IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI SPECIAL BENCH, COURT II

IA.NO.1447/MB/C-II/2021
In
CP(IB)No. 1790/MB/C-II/2017

Application filed under section 30(6) and section 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, read with Rule 11- of the National Company law Tribunal Rules, 2016

Filed by

Mr. Subodh Kumar Agarwal

Resolution Professional of Ushdev International Limited

Address: 1, Ganesh Chandra Avenue, 3rd Floor, R. N-301, Kolkata - 7000013

…Applicant

V/s

Taguda Pte. Ltd.

Address: 1, Magazine Road, #04-11, Central Mall, Singapore- 059567

…Respondent/ Resolution Applicant

In the matter of

State Bank of India

…Financial Creditor

V/s

Ushdev International Limited

…Corporate Debtor

Order Pronounced on:-03.02.2022

Coram:

SHRI SHYAM BABU GAUTAM **SMT. SUCHITRA KANUPARTHI**

HON'BLE MEMBER (T) **HON'BLE MEMBER (J)**

Appearances(through video conferencing)

For the Resolution Professional **:Ms. Fatema Kachwalla**

For the Resolution Applicant **:Senior Counsel, Mr. Venkatesh Dhond**

For the CoC **:Ms. Meghna Rajadhyaksha**

ORDER

Per: Suchitra Kanuparthi, Member (Judicial)

1. The present application has been filed under Section 30(6) and 31 of the Insolvency and Bankruptcy Code read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, read with

Rule 11- of the National Company law Tribunal Rules, 2016 by Mr. Subodh Kumar Agrawal, Resolution Professional/applicant.

2. The Corporate Debtor was admitted into CIRP by an order of admission dated 14.05.2018. The IRP issued public announcement on 19.05.2018 in Business Standard, Indian Express and Loksatta newspaper in terms of Section 15 of the Code read with Regulation 6(1) of CIRP Regulation. The last date for receiving the claim in pursuance of the public announcement was 31.05.2021.

3. The Committee of Creditors was constituted on 06.06.2018, which comprises of following Members: -

(a) State Bank of India

(b) IDBI Bank

(c) ICICI Bank

(d) Oriental Bank of Commerce

(e) Dena Bank

(f) Bank of Maharashtra

(g) Indian Overseas Bank

(h) Central Bank of India

(i) Andhra Bank

(j) Bank of Baroda

(k) Canara Bank

(l) UCO Bank

(m) Lodha Development Management Pvt. Ltd.

4. The applicant re-constituted the Committee of Creditors as per Section 17(1) of the CIRP Regulation on 21.01.2021 on the basis of additional claim received from another financial creditor. The revised list of CoC are as follows-

(a) State Bank of India

(b) IDBI Bank

(c) ICICI Bank

(d) Oriental Bank of Commerce

(e) Dena Bank

(f) Bank of Maharashtra

(g) Indian Overseas Bank

(h) Central Bank of India

(i) Andhra Bank

(j) Bank of Baroda

(k) Canara Bank

(l) UCO Bank

(m) Allahabad Bank

(n) Lodha Development Management Pvt. Ltd.

5. The first meeting of CoC was conducted on 14.06.2018, wherein the IRP was confirmed as RP. The applicant appointed two valuers namely (1) M/s. Adroit (2) M/s. Crest Capital Advisors on 22.06.2018 in terms of Regulation 27 of CIRP Regulation for the purpose of determining the fair value and the liquidation value of the Corporate Debtor. The valuation reports were submitted by two registered valuers on 27.09.2018 was circulated to the Member of the CoC from 29.09.2018. However, the valuation report did

not include current and non-current assets, therefore, the applicant sought for revised valuation report and the same was received on 15.10.2018.

6. In compliance with Regulation 36, the applicant prepared Information Memorandum on 30.06.2018. Further, in the 3rd CoC meeting held on 20.07.2018, the applicant was instructed (i) to invite prospective lenders, investors and any other person to put forward resolution plan. (ii) invite potential resolution applicant(s). (iii) present the resolution plan to the CoC. (iv) support the CoC in selection of a resolution plan.

7. Accordingly, the applicant published an advertisement for invitation of Expression of Interest **("EOI")** vide form G on 24.07.2018. The evaluation matrix was also approved by the CoC. The last date for submission of E.O.I was 20.08.2018. The applicant examined the various E.O.I received and the last date for submission of the resolution plan was 13.09.2018. The applicant did not receive any resolution plan till the last date of submission of the same. The said issue was disused by the CoC in 6th meeting on 15.09.2018 and the last date was extended to 28.09.2018.

8. In the 7th CoC meeting held on 29.09.2018, the applicant informed the CoC that the valuation report from both the valuers have been received and further the bid document submitted by the prospective resolution application was opened at the said meeting.

9. In the 9th meeting, the applicant informs the CoC that the CIRP commenced on 14.05.2018 and the period of 180 days would be completed on 09.11.2018 and hence the CoC approved an extension of CIRP period of 90 days. This Bench approved the extension of 90 days.

10. The applicant on 24.07.2018 appointed M/s Kirtane & Pandit LLP ("**Forensic Auditor"**) and the same was approved by the CoC in its 3rd meeting. The forensic auditor submitted his report on 29.09.2018. In accordance with the direction of the CoC, the applicant filed

interim applications under Section 43, 45 and 66 of the Code and the same are pending for adjudication by the Tribunal.

Filing of application for liquidation of the Corporate Debtor.

11. Upon issuance of EOI, three potential resolution applicants submitted EOI. The applicant are listed below:-

    (a) M/s Taguda Pte Ltd., Singapore (Trading House),

    (b) M/s Anika Industries Pvt. Ltd. (Trading House); and

    (c) M/s Langley (UK) jointly with M/s. Bowline Capital Partners, Netherland (Fund House).

12. M/s. Taguda Pte limited the eligible prospective applicant submitted the bid and paid the bid bond amount on 28.09.2018. The other two bidders were disqualified for the following reasons: -

    (a) M/s Anika Industries Pvt. Ltd. (Trading House) – They did not have the network as required; and

    (b) M/s Langley (UK) jointly with M/s. Bowline Capital Partners, Netherland (Fund House) – Brown Capital was in the fore-front backed by a fund house, M/s Langley. Although they were ready to bid as a consortium, appropriate papers (hard copy receipt of M/s Langley and statement of bidding as a consortium) were not produced.

13. At the 13th meeting of the CoC which is held on 05.01.2019, the resolution was further discussed, considered and evaluated, through discussion with Resolution Applicant and its advisors. At the 14th meeting of the CoC held on 22.01.2019, the legal advisors of the applicant made a presentation on the resolution plan. On 15th CoC meeting convened on 02.02.2019, the agenda of approving of the resolution plan was put for voting. The CoC

voted on the resolution plan upto 05.02.2019 by 5:00 pm. The members of the CoC with 77.61% voting share rejected the resolution plan.

14. At the 16th meeting of the CoC convened on 06.02.2019, the CoC discussed that there is no option than to file an application for liquidation of the Corporate Debtor under section 33 of the Code. Consequently, the applicant filed an application seeking initiation of the liquidation of the Corporate Debtor.

15. The liquidation application was inter-alia objected by the Resolution Applicant before this Hon'ble Tribunal on the ground that the CoC has erred and rejecting the resolution plan. The Tribunal vide order dated 07.11.2019 inter-alia dismissed the liquidation application and suo moto approved the resolution plan submitted by the Resolution Applicant.

