

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**IA-4544/2023**

**IA- 5057/2023**

**IN C.P (IB) NO. 1140/2020**

Under Section 30(6) of Insolvency &  
Bankruptcy Code, 2016

IA 5057/2023

*In the Application of*

Sabari Developers LLP ...Applicant

Vs.

S. Gopalakrishna ...Respondent No.1

Rupa Infotech and Infrastructure Private  
Limited ...Respondent No. 2

IA 4544/2023

*In the Application of*

S. Gopalakrishna  
Resolution Professional/  
...Applicant

In the matter of

**CP (IB) No.1140/MB/C-IV/2020**

**Rupa Infotech and Infrastructure Private  
Limited**

...Financial Creditor

Vs.

**Shankeshwar Properties Private Limited**

...Corporate Debtor

**Order Pronounced on: 19.12.2023**

*Coram:*

Ms. Anu Jagmohan Singh  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances:*

For the Applicant/RP : Mr. Shyam Kapadia i/b Adv.Amit Tungare

For the Applicant in Objection

Application: Mr. Chetan Kapadia a/w Mr.  
Kunal Kanungo, Ms.  
Tanushree Sogani and Mr.  
Atishay Jain.

**ORDER**

**IA 5057 OF 2023**

1. Before we deal with the Application for approval of the Resolution Plan, it is important to deal with the IA No. 5057 of 2023 hereinafter referred to as (Objection Applications) to the Resolution Plan, filed by Sabari Developers LLP i.e. the Applicant being Related Party Creditor of the Corporate Debtor. The bone of contention and relief sought in the said Applications are reproduced herein below:
  - i. This Hon'ble Tribunal be pleased to set aside the decision of the CoC (Committee of Creditor) in its 6<sup>th</sup> meeting held on 10<sup>th</sup> August 2023 approving the resolution plan of Respondent No.2 and all steps taken pursuant thereto or as a consequence thereof.
  - ii. This Hon'ble Tribunal be pleased to pass an order declaring that the resolution plan submitted by Respondent No. 2 is non-compliant with the Code and the regulations made thereunder.
  - iii. This Hon'ble Tribunal be pleased to pass an order rejecting the Interlocutory Application No. 4544 of 2023 filed by the Resolution Plan of the Corporate Debtor.

**BRIEF FACTS OF OBJECTION APPLICATION:**

2. The Applicant is a related party of the Corporate Debtor, the Applicant had no right of representation, participation or voting

in the meeting of the COC of the Corporate Debtor. However, when the authorized representative & designated partner of the Applicant also being the suspended director of the Corporate Debtor, received and perused the resolution plan submitted by Respondent No. 2 and as approved by Respondent No. 2 as the only member with voting rights on the COC of the Corporate Debtor, the following glaring illegalities and contraventions to the IBC and regulations made thereunder came to the notice of the Applicant:

- i. The resolution plan is conditional on there being no Material Adverse Effect (as defined in the resolution plan) between the date of approval of resolution plan by the COC (in its 6th COC meeting in the facts of this case) up to the Effective Date (i.e. date of approval of the resolution plan by this Hon'ble Tribunal).
- ii. The resolution plan is also conditional on there being no Force Majeure Event occurring until the Closing Date (Le. 60 days from the date on which this Hon'ble Tribunal approves the application for approval of resolution plan).
- iii. The Force Majeure Events and Material Adverse Effect are wide definitions under the resolution plan which are wholly inapplicable to a resolution plan approved by the COC owing to the nature of the Code as held by the Hon'ble Supreme Court in the case of Ebix Singapore Pvt. Ltd. Vs. CoC of Educomp [(2022) 2 SCC 401).
- iv. As held by the Hon'ble Supreme Court in Ebix Singapore (supra), Regulation 38(3) of the IBBI (Corporate Insolvency Resolution Process) Regulations, 2016 mandates that a resolution plan be feasible, viable and implementable with specific timelines. A resolution plan whose implementation can be withdrawn at the behest of the successful resolution applicant, is inherently unviable, since open-ended clauses on modifications/withdrawal would mean that the plan could fail at an undefined stage, be uncertain, including after approval by the Adjudicating Authority.
- v. Under the resolution plan, the monies received pursuant to the avoidance applications shall vest directly in the

resolution applicant. The same is ex facie contrary to the law laid down by the Hon'ble Delhi High Court in the case of Tata Steel BSL Ltd. Vs. Venus Recruiters [LPA 37/2021 dated 13th January 2023], wherein the Hon'ble Court has held that the benefit of avoidance applications ought to be given to all creditors.

