



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA (IBC)/91/30(6)/GB/2022
In CP (IB)/20/10/GB/2021**

Coram:

**Hon'ble Shri Deep Chandra Joshi, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference**

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.02.2023**

In the matter of:

Purshotam Gaggar, RP
In
(Byrnihat Coal Pvt. Ltd.
Versus
Sharma & Sons Corporation & Others)

Section: Under Section 30(6) of IBC, 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MS. VIDUSHI CHOKHANI	Advocate	Applicant/RP	Present in Video Conference

ORDER

The Applicant is represented through respective Learned Counsel (s).

The case is fixed for pronouncement of order.

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

Sd/-

**(PRASANTA KUMAR MOHANTY)
MEMBER (T)
AND ADJUDICATING AUTHORITY**

Sd/-

**(DEEP CHANDRA JOSHI)
MEMBER (J)
AND ADJUDICATING AUTHORITY**



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ORDER

Per: Shri Prasanta Kumar Mohanty, Hon'ble Member (T)

1. This Application has been filed by the Resolution Professional under Section 30(6) 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 for the approval of the Resolution Plan submitted by Successful Resolution Applicant- Mrs. Sapna Singhal which has been approved by the Committee of Creditors of the Corporate Debtor with 100% voting share, seeking the following reliefs:

- a. This Hon'ble Tribunal being the Adjudicatory Authority be pleased to approve the Resolution Plan (annexed to the present Application)as approved by the Committee of Creditors with requisite majority;
- b. Direct that the Resolution Plan shall be binding on the Corporate Debtor along with all Employees, Secured, Unsecured, Financial and Operational Creditors and Government/Statutory Authorities and no further approval of the same shall be required for implementing the Resolution Plan.



2. The Applicant submits that:
 - 2.1 The Corporate Debtor i.e. Byrnihat Coal Private Limited is a company incorporated under the Companies Act 1956 and is also registered as an MSME under UDYAM-AS-03-0000238.
 - 2.2 This Hon'ble Tribunal vide order dated 1st April 2022, allowed CP IB No. 20/GB/2021 filed under sec 10 of IBC, thereby initiating CIRP against the Corporate Debtor-Byrnihat Coal Private Limited (BCPL) and further appointed Mr. Akhil Ahuja as the Interim Resolution Professional (IRP).
 - 2.3 The IRP for the Corporate Debtor made public announcement as per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the CIRP Regulations) on 3 April 2022 whereby the IRP invited creditors of the Corporate Debtor to submit their claims.
 - 2.4 The IRP, upon receipt and verification of claims, constituted the Committee of Creditors of the Corporate Debtor. As required under sub regulation (1) of regulation 13 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the Interim Resolution Professional and the Resolution Professional, have verified every claim, as on the insolvency commencement date and thereupon maintained a list of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims. In conformity with clause (d) of sub regulation (2) of regulation 13 the list of creditors has been filed with the Adjudicating Authority. Based on the above ruling and following the guidelines of sub regulation (2) of regulation 12 read with sub regulation (1) of regulation 17 of the insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the Resolution Professional Constituted Committee of Creditors and the same as on



date along with their voting share in the Committee of Creditors comprise of the following:

Name of Creditors	Amount claimed by the Creditors (In. Rupees)	Amount Admitted	Voting Percentage
Secured Financial Creditors			
Punjab National Bank	7,21,76,398.98	7,21,76,398.98	100%
Total debt from Secured Financial Creditors (A)	7,21,76,398.98	7,21,76,398.98	
Unsecured Financial Creditors			
Total dues to Unsecured Financial Creditors (B)	NIL	NIL	
Total dues to Financial Creditors (A+B)	7,21,76,398.98	7,21,76,398.98	
Total Claims (A + B)	7,21,76,398.98	7,21,76,398.98	100%