Proceedings before the Hon'ble NCLAT

16. The State Bank of India, lead member of CoC of Corporate Debtor has filed an appeal before the Hon'ble NCLAT. The Hon'ble NCLAT stayed the implementation of the Order dated 07.11.2019 and directed the applicant to control the affairs of the Corporate Debtor. During the pendency of the appeal, the Resolution Applicant indicated that it is desirous of revising its offer under the resolution plan, in view of the same State Bank of India being the lead member of CoC of the Corporate Debtor agreed to re-consider the revised plan of the Resolution Applicant. The Hon'ble NCLAT on 08.04.2021, inter-alia granted six weeks to the stakeholders to consider the revised resolution plan submitted by the Resolution Applicant. Further, the Hon'ble NCLAT also clarified that this period shall be considered as an extended CIRP period for the Corporate Debtor. However, the

Hon'ble NCLAT also directed that if the revised resolution plan of the Resolution Applicant is rejected then the liquidation application shall stand revived.

17. Consequently, on 17.04.2021, the applicant convened the 17th CoC meeting and again on 18.05.2021 the applicant convened the 18th CoC meeting wherein it was discussed that the Order of Hon'ble NCLAT had only provided six weeks to the stakeholders to discuss and evaluate upon the revised resolution plan of the Resolution Applicant and therefore, the applicant must approach the Hon'ble NCLAT seeking extension of such time period. On 31.05.2021, the Hon'ble NCLAT modified its order and provided further time till 25.06.2021.

18. The Resolution Applicant submitted revised resolution plan and the applicant convened the 21st meeting of CoC of Corporate Debtor on 23.06.2021, wherein the applicant placed the compliant revised resolution plan before the CoC. The minutes of meeting captured the discussion of the CoC with respect to feasibility and viability of the revised resolution plan and it was concluded by the CoC that the revised resolution plan is feasible and viable. The member of the CoC consented to stop/cancel the voting which was ongoing. It was unanimously decided to cancel the voting and placed the revised resolution plan before the CoC. The CoC then decided to open the e-voting platform on 12 noon of 24.06.2021 till 12 noon of 25.06.2021.

19. The results of e-voting showed that the CoC has approved the resolution plan with 91.06% majority. The Resolution applicant has furnished a performance bank guarantee of USD 1,560,000 (approx. INR 11.5 crores).

Salient features of final Resolution Plan

20. The summary of claims and amounts to be provided to the stakeholder under the resolution plan are as follows:-

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)
	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above				
		(i) who did not vote in favour of the resolution Plan	29451.35	9451.35	1955.28	6.64
		(ii)who voted in Favour of the resolution Plan	297484.91	6549.52	20342.82	6.84
		Total (a) + (b)	326936.26	6000.87	22298.10	13.48
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above				
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii)who voted in Favour of the resolution Plan	3251.83	3251.83	215.89	6.64
		Total (a) + (b)	3251.83	3251.83	215.89	6.64
3.	Operational Creditors	(a) Related party of Corporate	NA	NA	NA	NA

		Debtor				
		(b) Other than (a) above				
		(i) Government				

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)
		(ii) Workmen (iii) Employees (iv) Others	94.35 133707.91	35.71 90351.26	36.00 25.00	38.15 0.00
		Total (a) + (b)	133802.24	90386.97	61.00	38.15
4.	Other than Operational Creditor filed Through Form F		NA	NA	NA	NA
5.	CIRP Cost		NA	NA	100**	NA
6.	Statutory Liabilities		NA	NA	25.00	NA
		Total	463990.37	419639.69	22700	4.89

(1) The distribution amounts mentioned above have been approved by the COC on the assumption that all the Financial Creditors vote in favour of the Resolution Plan. However, since ICICI Bank did not vote in favour of the Resolution Plan, as a dissenting financial creditor ICICI Bank would be entitled to liquidation value in terms of s. 53 of the Code and the payment to the remaining Financial Creditors shall be adjusted accordingly7 based on their voting share.

(2) Any further recoveries, pay-outs and amounts paid to the Financial Creditors on redemption/transfer of the New Preferences Shares shall be distributed amongst the Financial Creditors (other than the Dissenting Creditors, if any) in proportion to their respective voting shares as stated above (adjusted after removal of voting share of the Dissenting Creditors, if any).

** Under the Resolution Plan, CIRP Costs shall be paid in full on actual basis. The Resolution Applicant shall through the Company pay an amount of INR 1.00 Crore which shall be utilized for making payments of the CIRP Costs. In case the amount of INR 1.00 Crore proposed to be infused by the Resolution Applicant towards payment of the CIRP Costs is less than the amount required to pay the CIRP Costs in Full, then the balance amount payable towards the CIRP Costs shall be paid out of the first tranche of INR 48.14 Crores to be paid by the Resolution Applicant to the Financial Creditors. In case the actual payment for CIRP Costs is less than INR 1.00 Crore, the surplus amount, i.e. surplus of INR 1.00 Crore over payment for CIRP Costs shall be added to upfront payment to Financial Creditors of INR 48.14 Crores. The cash balances in the Company shall also be utilized for payment of CIRP Costs.

21. The above claims include the amounts which have been admitted by the Resolution Professional. Claims that have not been verified and/or admitted by the Resolution Professional pursuant to the IBC and CIRP Regulations shall not be paid any amounts, and any such claim, whether identified or unidentified, submitted or not submitted to the Resolution Professional, shall be considered to have been extinguished in its entirety on the approval of the Revised Resolution Plan by the Adjudicating Authority without requiring any further actions on the part of the Company and/or Resolution Applicant. Capitalised terms not defined herein shall have the meaning ascribed to it under the Revised Resolution Plan. The keys terms of the Revised Resolution Plan and the liquidation value is set out under Form H annexed hereto and attached as Annexure – "O".

22. **Form H is as follow:-**

FORM H
COMPLIANCE CERTIFICATE

[Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

1. I, Mr. Subodh Kumar Agrawal, an insolvency professional enrolled with IIIP of ICAI and registered with the Board with registration number IBBI/IPA-001/IP-P00087/2017-18/10183, am the resolution professional for the corporate insolvency resolution process (CIRP) of M/s Ushdev International Limited (Corporate Debtor).

2. The details of the CIRP are as under:

S.No.	Particulars	Description
1	Name of the CD	Ushdev International Limited
2	Date of Initiation of CIRP	May 14, 2018 (Date of receipt of order - May 17, 2018)
3	Date of Appointment of IRP	May 14, 2018
4	Date of Publication of Public Announcement	May 19, 2018
5	Date of Constitution of CoC	June 6, 2018
6	Date of First Meeting of CoC	June 14, 2018
7	Date of Appointment of RP	June 16, 2018 (by way of evoting)
8	Date of Appointment of Registered Valuers	June 22, 2018 (ratified by COC on July 6, 2018)
9	Date of Issue of Invitation for EoI	July 24, 2018 and revised and extended on August 13, 2018 for extension of date
10	Date of Final List of Eligible Prospective Resolution Applicants	August 21, 2018
11	Date of Invitation of Resolution Plan	August 21, 2018
12	Last Date of Submission of Resolution Plan	September 6, 2018 and which was extended to September 13, 2018 and lastly extended to September 28, 2018. Consequent upon order of Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") the resolution plan was submitted on June 13, 2021 and then on June 23, 2021.
13	Date of Approval of Resolution Plan by CoC	June 25, 2021 by way of E-voting
14	Date of Filing of Resolution Plan with Adjudicating Authority	June 25, 2021
15	Date of Expiry of 180 days of CIRP	November 9, 2018
16	Date of Order extending the period of CIRP	(a) Date of order passed by National Company Law Tribunal ("**NCLT**") extending the period of CIRP under Section 12 of the Code by 90 days – November 14, 2018

S.No.	Particulars	Description
		(b) Date of order passed by passed by the NCLAT extending the period of CIRP by another 6 weeks – April 8, 2021 (c) Date of NCLAT order extending the period of CIRP upto June 25, 2021 – May 31, 2021
17	Date of Expiry of Extended Period of CIRP	(a) Date of expiry of extended period of CIRP granted by NCLT vide order dated November 14, 2018 - **February 7, 2019** (b) Date of expiry of extended period of CIRP granted by NCLAT vide order dated April 8, 2021 – **May 19, 2021** (c) Date of expiry of extended period of CIRP granted by NCLAT vide order dated May 31, 2021 – **June 25, 2021**
18	Fair Value (Average)	Rs 105.06 Crores
19	Liquidation value (Average)	Rs 71.28 Crores
20	Number of Meetings of CoC held	Total No – 21 (Twenty One) till date

3. I have examined the Resolution Plan received from Resolution Applicant (Taguda Pte. Ltd.) and approved by Committee of Creditors (CoC) of M/s Ushdev International Limited.