- vi. Furthermore, Respondent No. 2 has proposed nil payment to the Applicant on the sole ground that it is a related party.

### **FINDINGS**

1. This Bench takes note that the Resolution Plan itself clarifies that the Resolution Applicant is not seeking or reserving any unilateral right to walk away, modify, renegotiate, or abandon the Resolution Plan, without the necessary approval of CoC and the Adjudicating Authority. An approval of the Resolution Plan under section 31 of the IBC would make such approval binding on Stakeholders including the Resolution Applicant, on such terms as the approval is granted.
2. It is clarified in the Resolution Plan that upon successful implementation of Resolution plan and discharge of the Resolution Professional any application filed by the Resolution Professional under section 43 to 51 & 66 of the Code shall be pursued by the Resolution Applicant (who is also the Financial Creditor) directly and all cost and benefits to this account shall accrue to Resolution Applicant/Financial Creditor.
3. The Hon'ble Apex Court in the case of ***M. K. Rajagopalan v. Dr. Periasamy Palani Gounder & Anr*** has held that there can be differential treatment of related party creditor, if CoC so decides in its commercial wisdom. Hence, the Petitioner claim of this account is devoid of merits.
4. It is also clarified that the Resolution Plan submitted by the Resolution Applicant is compliant with the code.

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**IA 4544 OF 2023**

1. This Application has been filed on 01.10.2023 by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'the Code') on behalf of the Committee of Creditors seeking approval of the Resolution Plan submitted by the Successful Resolution Applicant and approved by 100% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'CoC') of the Corporate Debtor viz. Shankeshwar Properties Private Limited [CIN: U75123MH2005PTC158221] (hereinafter referred to as 'Corporate Debtor').
2. **The brief facts of the Application are as follows:**
  - 2.1 Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated vide an order dated 03.02.2023 of this Court in C.P.(IB)-1140(MB)/2020 on an application filed by Rupa Infotech and Infrastructure Private Limited (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code 2016. Mr. S. Gopalakrishnan (Reg. No.: IBBI/IPA-002/IP-N00151/2017-18/10398 was appointed as Interim Resolution Professional (IRP), who was confirmed as Resolution Professional (RP) in the First CoC meeting held on 10.03.2023. The Applicant made a public announcement in the newspapers in Form-A on 10.02.2023 inviting claims from the creditors, workers/employees of the Corporate Debtor and from

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government bodies. IRP constituted the Committee of Creditors (CoC) based on the claims received by him and the first meeting of the CoC held on 10.03.2023.

2.2 Form G was published on 05.05.2023 for inviting Expression of Interest and the last date for submission of the resolution plan was 04.06.2023 which was later extended to 22.07.2023 on revision of the Request for Resolution Plans (**"RFRP"**). Only one Prospective Resolution Applicant i.e., Rupa Infotech and Infrastructure Private Limited, which submitted the Resolution plan on 19.07.2023.

2.3 The Resolution Plan submitted by the Resolution Applicant viz. Rupa Infotech and Infrastructure Private Limited was approved by the CoC in the 6<sup>th</sup> meeting held on 10.08.2023 through e-voting by 100% of the CoC member voting in favor of the Resolution Plan. The resolution is reproduced below -

*"Resolved that, pursuant to sub-section (4) and sub-section (6) of Section 30 of the Insolvency and Bankruptcy Code, 2016, read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016 and other applicable provisions of Insolvency and Bankruptcy Code, 2016 and rules and regulations made thereunder, the approval of the Committee of Creditors of*