- 2.5 The Committee of Creditors in its 1st Meeting held on 29th April 2022 did not accord consent for the confirmation of Mr. Akhil Ahuja as the Resolution Professional of the Committee of Creditors.
- 2.6 In the 2nd Meeting of the Committee of Creditors held on 6th May 2022, the Committee of Creditors resolved to replace Mr. Akhil Ahuja and appoint Mr. Purshotam Gaggar (the Applicant herein) as Resolution Professional (RP) of Corporate Debtor.
- 2.7 This Hon'ble Tribunal vide order dated 21st June 2022, was pleased to allow the application being IA. 36/GB/2022 and confirmed the appointment of the Applicant- Mr. Purshotam Gaggar as the Resolution Professional for the Corporate Debtor.
- 2.8 The Interim Resolution Professional carried out valuation of the Assets of the Corporate Debtor and duly appointed two valuers and further apprised the Committee of Creditors of such appointment in the 3rd Meeting of the Committee of Creditors held on 6th June 2022. In the



said meeting the IRP also apprised the Committee of Creditors of the circulation of Information Memorandum as the only CoC member had executed confidentiality undertaking, in conformity with Section 29 of the Code read with Regulation 36 of the Regulations. The IRP further placed the format of the Form G for publication so as to invite expression of interest from prospective resolution applicant for the Corporate Debtor as well as the eligibility criteria for the prospective resolution applicant. The said draft of Form G as well as the eligibility criteria was duly approved by the Committee of Creditors.

- 2.9 The IRP duly published the Invitation for Expression of Interest in Form G on 13.06.2022, inviting expression of interests from Prospective Resolution Applicants for submission of a Resolution Plan in accordance with the provisions of the Code.
- 2.10 After the appointment of the Applicant herein as the Resolution Professional, the Applicant updated the Information Memorandum. Furthermore, the RP held the 4th Meeting of the Committee of the Creditors wherein the Committee of Creditors was apprised that he was in receipt in of three (3) Expressions of Interests in pursuance of the Form G that was published. He further placed the Request for Resolution Plan along with the evaluation matrix for the consideration of the Committee of Creditors. The Evaluation Matrix prepared in conformity with the Regulations stood approved by the Committee of Creditors. The Request for Resolution Plan (RFRP), which is required to be circulated to all Prospective Resolution Applicants was prepared following the guidelines under Regulation 36B of the Regulations also stood approved by the members of the Committee of Creditors.
- 2.11 The Provisional List of Prospective Resolution Applicants was issued on 15.07.2022 in conformity with sub regulation (10) of regulation 36A of the Regulations. The Final List of Prospective Resolution Applicants was issued on 21.07.2022 in conformity with sub Regulation (12) of Regulation 36A of the Regulations.
- 2.12 As per the RFRP, the last date for submission of resolution plan was 22nd August 2022, however, the Resolution Professional received



requests for extension of time for submission of the plan. As such the Resolution Professional placed such request before the CoC for its consideration in the 5th Meeting of the Committee of Creditors wherein the Committee of Creditors resolved to extend the time for submission of resolution plan till 1st September 2022.

2.13 The Applicant/RP had appointed JN Gupta & Company, Chartered Accountants as Transaction Auditor for the Corporate Debtor. The Transaction Auditor vide its report highlighted several transactions which amount to avoidable transactions. The said report was also placed before the Committee of Creditor in the 6th Meeting held on 7 September 2022. The Applicant has also examined the Transaction Auditor's report as well as books of accounts of the Corporate Debtor and has determined that there has been violation under Section(s) 49 of Insolvency and Bankruptcy Code, 2016 and has accordingly filed an application being IA.(IBC) No. 73/GB/2022 which is pending adjudication before this Hon'ble Tribunal.

Moreover, in response to the Expression of Interest floated through Form G and subsequent preparation of Final list of Prospective Resolution Applicants, the Applicant herein, received only one Resolution Plan from one Mrs. Sapna Singhal. The said plan was opened in the 6th meeting of Committee of Creditors in the presence of the Resolution Applicant.

2.14 Following the receipt of the resolution plan, the Resolution Professional examined the plan in accordance with the provisions of the Code, CIRP Regulations as well as other applicable laws and the RFRP. The Resolution Professional sought clarifications on various aspects of the plan in the 7th Meeting of the Committee of Creditors. Furthermore, negotiations took place between the Committee of Creditors and the Resolution Applicant in the 8th and 9th meetings of the Committee of Creditors.