4. I hereby certify that—
   (i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
   (ii) the Resolution Applicant (Taguda Pte. Ltd.) has submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29-A of the Code to submit resolution plan. The contents of the said affidavit are in order.
   (iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 91.06% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
   (iv) I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the Regulation 26 i.e. started from 24th June, 2021 at 12:00 PM and ended on 25th June, 2021 at 12:00 PM.

5. The list of financial creditors of the CD (M/s Ushdev International Limited) 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	State Bank of India	28.68	Voted for
2	IDBI	13.32	Voted for
3	Bank of Baroda (including Dena Bank)	10.68	Voted for
4	ICICI Bank Limited	8.94	Dissented
5	Punjab National Bank (Oriental Bank of Commerce)	7.37	Voted for
6	Bank of Maharashtra	6.64	Voted for
7	Indian Overseas Bank	6.43	Voted for
8	Central Bank of India	5.99	Voted for
9	Union Bank of India (Andhra Bank)	3.74	Voted for
10	Canara Bank	3.41	Voted for
11	UCO Bank	2.41	Voted for
12	Indian Bank (Allahabad Bank)	1.40	Voted for
13	Lodha Development Management Private Limited	0.99	Voted for
	Total	100.00	

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder: Section 12 of the Resolution Plan.

7. The amounts provided for the stakeholders under the Resolution plan is as under: (Amount in Rs. Lakh)

Sl. No	Category of Stakeholder*	Sub-Category ofStakeholder	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 sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	29451.35	29451.35	1955.28*	6.64

Sl. No	Category of Stakeholder*	Sub-Category ofStakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
		(ii) who voted in favour of the resolution plan	297484.91	96549.52	20342.82	6.84
		Total [(a) + (b)]	326936.26	26000.87	22298.10	13.48
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	NA 3251.83	NA 3251.83	NA 215.89	NA 6.64
		Total [(a) + (b)]	3251.83	3251.83	215.89	6.64
3	Operational Creditors	(a) Related Party ofCorporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above: (i) Government (ii) Workmen (iii) Employees (iv) Others	 94.35 133707.91	 35.71 90351.26	 36.00 25.00	 38.15 0.00
		Total[(a) + (b)]	133802.24	90386.97	61.00	38.15
4	Other than operational creditor filed through Form F		NA	NA	NA	NA
5	CIRP Cost		NA	NA	100**	NA
6	Statutory Liabilities		NA	NA	25.00	NA
Total			**463990.37**	**419639.69**	**22700**	**4.89**

*(1) The distribution amounts mentioned above have been approved by the COC on the assumption that all the Financial Creditors vote in favour of the Resolution Plan. However, since ICICI Bank did not vote in favour of the Resolution Plan, as a dissenting financial creditor ICICI Bank would be entitled to liquidation value in terms of s.53 of the Code and the payment to the remaining Financial Creditors shall be adjusted accordingly based on their voting share.

(2) Any further recoveries, payouts and amounts paid to the Financial Creditors on redemption/transfer of the New Preference Shares shall be distributed amongst the Financial Creditors (other than the Dissenting Creditors, if any) in proportion to their respective voting shares as stated above (adjusted after removal of voting share of the Dissenting Creditors, if any).

** Under the Resolution Plan, CIRP Costs shall be paid in full on actual basis. The Resolution Applicant shall through the Company pay an amount of INR 1.00 crore which shall be utilized for making payments of the CIRP Costs. In case the amount of INR 1.00 crore proposed to be infused by the Resolution Applicant towards payment of the CIRP Costs is less than the amount required to pay the CIRP Costs in full, then the balance amount payable towards the CIRP Costs shall be paid out of the first tranche of INR 48.14 crores to be paid by the Resolution Applicant to the Financial Creditors. In case the actual payment for CIRP Costs is less than INR 1.00 crore, the surplus amount, ie surplus of INR 1.00 crore over payment for CIRP Costs, shall be added to upfront payment to Financial Creditors of INR 48.14 crores. The cash balances available in the Company shall also be utilized for payment of the CIRP Costs.

ā Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV. Section 3 of the Resolution Plan and Schedule XII of the Resolution Plan provide for the terms of New Preference Shares allotted to the Assenting Financial Creditors.

8. 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	33,84,94,000	As per Section 3.7 of the Resolution Plan	100%	As per Section 3.7 of the Resolution Plan
2	Preference	--	--	--	--

9. The compliance of the Resolution Plan is as under:

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?	-	Yes
Section 29-A	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?	-	Yes

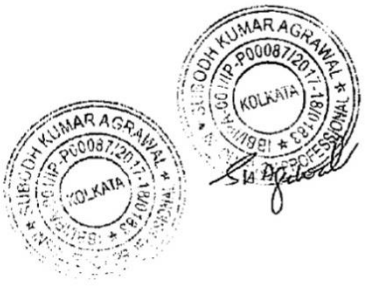
Section of the Code/Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	-	Yes
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs?	Section 3.1	Yes
	(b) provides for the payment to the operational creditors?	Sections 3.2 and 3.4	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Section 3.3	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Sections 9.2 and 9.3	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Sections 9.1, 9.2 and Schedule V	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	Section 13	No. The Resolution Plan and performance of actions contemplated therein are not in contravention of the provisions of law for the time being in force and are in strict compliance with the Code and CIRP Regulations
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC?	Section 2.7	Yes
	(b) has been approved by the CoC with 66% voting share?	-	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Sections 9.1, 9.2 and Schedule V	Yes

Section of the Code/Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
Regulation 35-A	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?	Section 3.6(iii)	Yes
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Sections 3.2 and 3.4	Yes
Regulation 38 (1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Section 12	Yes
Regulation 38(1-B)	(a) 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.	Section 8.2	The Resolution Applicant has confirmed that neither the Resolution Applicant nor any of its related parties have failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
	(b) If so, whether the Resolution Applicant has submitted the statement giving details of such non- implementation?	-	-
Regulation 38(2)	Whether the Resolution Plan provides: the term of the plan and its implementation schedule? for the management and control of the business of the corporate debtor during its term?	Sections 9.1, 9.2, 9.3 and Schedule V	Yes

Section of the Code/Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
	adequate means for supervising its implementation?		
38(3)	Whether the resolution plan demonstrates that — (a) it addresses the cause of default?	Section 2.6	Yes
	(b) it is feasible and viable?	Section 2.7	Yes
	(c) it has provisions for its effective implementation?	Sections 9.1, 9.2 and Schedule V	Yes
	(d) It has provisions for approvals required and the timeline for the same?	Section 9.2(iv)(e)(B)	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	Section 2.6 and 2.7	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Section 3.6(iii)	Yes The Resolution Professional craves leave to provide details of the said application, if required.
39(4)	Provide details of performance security received as referred to in sub-regulation (4A) of Regulation 36B.	-	Yes. The Resolution Applicant has provided an amount of USD 1,560,000 (approx. Rs. 11.5 crores).

