creditors of Corporate Debtor equated with the revival of the Corporate Debtor. It shall be in the best interest of all the stakeholders including creditors as well as Corporate Debtor.
13. We have carefully considered the submissions of the Applicant and perused the documents submitted before us.
14. The Corporate Debtor was incorporated on 30.11.2004, and the CIRP proceedings were initiated under Section 7 of the Code against the Corporate Debtor vide order dated 10.01.2020. The present Application is filed for approval of the Resolution Plan, submitted by Mr. Rishabh Chand Lodha (Resolution Professional). The permission has been sought under the provisions of Section 30(6) read with Sections 31 and 60(5) of the Code.
15. We may state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of

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Section 21 of the Code. The list of Financial Creditors of the Corporate Debtor being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	Punjab National Bank (Erstwhile Oriental Bank of Commerce), Bhilwara, Rajasthan	99.88%	Voted for Resolution Plan
2.	Alfa Suitings Private Limited	0.12%	Absent
<b>TOTAL</b>		<b>100%</b>	

16. The details of stakeholders under the resolution plan are given in Para 7 of Form H and has already been covered in para 8 of this Order, therefore, the same is not being reiterated.
17. This Application came to be admitted vide Order dated 10.01.2020. The Applicant had preferred an application being IA No. 375/2020 filed under Section 12(2) read with Section 60(5) of the Code seeking extension of CIRP Period by ninety (90) days excluding the lockdown period. This Authority vide order dated 03.12.2020 allowed the application to the extent of extending the period of CIRP by 90 more days beyond 180 days after excluding the lockdown period with effect from 25.03.2020 to 31.07.2020. Further in view of order of the Hon'ble Supreme Court of India in *Suo Motu Writ Petition (Civil) No(s). 3/2020 in Re: cognizance for extension of*

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*Limitation*, vide order dated 23.03.2020, the Limitation period was extended. The Hon'ble Supreme Court has vide order dated 10.01.2022 directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Therefore, the present CIRP is within the bounds as prescribed under law.

18. The compliance aspect of the resolution plan has been given in Para No. 9 of Form H, which is as follow:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	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?	As per EOI, the resolution applicant was meeting criteria approved by CoC.	Yes
Section 29A	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?	Resolution Applicant is eligible as per final list of resolution professional.	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit as per Format XIII	Yes
Section 30(2)	Whether the Resolution Plan- (a) Provides for the payment of insolvency resolution process costs?  (b) Provides for the payment to the operational creditors?	Part-C Clause 4.2  Part-C Clause 4.3	Yes  Yes

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	<p>(c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?</p> <p>(d) provides for the management of the affairs of the corporate debtor?</p> <p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?</p>	<p>Part-C Clause 4.8</p> <p>Part-G &amp; Clause 23,</p> <p>Part-F &amp; clause 17</p> <p>Part-F, clause 12 (d)</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Section 30(4)	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	<p>According to the member of Committee of Creditors the Resolution Plan is feasible and viable.</p> <p>Yes, member of Committee of Creditor accorded their consent for approval of resolution Plan with 99.88% voting share.</p>	<p>Yes</p> <p>Yes</p>
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Part-F	Yes
Regulation 35A	Where the resolution professional 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?	The RP obtained a Forensic Audit Report in the matter of the Corporate Debtor. However, in opinion of the RP there is no transaction in the nature of 43, 45, 50 or 66 of the	N.A.

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		Code. The same has been placed before the CoC which has been taken a note by COC. Therefore no requirement to intimate the board arose.	
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Part-C, Clause 4.10	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Part-C, Clause 4.1	Yes
Regulation 38(1B)	(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.	No as per Part-G, clause 27	Yes
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	NA	NA
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule?	Part-F	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Part-G Clause 23	Yes
	(c) adequate means for supervising its implementation?	Part-F Clause 17	Yes
38(3)	Whether the resolution plan demonstrates that –		Yes
	(a) it addresses the cause of default?	Part G, clause 24	Yes
	(b) it is feasible and viable?	Part G, clause 24	Yes
	(c) it has provisions for its effective implementation?	Part F	Yes