2.15 Meanwhile, the Resolution Professional further approached this Hon'ble Tribunal in IA No. 69/GB/2022 in CP(B)20/GB/2021, seeking extension of 90 days and this Hon'ble Tribunal vide an order dated



13.10.2022, allowed the application for extension filed by IRP, thereby extending CIRP period to 28.12.2022.

- 2.16 The 10th Meeting of the Committee of Creditors was held on 21st November 2022 in which the Resolution Professional placed the plan received from the Resolution Applicant for voting by the Committee of Creditors. It was pointed out by the Resolution Professional that the resolution amount had been increased from Rs. 1.97 Crores to Rs. 2.60 Crores by the Resolution Applicant. The RP brought to the notice of the Committee of Creditors the following point included in the resolution plan:

“Any proceeds/restoration of transfers or transactions, received by the Corporate Debtor pursuant to the avoidance application led by the Resolution Professional under Section 49 with the Hon’ble NCLT Guwahati Bench shall be retained by the Corporate Debtor and will also be utilised as deemed appropriate by the Resolution Applicant. It is further stated that in accordance with Regulation 38(2)(d) proceedings initiated by the Resolution Professional shall be pursued by the Resolution Applicant after approval of the resolution plan by the adjudicating authority. The said application will be pursued as per the discretion of the resolution applicant only. The costs for the same will be borne by the RA. The members of the CoC or the RP will have no role to play in the proceedings post approval of the resolution plan. The proceeds of the application (if any) in terms of share transfers or monetary terms will strictly be retained by the Resolution Applicant only.”

The said clause was not acceptable to the Committee of Creditors and hence the Committee of Creditors by a 100% vote rejected the resolution plan that was submitted and resolved for liquidation of the Corporate Debtor.

- 2.17 Thereafter, the Resolution Professional herein was in receipt of a letter dated 30th November 2022, from the Resolution Applicant along with an addendum to the Resolution Plan submitted by them wherein the primary concern as raised by the Committee of Creditors was sought to be addressed by them. The above mentioned clause was amended to be read as follows:



“Any proceeds/restoration of transfer of shares received by the Corporate Debtor pursuant to the avoidance application filed by the Resolution Professional under Section 49 with the Hon'ble NCLT, Guwahati Bench shall be retained by the corporate Debtor only. It is further stated that in accordance with regulation 38(2)(d) proceedings initiated by the Resolution Professional shall be pursued by the Resolution Applicant after approval of the resolution plan by the adjudicating authority.

It is further stated that should any directions be passed by the Hon'ble NCLT w.r.t the following prayer in the avoidance application filed under section 49:

“6.2 Pass an order thereby directing Respondent No. 3. to transfer a sum of Rs. 38.60 Lakh to the Corporate Debtor”

the same, will be retained exclusively financial creditors. The recovery towards the same (if any) will be paid to the financial creditor, after deduction of actual costs incurred by the RA for recovery of the same.

Thus, any proceeds/transfers of the avoidance application towards reversal of share transfer will be strictly retained by the corporate debtor. Further, if any monetary recovery towards the transfer of any sum amount by Respondent 3 pursuant to the avoidance application is made, that amount shall be to the account of the financial creditors, who would be paid the amount, after deduction of actual costs for recovery of the same.”

Additionally, the Resolution Applicant also reduced the timeline in making payments towards the resolution amount.

2.18 Thereafter, the Resolution Professional on request of the Financial Creditors (holding 100% voting share) convened a meeting of the Committee of Creditors on 7th December 2022. The Committee of Creditors wished to reconsider the Resolution Plan in light of the addendum and as such passed a resolution revoking the resolution for liquidation and rejection of the plan as was passed by it in the 10th CoC Meeting.

2.19 The 12th Meeting of the Committee of Creditors was held on 9th December 2022 on which day the revised resolution plan as submitted by the Resolution Applicant was once again discussed by the Committee of Creditors and the same was put to vote. **The viability and feasibility of the Resolution Plan was duly considered by the**



Committee of Creditors, thereafter, the plan was put for voting. The voting on the amended Resolution Plan concluded on 15.12.2022, and by 100% majority vote the amended Resolution Plan as submitted by the Resolution Applicant was approved by the Committee of Creditors.