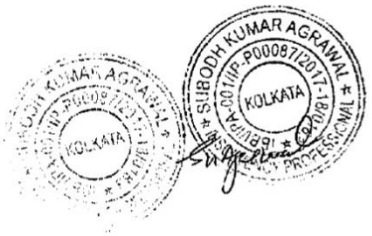
10. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code/Regulation No.	Description of Activity	Latest Timeline under Regulation 40- A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	May 14, 2018
Regulation 6(1)	Publication of Public Announcement	T+3	May 19, 2018



Section of the Code/Regulation No.	Description of Activity	Latest Timeline under Regulation 40- A	Actual Date
Section 15(1)(c)/ Regulation 12(1)	Submission of Claims	T+14	May 31, 2018
Regulation 13(1)	Verification of Claims	T+21	On the basis of the documents received from the claimants
Section 26(6A)/ Regulation 15-A	Application for Appointment of Authorised Representative, if necessary	T+23	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	June 6, 2018
Section 22(1) and Regulation 17(2)	First Meeting of the CoC	T+30	June 14, 2018
Regulation 35-A	Determination of fraudulent and other transactions	T+115	Date of determination of fraudulent and other transactions - October 13, 2018 and December 4, 2018 Date of filing of avoidance application - January 16, 2019
Regulation 27	Appointment of two Registered Valuers	T+47	June 22, 2018
Regulation 36(1)	Submission of Information Memorandum to CoC	T+54	June 30, 2018
Regulation 36-A	Invitation of EoI	T+75	July 24, 2018 and revised on August 14, 2018 for extension of date upto August 20, 2018
	Publication of Form G	T+75	July 24, 2018 and August 14, 2018 for extension of date
	Provisional List of Resolution Applicants	T+100	NA
	Final List of Resolution Applicants	T+115	August 21, 2018
Regulation 36-B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution	T+105	August 21, 2018

Section of the Code/Regulation No.	Description of Activity	Latest Timeline under Regulation 40- A	Actual Date
	Applicants		
Section 30(6) / Regulation 39 (4)	Submission of CoC approved Resolution Plan	T+165	The resolution plan was rejected by COC and submitted for liquidation U/s 33 of the Code on February 7, 2019. However, pursuant to the orders of the NCLAT dated April 8, 2021 and May 31, 2021 ("**NCLAT Orders**") a revised resolution plan was submitted to the COC on June 23, 2021. The NCLAT Order dated April 8, 2021 directed the Resolution Professional to urgently call COC meeting and place the revised resolution plan submitted by the Resolution Applicant for consideration of the COC. The NCLAT granted a period of 6 weeks from April 8, 2021 for the COC to take a decision on the revised resolution plan and depending on whether the COC accepts the revised resolution plan or rejects the same, for the Resolution Professional to take further steps before the NCLT for orders regarding approval of the resolution plan or liquidation. Further, vide the NCLAT Order dated May 31, 2021, the period of filing the resolution plan (if approved by the COC) with NCLT was extended upto June 25, 2021.
A Section 31(1)	Approval of Resolution Plan	T=180	The resolution plan was rejected by COC and submitted for liquidation U/s 33 of the Code on February 7, 2019. However, the NCLAT Order dated April 8, 2021 directed the Resolution Professional to urgently call COC meeting and place the revised resolution plan submitted by the Resolution Applicant for consideration of the COC. The



Section of the Code/Regulation No.	Description of Activity	Latest Timeline under Regulation 40- A	Actual Date
			NCLAT granted a period of 6 weeks from April 8, 2021 for the COC to take a decision on the revised resolution plan and depending on whether the COC accepts the revised resolution plan or rejects the same, for the Resolution Professional to take further steps before the NCLT for orders regarding approval of the resolution plan or liquidation. Further, vide the NCLAT Order dated May 31, 2021, the period of filing the resolution plan (if approved by the COC) with NCLT was extended upto June 25, 2021.

11. The time frame proposed for obtaining relevant approvals is as under:

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1.	Approval for reduction of equity share capital of the corporate debtor	Companies Act, 2013	Adjudicating Authority, Mumbai Bench or any other person or government authority (including SEBI, designated stock exchange, any tribunal or court)	Monitoring agency (IMA) to file application for approval within 15 days of approval of the Resolution Plan by Adjudicating Authority.
2.	Approval for assignment of the assigned debt by the financial creditors to the identified affiliate	Foreign Exchange Management Act, 1999	Reserve Bank of India (or the Authorised Dealer Bank, as applicable)	Monitoring agency (IMA) to file application for approval within 15 days of approval of the Resolution Plan by Adjudicating Authority.
3.	Approval for (a) granting exemption from pricing guidelines in relation to the equity investment going to be made by the Resolution	Foreign Exchange Management Act, 1999	Reserve Bank of India	Monitoring agency (IMA) to file application for approval within 15 days of approval of

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
	Applicant in the corporate debtor, and (b) to implement the transfer of free shares by the resolution applicant to the retail shareholders.			the Resolution Plan by Adjudicating Authority.
4.	Approval for exemption from open offer obligations in respect to (a) the equity investment to be made by the Resolution Applicant in the corporate debtor, and (b) acquisition of control over the corporate debtor by the Resolution Applicant.	Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011	Securities and Exchange Board of India	Monitoring agency (IMA) to file application for approval within 15 days of approval of the Resolution Plan by Adjudicating Authority.
5.	Approval for exemption from the minimum public shareholding requirements as given in Rule 19A(5)	Securities Contracts (Regulation) Rules, 1957	Securities and Exchange Board of India	Monitoring agency (IMA) to file application for approval within 15 days of approval of the Resolution Plan by Adjudicating Authority.
6.	Approval for exemption from the provisions of Chapter V (other than the provisions relating to lock-in of shares) to the issuance of equity shares by the corporate debtor	Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018	Securities and Exchange Board of India	Monitoring agency (IMA) to file application for approval within 15 days of approval of the Resolution Plan by Adjudicating Authority.

12. The Resolution Plan is subject to the following contingencies *(Elaborate the contingencies)*:

i. The Resolution Plan shall not be binding on the Resolution Applicant and the Resolution Applicant shall not be obligated to implement the Resolution Plan in any manner whatsoever if any event or circumstance has occurred which is likely to result into Material Adverse Effect. The Resolution Applicant shall proceed with the implementation of the Resolution Plan as approved by the Adjudicating Authority, provided that the Resolution Amount proposed by the Resolution Applicant in the Resolution Plan are not modified. **Material Adverse Effect has been defined in para 35 of Schedule I of the Resolution Plan.**

ii. Closing Date has been defined in the Resolution Plan to mean the date falling on the 7th business day after the date on which all of the conditions precedent set out in the Resolution Plan will be fulfilled. **This is more particularly defined in para 14 of Schedule I of the Resolution Plan.**

13. Following are the deviations/non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder *(If any deviation/non-compliances were observed, please state the details and reasons for the same)*:

Not Applicable

Sl. No.	Deviation/Non-compliance observed	Section of the Code/Regulation No./Circular No.	Reasons	Whether rectified or not
1				
2				
3				

14. The Resolution Plan is filed before the expiry of the period of CIRP provided in Section 12 of the Code, as extended by the NCLAT Orders dated April 8, 2021 and May 31, 2021.