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	(d) it has provisions for approvals required and the timeline for the same?  (e) the resolution applicant has the capability to implement the resolution plan?	Part F, clause 18 (f)  Part G, clause 24	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NA	NA
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	IN RFRP under clause 1.9 which states that:- The Successful Resolution Applicant shall furnish a performance security of an <b>amount of INR 1 Crore (One Crore Only) or 10% of the Resolution Amount, whichever is higher</b> , in the form of a performance bank guarantee issued by any scheduled commercial bank in India, or a demand draft issued by any scheduled commercial bank in India, payable at Bhilwara, Rajasthan, in favour of " <b>Super Shiv Shakti Chemicals Private Limited</b> " or by way of a	Yes

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		<p>direct deposit by way of the real time gross settlement system into such bank account as intimated, the details of which shall be shared separately with the Resolution Applicant(s), within 4 (four) Business Day of issuance of LoI by the CoC or such other extended date as may be notified by the Resolution Professional in prior consultation with the CoC.</p> <p>Hence, RA credited performance security of Rs. 2.70 Crore in CIRP account. (2.45 Crores as Performance security and Rs. 0.25 Crores EMD already deposited)</p>	
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19. The approval of the resolution plan has been sought under Section 31(1) of the Code, which reads as follows:

*“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,*

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*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.”*

20. The conditions provided in Section 31(1) of the Code for approval of resolution plan are as follows: -

- a) *The Resolution Plan is approved by the CoC under Section 30(4) of the Code,*
- b) *The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*
- c) *The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

21. The RP has submitted that the committee has approved the resolution plan with 100% of the voting share of the financial creditors, and the conditions provided for by Section 30(4) of the Code are satisfied.

22. The provisions of Section 30(2) of the Code are as follows:

*“(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*



*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.”*

23. The compliance of Section 30(2) of the Code is given in Para-No. 9 of Form H (*supra*). The same is being further examined as under:

- a. **Section 30(2)(a):** The Resolution Plan (Part C Para 4.2 at Page 159 of the Application) states that Resolution Applicant has assumed CIRP cost at Rs. 50,00,000/- (Rupees Fifty Lacs) and shall be paid in priority to other payments and shall be adjusted in the upfront amount proposed to be paid to secured financial creditors.
- b. **Section 30(2)(b):** From the resolution plan (Part C, Para 4.3 to 4.7 at Page 159-161 of the Application),
  - i. It could be seen that the outstanding payment of operational creditors as admitted is Rs. 7,68,49,541/- (Rupees Seven Crores Sixty-Eight Lacs Forty-Nine Thousand Five Hundred and Forty-One Only) in place of which resolution applicant is providing Rs.30,73,982/- (Rupees Thirty Lacs Seventy-Three Thousand Nine Hundred and Eighty-Two Only). The Liquidation value of the Corporate Debtor is less than the amount claimed by the secured financial creditors, hence the Operational Creditors shall not be entitled to get any amount in case of Liquidation of Corporate Debtor.

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- ii. The Resolution Applicant proposed to pay entire admitted claim amount to the workmen i.e. Rs. 1,06,414/- (Rupees One Lakh Six Thousand Four Hundred and Fourteen).
- iii. The Resolution Applicant in relation to debt owed to Unsecured Financial Creditors proposed to pay Rs. 1,00,000/- towards full and final settlement of their dues on or before effective date.
- iv. The liquidation value of the Corporate Debtor is less than the claim of secured financial creditors, hence no amount become payable to Statutory Dues (Government Dues). The Resolution applicant proposes to pay 4% of the admitted claim amount which comes to Rs. 65,96,391/- (Rupees Sixty-Five Lakhs Ninety-Six Thousand Three Hundred Ninety-One).
- v. Further the Resolution Applicant has proposed to pay sum of Rs. 50,000/- to the other Creditors towards full and final settlement of their dues on or before effective date.
- vi. Therefore, the amount payable to the Creditors under the Resolution Plan is higher than 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,

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hence condition under Section 30(2)(b) stands complied.

- c. **Section 30(2)(c):** Resolution Plan (Part G Para 23 at Pg 179 of Application) provides that the management and control of the business of the Corporate Debtor shall be handed over to the Director appointed by the Resolution Applicant. The Resolution Applicant has already proposed the Key team which is as follows:
- i. D.S. Kachhwaha as Chief Operating Officer and Proposed Board Member
  - ii. Amit Sharma as Head- Strategy
  - iii. Anand Daga as General Manager- Strategy
  - iv. Sourabh Roy as Head- Technical
  - v. Pankaj Kumar- Technical and Operations
  - vi. Piyush Agarwal- Chief Financial Officer
- d. **Section 30(2)(d):** In Part F, Para 16 of Pg.171 of the Application, it is stated that subject to the approval of this Adjudicating Authority, the Board of Directors of the Resolution Applicant shall supervise the implementation and execution of the Resolution Plan.
- e. **Section 30(2)(e):** In Form H, Para 4 at Pg. No. 190, the RP has certified that the Resolution Plan does not contravene any of the provisions of the law for the time being in force.