- 2.20 The Resolution Applicant is one Mrs. Sapna Singhal, is an individual with experience of business of trading of coal and manufacturing of coke and is a director in various companies including but not limited to companies in the business of coal. She has further been involved in acquisition of stressed assets previously which she successfully turned around. She has adequate financial capability and experience and can provide required capital to grow Corporate Debtor-Byrnihat Coal Private Limited from own sources and by contracting Debt.
- 2.21 The Resolution Applicant, Mrs. Sapna Singhal, as required under the RFRP, has submitted Affidavits confirming eligibility from the point of view of section 29A of the Insolvency and Bankruptcy Code, 2016.
- 2.22 On 09.12.2022, Applicant herein forwarded to the Committee of Creditors a certificate pertaining to the compliance of various Sections of the Code read with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 with respect to the Resolution Plan submitted by the Resolution Applicant.
- 2.23 The liquidation value of the Corporate Debtor as determined by the Registered valuers is Rs. 2,14.11.216.00 whereas the Resolution Amount offered by the Resolution Applicant is Rs. 2,60,00,000.00.
- 2.24 The Resolution Applicant has deposited the entire sum of Rs. 39 Lakh towards Performance Security by way of security deposit vide RTGS UTR NO. SBINR52022122322375162.
- 2.25 Form H as required under sub regulation (4) of regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 duly completed by the Applicant.



2.26 In view of the above facts and circumstances, the present application has been filed by the Resolution Professional under Section 30 (6) of the Code seeking approval of this Hon'ble Tribunal in terms of Section 31 (1) of the Code and Regulation 39(4) of the CIRP Regulations.

3. The RP has under Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, submitted the Compliance Certificate as stated below:

3.1 The RP, Purshotam Gaggar, CA, an Insolvency Professional enrolled with the Institute of Company Secretaries of India and registered with the Board with registration number IBBI/IPA-001/IP-NOO487/2017-18/10875, is the Resolution Professional for the Corporate Insolvency Resolution Process (CIRP) of Byrnihat Coal Private Limited

3.2 The details of the CIRP are as under:

SL. NO.	PARTICULARS	DESCRIPTION
1.	Name of the CD	Byrnihat Coal Private Limited
2.	Date of Initiation of CIRP	01.04.2022
3.	Date of Appointment of IRP	01.04.2022
4.	Date of Publication of Public Announcement	03.04.2022
5.	Date of Constitution of CoC	22.04.2022
6.	Date of First Meeting of CoC	29.04.2022
7.	Date of Appointment of RP	21.06.2022
8.	Date of Appointment of Registered Valuers	07.07.2022
9.	Date of Appointment of Invitation for EoI	13.06.2022
10.	Date of Final List of Eligible Prospective Resolution Applications	21.07.2022
11.	Date of Invitation of Resolution Plan	20.07.2022
12.	Last Date of Submission of Resolution Plan	22.08.2022
13.	Date of Approval of Resolution Plan by CoC (meeting date)	09.12.2022
	Date of Voting for approval of plan	15.12.2022
14.	Date of filing of Resolution plan with adjudicating Authority	
15.	Date of Expiry of 180 Days of CIRP	28.09.2022
16.	Date of order extending of period of CIRP	13.10.2022



17	Date of Expiry of Extended Period of CIRP	28.12.2022
18	Fair Value	3,84,20,125.00
19	Liquidation Value	2,14,11,216.00
20	Number of Meetings of CoC held	12

3.3 The RP has examined the Resolution Plan received from Resolution Plan Applicant/ Ms. Sapna Singhal and approved by CoC by Byrnihat Coal Private Limited.

3.4 The RP has certified 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/ Ms. Sapna Singhal has submitted an affidavit pursuant to Section 30(1) of the Code Confirming its eligibility under Section 29A 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 100% of voting share of financial creditor after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
- iv. The voting concluded on 15.12.2022 wherein 100% member of CoC voted in favour of the resolution plan.

3.5 The list of financial creditors of the CD/ Byrnihat Coal Private Limited being members of the CoC and distributing of voting shares among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for/ Dissented/Abstained)
1.	Punjab National Bank	100%	Voted for



3.6 The Resolution Plan includes a statement under Regulation 38(IA) of the CIRP Regulations as to how it has dealt with the interest of all stakeholders in compliance with the Code and Regulations made thereunder.