15. Provide details of Section 66 or avoidance application filed/pending. The application for avoidance of transaction was filed by Resolution Professional before the Adjudicating Authority and the same is pending for adjudication.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under Section 43	January 16, 2019	-	-
2	Undervalued transactions under Section 45	January 16, 2019	-	-
3	Extortionate credit transactions under Section 50	NA	-	-
4	Fraudulent transactions under Section 66	January 16, 2019	-	-

15-A. The committee has approved a plan providing for contribution under Regulation 39-B as under:

a. Estimated liquidation cost: Rs. 6.50 Lakh
b. Estimated liquid assets available: Rs. More than above
c. Contributions required to be made: Rs. NIL
d. Financial creditor wise contribution is as under: **Not applicable**

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1		
2		

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
..		
Total		

15-B. The committee has recommended under Regulation 39-C as under:

a. Sale of corporate debtor as a going concern: **Yes**

b. Sale of business of corporate debtor as a going concern: **No**

The details of recommendation are available with the resolution professional.

The CoC with 89.32% value of votes in favour approved the recommendation for sale of corporate debtor as a going concern.

15-C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under Regulation 39-D - **As per Regulation 4 of IBBI (Liquidation Process) Regulations 2016**

The CoC with 89.32% value of votes in favour approved the fee payable to the liquidator.

16. I, Mr. Subodh Kumar Agarwal, hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

(Signature)

Name of the Resolution Professional:
IP Registration No:IBBI/IPA-001/IP-P00087/2017-18/10183
Address as registered with the Board: 1, Ganesh Chandra Avenue, 3rd Floor, Room No 301, Kolkata – 700013
Email id as registered with the Board: subodhka@gmail.com

Date: June 25, 2021
Place: Kolkata

Brief background of the Resolution Applicant

23. Taguda Pte Limited is a private limited company incorporated under the laws of Singapore and he is engaged in the business of wholesale (including import and export) trade of ferrous and non-ferrous metals and precious metals through its wholly own subsidiaries. The activities of subsidiary of the Resolution application are as follows:-

(a) Abbey International Pte. Limited, Singapore: primarily engaged in the activity of metal trading in the region of south east Asia. It has net worth of USD 20.68mn and revenue of USD 232.96mn;

(b) Akasa International Limited, Hong Kong, focuses on metal and precious stones trading in China, Korea, Japan, Vietnam and other Asian markets. It has net worth of USD 30.66 million and revenue of USD 203.84 million;

(c) AP International FZC, UAE: Operates in the middle East & African market with primary business activity of metal and precious stone trading. It has net worth of USD 26.56 million and revenue of USD 285.69 million; and

(d) Taguda Pty. Limited, Australia: Operates as sourcing centre of metals and minerals from Australia and New Zealand for supply to Asia Pacific;

Creditworthiness and financial capability of Resolution Applicant:-

24. Resolution Applicant has consolidated annual turnover of approximately USD 722,494,194 (United States Dollars seven hundred twenty-two million four hundred ninety-four thousand and one hundred ninety-four) and net assets of approximately USD 84mn (United States Dollars eighty-four million). The audited consolidated financial statements of the Resolution Applicant for the financial year ending 31st March 2020 and financial statements for the financial years ending 31st March 2019 and 31st March 2018

have been separately provided. Please refer to Annexure I of this Resolution Plan for further details in relation to the financial standing of the Resolution Applicant.

Resolution Applicant has financing lines available of USD 40,000,000 with a financial institution in addition to the equity support from its promoter.

Proposal for Financial Creditors

25. This Financial Proposal is based on the statement of assets and liabilities of the Company as set out in the Information Memorandum which is also summarized in Schedule III (**Provisional Balance Sheet**).

The following table summarizes the proposed offer as part of the Resolution Plan to the Financial Creditors under the IBC:

Particulars	Amounts/Description	Timelines for payment
1. Upfront Cash Payment to the Financial Creditors	1. The Resolution Applicant shall through the Company pay an amount aggregating to INR48.14 crores to the Financial Creditors. In case amounts allocated for payment of CIRP Costs and the Employee & Workmen dues, are less than the amount required to make payments of the CIRP Costs and the employee & workmen dues in full, then such additional amounts as may be required to make payments of the CIRP Costs and the employee & workmen dues in full shall	On the Closing Date*

	be deducted from the above-mentioned amount of INR 48.14 crores proposed to be paid to the Financial Creditors and the first tranche of amount payable to the Financial Creditors shall stand reduced accordingly. It is hereby clarified that amount deposited in the designated account of Company against Bid Bond shall be adjusted towards payment of above-mentioned amount of INR 48.14 crores.	
	2. The Resolution Applicant through Taguda India Private Limited (Identified Affiliate) shall pay an amount aggregating to INR 50 crores to the Financial Creditors towards assignment of Financial Debt of the Company of equal value out of the Admitted Debt to the Identified Affiliate. The Identified Affiliate is managed and controlled jointly by Radhika Zaveri and Sagar Zaveri. The Identified Affiliate is compliant with Section 29A of IBC and shall make payment directly to the Financial Creditors towards such assignment of	On 30th day from Closing Date*

	Financial Debt.	
	3. The Resolution Applicant shall cause the Company to pay an amount of INR 50 crore to the Financial Creditors.	On 60th day from Closing Date*
	4. The Resolution Applicant shall cause the Company to pay an amount of INR 50 crore to the Financial Creditors.	On 90th day from Closing Date*
	5. The Resolution Applicant shall cause the Company to pay an amount of INR 27 crores to the Financial Creditors. The Performance Bank Guarantee submitted by the Resolution Applicant shall be appropriated towards payment of this tranche of INR 27 crores, as may be required by the Resolution Applicant.	On 120th day from Closing Date*
2. Payment to the Financial Creditors against recoveries from the Existing Receivables	In addition, any balance Financial Debt forming part of the Admitted Debt (Unpaid Debt), (i.e. the Admitted Debt as reduced by the amounts mentioned in (1) above and the Residual Debt of INR 200 crore), is proposed to be converted into Non- Convertible Redeemable Preference Shares (New	At the end of each year for 3 years from the Closing Date*

	Preference Shares) of the Company being zero dividend and non-cumulative in nature at their face value. If the cash recoveries made by the Resolution Applicant and/or the Company from the Existing Receivables during the period of 3 years from the Closing Date are in excess of INR 75 crores, the Financial Creditors shall be paid 75% of the actual amounts recovered that are in excess of INR 75 crore (after paying all costs and expenses incurred in making cash recoveries and costs and expenses incurred for the Monitoring Committee) and the New Preference Shares of an equivalent amount shall stand redeemed.	
	The Financial Creditors shall be paid their pro rata share at the end of each year for 3 years from the Closing Date. If however, the Company does not have adequate profits to redeem the New Preference Shares and pay the Financial Creditors an amount equivalent to their entitlement of the cash recoveries made by the Company, then the Identified Affiliate shall purchase from the	

	Financial Creditors, and the Financial Creditors shall sell to the Identified Affiliate, such number of New Preference Shares (with full title guarantee and free and clear of all Encumbrance and together with all rights, title and benefits appertaining thereto) as may be necessary to give effect to the arrangement set out above. If, however, the aggregate amounts of cash recoveries made by the Resolution Applicant and/or the Company from the Existing Receivables within 3 years from the Closing Date is less than INR 75 crore (after paying for all costs and expenses incurred in making cash recoveries and costs and expenses incurred for the Monitoring Committee), no amounts shall be paid to the Financial Creditors by the Company and/or the Resolution Applicant on this account. Detailed terms of New Preference Shares shall be as per Schedule XII	