24. The Resolution Professional has also certified that Resolution Applicant

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No. 1, has submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan, and the contents of the said affidavit are in order.

25. As per the requirement of Regulation 39(4) of the Regulations for performance security, it is stated that as per the 6<sup>th</sup> Meeting of CoC the Earnest Money Deposit (EMD) would be deposited by the Resolution Applicant at the submission of resolution plan and further the successful Resolution Applicant shall provide a performance security of Rs.100 Lacs or 10% of the Resolution amount and the committee approved the same with 100% of voting share. Thus, it is stated in Form H that the same has been complied with.
26. With regard to the compliance under Regulation 35A, it is stated that the Resolution Professional obtained a Forensic Audit Report in the matter of Corporate Debtor and the requirements under the same are complied with. There is no pending IA in such respect.
27. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of resolution plan as discussed in the preceding paragraphs in relation to Section 30 and Section 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Thus, the resolution plan fulfils all the requirements of Regulation 38 of the CIRP Regulations.

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28. The Resolution Plan inter-alia entails the following:

- a) Reduction in paid up capital held by the existing shareholders i.e., Non-Promoters group of Corporate Debtor and cancellation of paid up capital held by existing promoters and its associates. Fresh issue of share capital in the Company in lieu of funds infused by Capital Infusion.
- b) On payment of entire dues as proposed under the Resolution Plan, the Secured Financial Creditors shall issue a certificate of discharge and no claims to the Corporate Debtor. Further, return the security documents to the Corporate Debtor within 21 days from the date of final payment to the Secured Creditors as proposed in the Resolution Plan.
- c) Reset financial debt and operational debt as per the parameters of the Resolution Plan.
- d) Extinguishment of any/ all claims against the Corporate Debtor along with related legal proceedings, including criminal proceedings and other proceedings which shall stand abated, settled and extinguished.
- e) Change of Board of Directors and handing over of management to the Resolution Applicant upon sanction of the plan from the effective date, the effective date being the date of handover by the

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Resolution Professional to the Resolution Applicant.

- f) No cancellation of any consents, approvals, licenses, concessions, authorizations, permits or the like granted to the Corporate Debtor or for which the Corporate Debtor has made an application for renewal or grant. The Resolution Applicant shall be granted a period of 12 months from the date of approval to comply with the statutory obligation without suffering any adverse implication, including any revocation of licenses or levy of penalties.
- g) The Resolution Applicant is acquiring the Corporate Debtor as a going concern basis and operate the factory plan, and revive the Corporate Debtor with adequate finances and management expertise. In this respect, the Resolution Applicant is directed to follow up with the concerned authorities for maintaining/ sustaining operations as a going concern, following applicable laws, rules and procedures.
- h) The term of the Resolution Plan shall be implemented from the date of communication of order of this Authority and the payment thereunder shall be made in the prescribed manner.
29. In view of the above discussion, the Resolution Plan submitted by Resolution Applicant No. 2 as approved by the CoC under Section 30(4) of the Code is hereby approved. The Resolution Plan so authorized shall be

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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.

30. Under the provisions of Section 31(3) of the Code, we also direct as under:

- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 10.01.2020 shall cease to have effect; and
- b) The RP shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Board to be recorded on its database.

31. It has been submitted by the Applicant that an Application numbered as IA No. 113/2020 filed under Section 19(2) of the Code against the suspended Board of Director(s) and auditor of the Corporate Debtor for non – cooperation with the IRP for carrying out the CIRP activities and not providing the requisite financial records & other information relating to the Corporate Debtor is pending. In view of the Resolution Plan being accepted by the CoC, this IA is infructuous and stands disposed of accordingly.


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32. In view of the foregoing, IA No. 41/JPR/2021 is disposed of and the Resolution Plan is approved.



**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**



**RAGHU NAYYAR,  
TECHNICAL MEMBER**