3.7 The amount provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. Lakhs)

S.NO.	Category of stakeholders*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount.
(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	0.00	0.00	0.00	0.00
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	0.00	0.00	0.00	0.00
		(ii) who voted in favour of the resolution plan	721.76	721.76	249.00	34.50
		Total[(a)+(b)]	721.76	721.76	249.00	34.50
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under Sub-Section (2) of Section 21	0.00	0.00	0.00	0.00



		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution plan.	0.00	0.00	0.00	0.00
		(ii) who voted in favour of the resolution plan	0.00	0.00	0.00	0.00
		Total[(a)+(b)]	0.00	0.00	0.00	0.00
3.	Operational Creditors	(a) Related Party of Corporate Debtor	0.00	0.00	0.00	0.00
		(b) Other than (a) above:				
		(i) Government	0.00	0.00	0.00	0.00
		(ii) Workmen	0.00	0.00	0.00	0.00
		(iii) Employees	0.00	0.00	0.00	0.00
		(iv) Other	0.00	0.00	0.00	0.00
		Total[(a) =(b)]	0.00	0.00	0.00	0.00
4.	Other debts and dues (provision for contingent claims in plan)		0.00	0.00	1.00	0.00
Grand Total			721.76	721.76	250.00	64.64

[* If there are sub-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.]

3.8 The interests of existing shareholders have been altered by the Resolution plan as under:

Sl.No	Category of share holder	No. of Shares	No. / of Shares	Voting share (%) held	Voting Share (%) held after CIRP
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		held before CIRP	held after CIRP	before CIRP	
1	Equity	117,850	NIL	100	NIL
	Preference	NIL	NIL	NIL	NIL

3.9 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) (b)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the Complexity and scale of operation of business of the CD?	Clause III of the plan being the profile of the Resolution Applicant on Page 8 to 10, along with the Net worth certificate from Agrawal Shruti & Co. Chartered Accountant and other KYC document submitted with the Plan.	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?	Clause X on Page 34 and 35 Declaration U/s 29 A also submitted	Yes
Section 30 (1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible	Affidavit, Format IIIA- IB Code Related undertaking by Resolution Applicant duly notarised on 22.08.2022	Yes
Section 30(2)	Whether the Resolution Plan-		
	(a) Provides for the payment of insolvency Resolution Process costs?	Clause VI,I	Yes
	(b) Provides for the payment to the operational creditors?	Clause VI,2	Yes



	(c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause VI 4 v at Page 20	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Clause VIII, 2 (a)	Yes
	(e) provides for the implementation and supervision of the resolution Plan?	Clause VIII, 2 (b)	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	NO	Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?		Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause VIII, 2(b) of the plan provides for the same	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?	Clause VI, 2,ii	Yes
Regulation 38 (1A)	Whether the resolution Plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause IX on Page 30-31	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 nay resolution plan approved under the Code.	Clause X, 3 Page 33, Not Applicable	NO NA
Regulation 38(2)	Whether the Resolution plan provides:		
	(a) The term of the plan and its implementation schedule?	Clause VIII< 1 on Page 26-27	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Clause VIII, 2(a) on Page 27,	Yes
	(c) adequate means for supervising its implementation?	Clause VIII , 2 (b) on Page 27-29	Yes
Regulation 38(3)	Whether the Resolution Plan demonstrates that-		
	(a) It address the cause of default?	Clause IV, 2 on Page 11 and 12	Yes
	(b) it is feasible and viable?	Clause VII, B along with Annexure A	Yes
	(c) it has provisions for its effective Implementation?	Clause VIII, 2 (B) on Page 27-29,	Yes
	(d) It has provisions for approvals required and the timeline for the same?	Claus XII	Yes
	(e) The resolution applicant has the capability to	Clause III, Page 8 to 10	Yes



	implement the resolution plan?		
Regulation 39 (2)	Whether the RP has filed applications in respect of translations observed, found or determined by him?	Clause III, Page 8 to 10	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-Regulation (4A) of Regulation 36B.	Deposited on 23.12.2022 vide RTGS UTR NO. SBINR 52022122322375162	Yes