3. Payment for CIRP Costs	1. The CIRP Costs shall be paid in full on actual basis and in priority to any other creditor of the Company upon the Resolution Plan becoming effective. 2. The Resolution Applicant shall through the Company pay an amount of INR 1.00 crore which shall be utilized for making payments of the CIRP Costs. In case the amount of INR 1.00 crore proposed to be infused by the Resolution Applicant towards payment of the CIRP Costs is less than the amount required to pay the CIRP Costs in full, then the balance amount payable towards the CIRP Costs shall be paid out of the first tranche of INR 48.14 crores to be paid by the Resolution Applicant to the Financial Creditors. 3. In case the actual payment for CIRP Costs is less than INR 1.00 crore, the surplus amount, i.e. surplus of INR 1.00 crore over payment for CIRP Costs, shall be added to upfront payment to Financial Creditors of INR 48.14 crores.	On the Closing Date*

	4. For the avoidance of doubt, it is hereby clarified that the cash balances available with the Company as on the Closing Date shall be retained by the Company and the Financial Creditors shall not have any right or claim on such surplus. The Company shall have full discretion to utilize such surplus amount in such manner and for such purpose as may be determined by the Resolution Applicant.	
4. Paymentsfor the employee &workmen dues	1. The employee & workmen dues shall be paid in full as admitted by Resolution Professional and summarized in Schedule III of Resolution Plan. Payment for the employee & workmen dues shall be on actual basis and in priority to any other creditor of the Company, except CIRP Costs, upon the Resolution Plan becoming effective. 2. The Resolution Applicant shall through the Company pay an amount of INR 36 lacs which shall be utilized for making payments for the employee & workmen dues.	

	For the avoidance of doubt, it is hereby clarified that the cash balances available with the Company as on the Closing Date shall be retained by the Company and the Financial Creditors shall not have any right or claim on such surplus. The Company shall have full discretion to utilize such surplus amount in such manner and for such purpose as may be determined by the Resolution Applicant.	
5. Payments for Operational Creditors (other than the employee &workmen dues and the statutory liabilities)	Subject to the provisions of Section 30(2)(b) of the IBC, the Resolution Applicant shall, in priority to Financial Creditors, through the Company pay an amount of: a) INR 25 lac; or b) the Liquidation Value owed to Operational Creditors (other than the employee & workmen dues and the statutory liabilities); or c) 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	On the Closing Date*

	order of priority in sub- section (1) of section 53. whichever is higher, to the Operational Creditors (other than the employee & workmen dues and the statutory liabilities.) The Resolution Applicant shall infuse an amount of INR 25 lac in the Company by way of equity investment.	
6. Payment for statutory liabilities (statutory dues, taxes and other government dues)	Subject to the provisions of Section 30(2)(b) of the IBC, the Resolution Applicant shall, in priority to Financial Creditors, through the Company pay an amount of: a) INR 25 lac; or b) the Liquidation Value owed for statutory liabilities; or c) 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, towards full and final	On the Closing Date*

	payment of the statutory liabilities. The Resolution Applicant shall infuse an amount of INR 25 lac in the Company by way of equity investment. In case the actual payment for statutory liabilities is less than INR 25 lac, the surplus amount, i.e. surplus of INR 25 lac over payment for statutory liabilities, shall be added to upfront payment to Financial Creditors of INR 48.14 crores.	
7. Fresh equity infusion for meeting working capital requirement or capital expenditure of the Company.	The Resolution Applicant shall, as and when required for the business of the Company, infuse the additional funds in the Company for meeting capital expenditure and working capital requirements of the Company over a period of 12 months commencing from the Closing Date. Such amount shall be invested by the Resolution Applicant by way of equity infusion either directly or through any of its Indian Affiliate which shall be an entity compliant with Section 29A of IBC.	Within 12 months from the Closing Date

* *If this date is not a Business Day, then the immediately next Business Day.*

To summarize, this Resolution Plan proposes a committed payment of [INR 227 crores], of which INR 225.14 crores will be paid towards the settlement of the Financial Creditors, INR 1 crore is for the CIRP Costs, INR 36 lacs is for the employee & workmen dues, INR 25 lac is for the Operational Creditors and INR 25 lac is for the statutory liabilities. In addition to this, the Resolution Applicant shall infuse additional funds in the Company for meeting the capital expenditure and working capital requirements of the Company as and when the need arises during the period of 12 months commencing from the Closing Date. Further, the cash balances available in the Company shall also be utilized for payment of the CIRP Costs and the employee & workmen dues.

Details of payment to the Financial Creditor as per the Resolution Plan.

26. The Resolution Plan provides for payment of the Financial Creditor as per the table supra and also expressly captured that as on final settlement debt the financial debt is equivalent to Rs. 200 crores (residual debt) out of admitted debt shall be written off and permanently extinguished in the book of account of the company against the payment of 'Nil' consideration. Clause 3.3 (iii) (c) is reproduced below: -

    (c) *The Resolution Applicant proposes that on the Final Settlement Date, the Financial Debt of the Company of amount equal to INR 200 Crore (Residual Debt) out of the Admitted Debt shall be written off and permanently extinguished in the books of the Company against payment of 'Nil' consideration.*

27. The Resolution Applicant further in addition to the above payment proposed to pay 75% of the cash receivable made by the Resolution Applicant from the existing receivable within three years from the closing date that are excessing Rs. 75 crores. The Applicant company shall be free to be use its portions of the cash recovery made within three year from the closing date. Any recovery made after the expiry of three years shall be retained by the company.

28. Further, the Resolution applicant proposal that any balance financial debt forming part of admitted debt (unpaid debt), such unpaid debt shall be converted into non-convertible

redeemable preference share (new preference shares) of the Company being zero dividend and non-cumulative in nature at their face value. The Unpaid Debt shall be converted into the New Preferences Shares as per the detailed terms set out in Schedule V simultaneously with the payment of the final tranche of INR 27 crore (which shall be payable by the Resolution Applicant on or before the 120th day from the Closing Date). Subject to the Applicable Laws, the memorandum of association and the articles of association of the Company, the New Preference Shares, which shall not have rights to receive any dividends and/or voting rights of any nature whatsoever. The New Preference Shares shall not have any rights to appoint director on the board of the Corporate Debtor.

29. The Resolution Plan also provided for treatment of security as follows: -

Security: All Encumbrances provided by the Promoters or any third party, other than the Excluded Securities, in favour of the Financial Creditors for securing the financial debt of the Company (hereinafter referred as the Assigned Securities), which are valued by Resolution Applicant and included as part of Resolution Plan amount, shall not be extinguished or waived under this Resolution Plan and shall be assigned to Taguda India Private Limited (which entity is the 'Identified Affiliate'), along with the payment of INR 50 crore constituting the Assigned Debt by Taguda India Private Limited in the manner set out in Schedule XI. The Excluded Securities shall also not be extinguished or waived under this Resolution Plan and will continue be available with the Financial Creditors in accordance with their terms, which may be exercised by the Financial Creditors at their discretion for its debt. All other securities or other Encumbrances provided by the Company including on the fixed assets of the

Company shall be extinguished as on the Final Settlement Date. The Financial Creditors reserve the right to take any action against the Promoters.

30. The dissenting Financial Creditor were defined as follow: -

Dissenting Financial Creditor: The Financial Creditors who do not vote in favour of this Resolution Plan shall be paid an amount equivalent to the amount to be paid to such financial creditors in accordance with sub-section (1) of section 53 of the IBC in the event of liquidation of the Company ("LV to the dissenting FCs"). The LV to the dissenting FCs shall be paid in priority to the Financial Creditors who vote in favour of the Resolution Plan. It is hereby clarified that the payment to the Financial Creditors who do not vote in favour of this Resolution Plan will be made out of the Upfront FC Payment and the Resolution Applicant shall not be required to infuse any funds over and above the Upfront FC Payment in order to make payment to such Financial Creditors who do not vote in favour of this Resolution Plan.