3.10 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	Actual Timeline
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	01.04.2022	T
Regulation 6(1)	Publication of Public Announcement	T+3	03.04.2022	T +3
Section 15(1) (C) /Regulation 12(1)	Submission of Claims	T+14	15.04.2022	T+15
Regulation 13(1)	Verification of Claims	T+21	22.04.2022	T+22
Section 26(6A) /Regulation 15 A	Application for appointment of Authorized Respective, if necessary	T+23	NA	NA
Regulation 17 (1)	Filing of Report certifying Constitution of CoC	T+23	22.04.2022	T+29
Section 22(I) and Regulation 17(2)	First meeting of the CoC	T+30	29.04.2022	T+29
Regulation 35A	Determination of fraudulent and other transaction	T+115	07.09.2022	T+159



Regulation 27	Appointment of two Registered valuers	T+47	07.07.2022	T+98
Regulation 36 (1)	Submissions of Information Memorandum to CoC	T+54	25.05.0222	T+54
Regulation 36 A	Invitation of EoI	T+75	13.06.2022	T+74
	Publication of Form G	T+75	15.07.2022	T+74
	Provisional List of Resolution Applicants	T+100	15.07.2022	T+106
	Final List of Resolution applicants	T+115	21.07.2022	T+112
Regulation 36B	Issues of Request for Resolution Plan, which include Evaluation Matrix and Information Memorandum of Resolution Applicants	T+105	20.07.2022	T+111
Section 30(6)/Regulation 39(4)	Submissions of CoC approved Resolution Plan	T+165	27.12.2022	T+269
Section 31(1)	Approval of resolution Plan	%T-180		T+

- 3.11 The time frame proposed for obtaining relevant approvals is as under:
NA.
- 3.12 The Resolution Plan is not subject to any contingency.
- 3.13 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): NA
- 3.14 The Resolution Plan has been filed on 27.12.2022 i.e. one day before the expiry of the period of CIRP provided in sec 12 of the Code
- 3.14 A. Whether the Resolution Professional has, in accordance with Regulation 35A-



(a) Applied to the Adjudicating Authority on or before the one hundred and thirty five day of the Insolvency Commencement date: No, it was filed on the 196th Day

(b) Filed form CIRP 8 with the Board on or before the one hundred and fortieth day of the insolvency commencement date: No, it was filed on 11.11.2022.

3.15 Details of section 66 or avoidance applicable filed/pending

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	-	-	-
2	Undervalued transactions under Section 45	-	-	-
3	Transactions defrauding creditors under section 49	14.10.2022	Pending	
4	Extortionate credit translations under Section 50	-	-	-
5	Fraudulent transactions under Section 66	-	-	-

3.15 A. The committee has approved a plan providing for contribution under regulation 39B as under:

- Estimated liquidation cost: Rs. 15,97,500.00
- Estimated liquid assets available: Nil
- Contributions required to be made: Rs. 15,97,500.00
- Financial creditor wise contribution is as under: NA



Sl. No.	Name of Financial Creditor	Amount to be contributed (In Rs.)
1.	Punjab National Bank	15,97,500.00

3.15 B. The committee has recommended under regulation 39C as under:

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

3.15.C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D

4. On 13.01.2023, the Bench sought clarification from the SRA as well as the CoC on certain points in the resolution plan submitted for approval. The RP vide its email dated 16.01.2023 requested the SRA to provide the clarifications. The Resolution Applicant has replied the same in her email dated 16.01.2023. The same has been filed by the RP in the form of an affidavit on 17.01.2023 before us and the same has been considered as part of the Resolution Plan submitted. It is submitted that any guarantees/contractual comforts provided by existing shareholders/promoters/guarantors in respect of the debt/claim of the Corporate Debtor to the financial creditor shall continue to exist. The collateral provided inter alia for the Cash credit limits also includes land belonging to the CD, which in any case shall be part of the plan. Any other collaterals not belonging to the CD may be retained by the financial creditors for further action/ recovery, if any. CA Certificate of Net Worth for year FY 21-22, Provisional Balance sheet for AY 22-23, ITR Computation and Balance sheet for AY 21-22, ITR Computation and Balance sheet for AY 20-21 5) ITR Computation and Balance sheet for AY 19-20, Permission for withdrawal of money for Source of Fund from Mahalaxmi Wellman Fuel LLP, CIBIL Report for the Resolution Applicant Sapna Singhal, KYC documents, Aadhar Card, Passport, the Balance Sheet for Mahalaxmi Wellman Fuel LLP for the years 2019-20, 2020-21 and 2021-22 have been submitted to conform the source of funds. The following



methodology of the infusion of funds for both the repayment of the creditors and the revival of the company in the resolution plan has been adopted.

<i>Sl. No.</i>	<i>Parameters</i>	<i>Amounts Payable</i>	<i>Source of Funds</i>	<i>Description of Proposal</i>
1.	<i>Upfront fresh capital Infusion</i>	<i>Equity-Rs. 65 lakhs</i>	<i>Equity / unsecured loans.</i>	<i>Refer Section VI of the Resolution Plan</i>
2.	<i>5% cumulative redeemable preference shares (to be redeemed after 8 years of Issue)</i>	<i>Rs. 115 lakhs worth will be infused</i>	<i>The same to be brought in by Mrs. Sapna Singhal and Mr. Naveen Gupta.</i>	
3.	<i>Unsecured Loans from family group sources</i>	<i>Rs. 80 lacs (Excluding Rs. 94 lakhs for working capital margin)</i>	<i>Assurance letter from LLP firm obtained for payments. Provided.</i>	
4.	<i>Equity/Quasi- Equity infusion for Improving Business Operations</i>	<i>Rs. 94 lakhs as long term subordinated unsecured loans</i>	<i>from self/group sources (Working capital margin)</i>	

The CoC has also clarified that the Plan has been approved and the offer made in the Plan accepted after due consideration of several aspects and market conditions.

5. IA (IBC) No. 73/GB/2022 is pending before this bench for adjudication in this matter. This IA has been filed on behalf of Resolution Professional of the Corporate Debtor / Byrnihat Coal Private Limited, under Section 49 of the Insolvency and Bankruptcy Code, 2016, seeking an order declaring that the transactions as stated in the present application are undervalued in terms of Section 49 of the Insolvency and Bankruptcy Code 2016; thereby directing Respondent No. 3, to transfer a sum of Rs. 38.60 Lakhs to the Corporate Debtor; Respondent No. 4/Ajay Anayya Kumar (HUF) to transfer 30,000 shares of Kamrup Warehousing Pvt. Ltd to the Corporate Debtor; Respondent No. 5/ Mahalaxmi Foundation to transfer 80,000 shares of Mahalaxmi Continental Ltd to the Corporate Debtor.

ORDER

6. The Insolvency and Bankruptcy Code, 2016, defines Resolution Plan as a plan for Insolvency Resolution of the Corporate Debtor as a going concern.



The Resolution Plan must resolve insolvency (rescue a failing, but viable business); should maximize the value of assets of the Corporate Debtor, and should promote entrepreneurship availability of credit and balance the interests of all the stakeholders.

7. In the backdrop of the object of the IBC, it is amply clear that the **Resolution is Rule and the Liquidation is an Exception.** Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. **IBC therefore, does not allow liquidation of a corporate debtor directly.** It allows liquidation only on failure of corporate insolvency resolution process. It rather facilitates and encourages resolution in several ways.

8. Keeping in view such object behind the enactment of the Code, intention of the Legislature is that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for bringing a Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per the apex court's decision in the matter of ***K. Saahidhar Vs. Indian Overseas Bank & Ors.***

9. The Resolution Plan was heard by this Bench on **20.01.2023** at length in the presence of the CoC members, RP, SRA and their learned Counsels. During the hearing on 20.01.2023, the member of the CoC submitted that the **the offer made in the Resolution plan was accepted considering number of factors into consideration and they prayed for approval of resolution Plan. Clarifications were sought from the SRA about the source of fund and the SRA has submitted in details about the source available with the SRA and its associates accounts.**