31. The Resolution Plan also contends that the Resolution Applicant is eligible to present resolution plans is not barred in terms of Section 29A of the Code.

32. The management and supervision of the implementation of the resolution plan, the resolution applicant and the CoC will constitute a monitoring agency for supervision of the implementation of the resolution plan and day to day operation and management of the company. The interim monitoring agency shall comprise of four members out of which two members shall be appointed by the resolution applicant and remaining members shall be appointed by the CoC.

MANDATORY CONTENTS OF THE PLAN

33. In accordance with Section 30(2) of the IBC and Regulation 38 of the CIRP Regulations, this Resolution Plan includes the following mandatory contents:

(i) Provides for payment of CIRP Costs in priority of the payment of any other debts of the Company and identifies the specific sources of funds that will be used for such payments (**Section3.1 of this Resolution Plan**);

(ii) Providesforpaymentoftheemployee&workmenduesinpriorityofthepaymentofany otherdebts(exceptCIRPCosts)of the Company and identifies the specific sources of funds that will be used for such payments (**Section3.2of this Resolution Plan**);

(iii) Provides for payment of debts of the Operational Creditors (*as per the provisions of Section30(2)(b) of the IBC*) in priority over the Financial Creditors. This Resolution Plan also identifies the specific sources of funds that will be used for such settlement (**Section 3.4 of this Resolution Plan**);

(iv) Provides for payment to the financial creditors, who have a right to vote under section21(2) of IBC and did not vote in favour of the resolution plan, in priority over financial creditors who voted in favour of the plan (**Section3.3 (iii)(h) of this Resolution Plan**);

(v) Provides for management and control of the affairs of the Company after approval of the Resolution Plan (**Section 9.2 of this Resolution Plan**); and

(vi) Specifies the term of the Resolution Plan and implementation schedule (**Section 9.1 of this Resolution Plan**)

Equity Shareholders

(i) The details of the outstanding Equity Share capital of the Company as of the Insolvency Commencement Date are set out in Schedule IV. The Resolution Applicant acknowledges that there are no outstanding preference shares that are issued by the Company, hence, not required to be dealt with in this Resolution Plan.

(ii) All outstanding Equity Shares held by the Promoters constituting 49.04% of the entire paid up share capital of the Company will be cancelled against the payment of NIL consideration by way of capital reduction process as set out in Schedule V. Other than the cancellation of the outstanding Equity Shares held by the Promoters, the Resolution Applicant proposes that all outstanding Equity Shares that are held by any shareholder forming part of the public shareholders, who is holding more than 0.50% of outstanding Equity Shares, will be cancelled against payment of NIL consideration by way of capital reduction process as set out in Schedule V. Nil consideration is proposed on the expectation that the Liquidation Value due to the equity shareholders of the Company shall be a Nil amount. To encourage participation of Retail Shareholders, Resolution Applicant proposes to transfer part of its shareholding in the Company to Retail Shareholders in proportion to shares held by Retail Shareholders as on the Closing Date.

Resolution Applicant shall transfer such number of Free Shares to Retail Shareholders which along with existing shareholding of Retail Shareholders

on Closing Date gives them participation rights of 5% of outstanding Equity Shares of the Company on implementation of Resolution Plan.

(iii) Any Encumbrance that was created over any Equity Shares of the Company by the Promoters, at any time, shall automatically be released and all liabilities and obligations of the Company in relation to such Encumbrance or other form of collateral shall stand permanently extinguished on the approval of this Resolution Plan by the Adjudicating Authority, without the requirement of any further action on part of any party and the Resolution Professional (and his representatives, advisers and agents), the Company and the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.

Admitted Claims

(i) Notwithstanding anything contained in this Resolution Plan, claims made by the creditors and other stakeholders of the Company and stated to be paid in accordance with Clause 3 of this Resolution Plan, shall be paid only if they are verified as valid and admitted by the Resolution Professional pursuant to the IBC and CIRP Regulations.

(ii) Claims that have not verified and/or admitted by the Resolution Professional pursuant to the IBC and CIRP Regulations shall not be paid any amounts, and any such claim, whether identified or unidentified, submitted or not submitted to the Resolution Professional, shall be considered to have been extinguished in its entirety on the approval of this

Resolution Plan by the Adjudicating Authority without requiring any further actions on the part of the Company and/or Resolution Applicant.

Proposal for funding by the Resolution Applicant

The Resolution Amount is proposed to be infused by the Resolution Applicant in the following manner:

(i) Infusion on and after the Closing Date:

(a) The Resolution Applicant shall infuse the Investment Amount of INR 50 crore in the Company, against subscription of the Equity Shares of the Company, as contemplated under Schedule V. It is clarified that the amount paid by the Resolution Applicant towards Bid Bond shall be treated as a part of the Investment Amount and the Equity Shares shall be issued by the Company to the Resolution Applicant against such amount.

(b) On or before the 30th day from the Closing Date, the Resolution Applicant shall cause the Identified Affiliate to pay an amount aggregating to INR 50 crore towards Assigned Debt. The Identified Affiliate is compliant with Section 29A of IBC and the manner of payment to the Financial Creditors shall be on a proportionate basis in compliance with the requirements of IBC.

(c) The funding of the aforesaid amount of INR 100 crore by the Resolution Applicant is sourced from the internal accruals or funds arranged by the Resolution Applicant.

(d) This amount shall be utilized to pay for the CIRP Costs and settlement of the Financial Creditors, workmen/employees, statutory liabilities and the other Operational Creditors in accordance with the terms of this Resolution Plan.

(e) Notwithstanding anything stated herein, if any unforeseen amounts are required to be paid to any other Person or settlement of any other creditors of the Company, including by an order, direction or request by the Adjudicating Authority or any Person, which is currently not contemplated and required as per this Resolution Plan, the Resolution Applicant shall not be liable to provide funds either as equity or debt to meet such exigencies.

(ii) In addition to the INR 100 crore as set out in Clause (i) above, the Resolution Applicant shall cause the Company to pay an additional amount aggregating to INR 127 crore in three instalments in the following manner:

(a) On or before the 60th day from the Closing Date, an amount of INR 50 crore shall be paid by the Company to the Financial Creditors;

(b) On or before the 90th day from the Closing Date, an amount of INR 50 crore shall be paid by the Company to the Financial Creditors; and

(c) On or before the 120th day from the Closing Date, an amount of INR 27 crore shall be paid by the Company to the Financial Creditors.

It is hereby clarified that the amount paid by the Resolution Applicant towards PBG as per the requirements of the RFRP shall be treated as part of INR 27 crore payable to the Financial Creditors on or before the 120th day from the Closing Date and on payment of the said tranche of 27 crore, Equity Shares shall be issued to the Resolution Applicant for such amount.

It is clarified that in case the Company is unable to fund any of the amount as set out in this sub-Clause (ii) from its internal accruals, the Resolution Applicant shall fund such shortfall in a manner such that the Financial Creditors receive the entire amount as agreed. For this purpose, the Resolution Applicant shall subscribe to such instruments issued by the Company, including Equity Shares, convertible preference shares or convertible/non- convertible debentures or any debt funding as it may decide in its sole discretion.