10. **On perusal of the records, it is found that the Resolution Plan confirms to the criteria as provided under clauses (a) to (f) in section 30(2) of the Code and the CoC approved the Resolution Plan by 100% voting. The value offered by the Resolution Plan is higher than the value of liquidation. The Resolution Plan also confirms to such other requirements as may be specified by the Board. The Resolution Professional has also certified that the Final Resolution Plan is in conformity with the provisions of the IBC.**

11. **Transactions relating to Sec. 49: IA(IBC) 73 of 2022** filed under sec 49 of IBC is pending for adjudication before this tribunal. With regard to this IA, as per clause VI of the Resolution and also as discussed and agreed in the meeting held on 09.12.2022 that the Successful Resolution Applicant would pursue the Application before this Tribunal and any amount to be realized from the Application shall be distributed as per the resolution plan among the secured financial creditors in accordance with the provisions of the code. Since this IA has no bearing on the approval of the Resolution Plan, the IA(IBC) 73 of 2022 is kept outside of the Resolution Plan and the same shall be heard and disposed of by this Bench later on. **The Registry is directed to list the IA on 23.02.2023 for hearing.**

12. **Personal Guarantors are not to be discharged by virtue of the approval of this Resolution Plan.**

13. On perusal of the Resolution Plan, we are of the considered view that the Resolution Plan meets the requirement of Section 31 r/w Section 30(2) of the Code. **Therefore, the present application IA (IBC) No. 91/GB/2022 is allowed and the Resolution Plan is approved with the certain observations and compliances of the following Conditions:**

13.1 Approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/ Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/ own



jurisdiction to pass any appropriate order as the case may be. The Resolution Applicant, on approval of the Plan, has liberty to approach those Competent Authorities/ Courts /Legal Forums/ Offices-Govt. or Semi Govt./State or Central Govt. for appropriate relief or concession, or dispensation sought for in the plan as the case may be. This is not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant has liberty to approach Competent Authorities for any concession, relief or dispensation as the case may be.

13.2 **The Monitoring Committee would be three members monitoring committee consisting of one member/representative of the SRA, (ii) representative of Financial Creditor having highest voting share in the CoC and (iii) Mr. Purshotam Gaggar Resolution Professional, as Head of Monitoring Committee.** The Resolution Professional is hereby appointed as the Head/Chairman of the monitoring Committee for supervision of the implementation of the Resolution Plan. **The Monitoring Committee needs to be wound up at an early date on implementation of the Resolution Plan.** Fees of the RP as the Chairman of the Monitoring Committee is Rs. 25,000.00 per month as stated in Clause VIII of the Resolution Plan.

14. **It is further directed that:**

14.1 **The approved Resolution Plan shall come into force with immediate effect.**

14.2 The moratorium order passed under section 14 of the Code on **Byrnihat Coal Private Limited** shall cease to have effect from today;

14.3 The Resolution Professional, Mr. Purshotam Gaggar is discharged from the duties of the resolution professional of the CD but he is to work as the Chairman of the Monitoring Committee till the Plan is implemented.

14.4 This Adjudicating Authority holds that it is beyond its scope to grant any Concessions/waivers etc. in respect of any dealings/transactions



between the different parties, and/or as regards any statutory obligations/liabilities that are visualized or may arise subsequently while giving effect to the Plan, as the same would be dealt with by the SRA.

- 14.5 The Resolution Plan shall be subject to the various existing laws in force and shall also confirm to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.
- 14.6 The Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws for the time being in force **within a period of one year from** the date of approval of the Resolution Plan by the Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.
- 14.7 All relevant parties in relation to the Final Resolution Plan are to be bound by the terms and conditions mentioned therein in accordance with Section 31(1) of the IBC 2016.
- 14.8 All relevant parties are directed **to extend full cooperation to carry** out the terms and conditions of the Final Resolution Plan. If there is any deviation in implementing the Final Resolution Plan, the concerned parties/entity will be liable for punishment as per Chapter 7 (Offences and penalties) of the IBC, 2016.
- 14.9 **The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.**



15. **Accordingly, IA (IBC)/91/GB/2022 in CP (IB)/20/GB/2021 is allowed and the Resolution Plan is approved with the above Observations and Directions.**

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority**

Sd/-

**(Deep Chandra Joshi)
Member (Judicial)
& Adjudicating Authority**