(iii) In addition to the Investment Amount and investment required under clause (ii) above, the Resolution Applicant proposes to infuse such additional amount over a period of within 12 months commencing from the Closing Date as may be required from time to time to meet the Company's capital expenditure and working capital requirements. This infusion over 12 months period will be made by the Resolution Applicant either directly or through its Affiliates (such entity shall be compliant with Section 29A of IBC) on such dates and in instalments of such amounts as the Resolution Applicant considers appropriate based on business needs of the Company. For this purpose, the Resolution Applicant or its Affiliates, as the case may be, shall subscribe to such instruments issued by

the Company, including Equity Shares, convertible preference shares or convertible/non-convertible debentures as the Resolution Applicant may decide in its sole discretion.

Management of the Company and Supervision of the Implementation of the Resolution Plan

On and from the date of approval of this Resolution Plan by the Adjudicating Authority and until the Final Settlement Date (Interim Period), the Resolution Applicant and the CoC will constitute a monitoring agency (IMA) for the supervision of the implementation of this Resolution Plan and for the day-to-day operations and management of the Company. The IMA shall comprise of 4 members out of which 2 members shall be appointed by the Resolution Applicant and the remaining 2 members shall be appointed by the CoC. IMA shall be required and entitled to do all such acts, deeds and things as may be desirable and expedient in order to implement and give effect to this Resolution Plan and supervise the management and operations of the Company, in a manner consistent with this Resolution Plan.

Management after CoC's Approval

After approval by the CoC and until the approval of the Resolution Plan by the Adjudicating Authority, all major business decisions impacting the shareholders' value and the running of the Company along with its business shall be made by the Resolution Professional.

Binding Nature of the Resolution Plan

(i) Upon the approval of this Resolution Plan by the Adjudicating Authority, it shall be binding on the Resolution Applicant, Company 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 this Resolution Plan and/ or otherwise concerned or connected with the Company.

(ii) Any breach of the terms of this Resolution Plan or default in the performance of the obligations hereunder by any of the foregoing persons shall cause irreparable damage to the Resolution Applicant and its proposal to revive the Company. Accordingly, in case of such breach or default, the Resolution Applicant shall have the right to an injunction or other equitable relief including specific performance of the terms hereof.

(iii) This Resolution Plan overrides all past discussions with the CoC and the Resolution Professional and the earlier resolution plans submitted by the Resolution Applicant, and all such earlier resolution plans shall be considered to have been nullified by this Resolution Plan.

RELIEFS, CONCESSIONS AND DISPENSATIONS

With regard reliefs, concessions and waivers as sought by the Resolution Applicant, this Bench orders that the reliefs and concessions are guaranteed as per the judgment of the Hon'ble Supreme Court in Ghanshyam Mishra & Sons Vs Edelweiss Asset Reconstruction Company limited, where at para 95 (i) it was held that once a resolution plan was approved a creditor cannot initiated proceedings for recovery of the claim which are not part of the Resolution plan. Hence, all past liabilities arising out of any levies/tax dues to any government authority such as VAT, CST, Customs Excise Duty and employees, workmen, operational creditor, financial creditor etc., which are not part of the resolution plan and pertaining to the pre CIRP period, shall stand extinguished, post approval of the resolution plan.

1. The unpaid debt shall stand converted into non-convertible redeemable preference share. Hence, the excluded securities are no longer enforceable as defined under the resolution plan.

2. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorizes in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

Findings:-

1. The approval of the resolution plan has been sought under Section 31 of the Code, we have carefully considered the submissions of the learned counsel for the RP and perused the records. The conditions provided under Section 31(1) are that the resolution plan is approved by Committee of Creditors under Section 34 of the Code and that the resolution plan so approved meets the requirement of Section 30(2) and that the Resolution plan has provisions for its effective implementation.

2. The resolution plan was approved by 91.06% majority of the CoC and therefore, the conditions of Section 30 (4) are satisfied.

3. The provisions of Section 30(2) are as follow:

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 repayment 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

(iii) 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,

4. The resolution plan requires that the Resolution applicant would provide payment of CIRP cost in full and actual basis. The RA shall pay an amount of Rs. 1 crore which shall be utilized for making payment of CIRP cost, if the amount is less than the balance amount payable to CIRP cost shall be paid out of the first tranche of INR 48.14 crores to be paid by the Resolution Applicant to the Financial Creditor.

5. The liquidation value is approximately Rs. 71.28 crores however the resolution plan provides for payment of 227 crores. Out of the resolution amount, an amount of Rs. 225.14 crores is proposed to be paid upfront to the financial creditor. On the closing date the RA shall pay INR 48.14 crores to the financial creditor. The RA shall pay INR 50 Crore on 60th day from the closing date and pay 50 Crores to Financial Creditor on 90th Day, Rs. 27 Crores to the Financial Creditor 120th days from the closing date. The performance Bank guarantee submitted by the RA shall be appropriated towards this tranche of 27 Crores. Any balance Financial Debt forming part of admitted debt (unpaid debt) (admitted debt as reduced by the amount paid to the Financial Creditors and the residual debt of INR 200 Crores) is proposed to be converted into non-convertible redeemable preference shares (new preference shares) of the company being zero evident and non-cumulative in nature at the face value. The RA will pay Rs. 36 Lakhs to the employees and workman and amount of Rs. 25 Lakhs to the Operational Creditors (other than

employees and workman dues and statutory liabilities). An amount of Rs. 25 Lakhs to the Statutory liabilities.

6. All outstanding equity shares held by promoters constituting 49.04% of the entire paid of shares capital of the company will be cancelled against nil consideration. The RA has proposed share swap arrangement as an integrated part of revised resolution plan.

7. Section 30(2)(c) (d) the resolution plan provides that upon approval, the RA will constitute an Interim Monitoring Agency, which shall comprise of four members out of which two members shall be appointed of RA and two members shall be appointed by the CoC.

8. Section 30(2) (e), the RP has certified that the Resolution Plan complied with the provision of the Code and regulation and does not contravene any provision of law from the time being in force.

9. We further rely on the judgement of the Hon'ble Supreme Court in case of Shashidhar Vs IOB, wherein it was held inter alia that no corresponding provision has been envisage by the legislature to empower the Resolution Professional, Adjudicating Authority, of that matter NCLAT to reverse the commercial decision of the CoC. It is also held that the commercial decision of Financial Creditor is not open for judicial review by Adjudicating authority and by Appellate Authority. Therefore, in view of the above discussion. The decision taken by the Financial Creditor/CoC Members falls within the ambit of its commercial and banking wisdom and is therefore not being interfere with.

10. In CoC of Essar Steel (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

> "*Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61 (3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in* ***K. Sashidhar*** *(supra)."*

11. In accordance with Regulation 39 of CIRP Regulation the RA has provided performance Bank guarantee of USD 1,560,000/-.

ORDER

1. Therefore, subject to the observation made in this order, we hereby accord our approval to the Resolution Plan. The Resolution Plan shall form part of this order.

2. Any relief sought in the Resolution Plan, where any contract, agreement understanding, Proceeding, action, notice etc. not specifically identified, or is for a future contingency, is, at this point of time, rejected.

3. The Resolution Plan as approved is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor can come into force with immediate effect.

4. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.

5. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order. However, he shall perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.

6. The Resolution Professional is further directed to handover all records, and properties to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Resolution Professional to finalise the further line of action required for starting of the operation.

7. In case of non-compliance of this order or withdrawal of Resolution Plan, the performance security amount already paid by the Resolution Applicant shall be liable to be forfeited.

8. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.

9. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.

10. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.

11. The Applicant shall forthwith send a certified copy of this order to the CoC and the Resolution Applicant, respectively for necessary compliance.

12. The application bearing no **IA No. 1447/2021** is **stand disposed of**.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)
03.02.2022
Sushil

Sd/-

SUCHITRA KANUPARTHI
Member (Judicial)