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*Shankheshwar Properties Private Limited be and is hereby accorded for the Resolution Plan submitted by Rupa Infotech and Infrastructure Private Limited on July 24<sup>th</sup>, 2023 after considering its feasibility and viability, the manner of distribution proposed by the said Resolution Plan, for the Insolvency resolution of Shankheshwar Properties Private Limited.”*

- 2.4 The RP issued Letter of Intent on 16.08.2023 in favor of the Resolution Applicant and also sought for Performance Security of Rs. 1,00,000/- (Rupees One Lakh Only). Further, the RP vide its letter dated 16.08.2023, inter alia has informed the Successful Resolution Applicant that the amount of Performance Security for an amount of Rs. 1,00,000/- (Rupees One Lakh Only) to be continued to be held as in the nature of Performance Bank Guarantee. Therefore, RP states that the Resolution Plan approved by the CoC is in compliance with the requirements of Section 30(2) of the Code.

In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant and confirms that this Resolution Plan:

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- a. Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the corporate debtor;
  - b. Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;
  - c. The implementation and supervision of Resolution Plan;
  - d. Does not prima facie contravene any of the provisions of the law for time being in force,
  - e. Conforms to such other requirements as may be specified by the Board.
  - f. As per the Affidavit received and the further documents submitted, the Resolution applicants are not covered under 29A.

In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that:

- i. The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.
- ii. It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD.
- iii. A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have



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contributed to the failure of implementation of any other Resolution Plan approved by the AA in the past.

- iv. The terms of the plan and its implementation schedule.
- v. The management and control of the business of the CD during its term.
- vi. Adequate means of Supervising its implementation.
- vii. The Resolution Plan Demonstrates that it addresses
  - a. The cause of the Default
  - b. It is feasible and viable
  - c. Provision for effective implementation
  - d. Provisions for approvals required and the time lines for the same.
  - e. Capability to Implement the Resolution Plan

2.5 The Resolution Applicant viz. Rupa Infotech and Infrastructure Private Limited is a company engaged in the business of carry out business of buying, selling, owning, trading, building, developing, constructing and related activities thereof and to develop purchase sell, lease or otherwise deal in computers software, including programmes, application systems, data collections and other facilities relating to computer operations, having office at 401, Rupa Plaza, Jawahar Road, Ghatkopar (E), Mumbai-400077, Maharashtra, India. The Resolution Applicant confirmed that

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it is eligible to submit Resolution Plan as per Section 29A of Insolvency and Bankruptcy Code.

2.6 The Resolution Applicant has confirmed that -

- i. its connected persons are not convicted for any offence during the preceding five years and no criminal proceedings are pending against any person.
- ii. not disqualified under Companies Act, 2013 to act as a Director.
- iii. not identified as a willful defaulter by any bank of financial institution or consortium thereof in accordance with the guidelines of the Reserve Bank of India.
- iv. not debarred from accessing to, or trading in securities markets under any order or directions of the Securities and Exchange Board of India.

2.7 As per the RP the Fair Value and Liquidation Value determined by the registered Valuer are as follows:

Fair Value Rs. 07,82,389/-

Liquidation Value Rs. 94,330/-

3. **Resolution Plan for the Corporate Debtor (the key features of the Resolution Plan submitted by Rupa Infotech and Infrastructure Private Limited is summarized below):**

3.1 *The value of the said Resolution Plan is Rs. 16,50,000/- which includes the payments towards the CIRP cost and payment to the Unsecured Financial Creditors and the summary of payment is enumerated below:*

Sr. No.	Particulars	Amount	Remarks
1.	Insolvency Resolution Process Cost	Rs. 15,00,000	As per the Resolution Plan, the CIRP Cost shall not exceed the given amount.
2.	Unsecured Financial Creditor	Rs. 1,50,000	The said amount is 0.24% of the admitted claims of Unsecured Financial Creditor.
3.	Operational Creditors: Statutory Dues/Government dues	00	The said liability stands extinguished after the approval of the Resolution Plan.
4.	Employees and Workmen	00	The said liability stands extinguished after the approval of the Resolution Plan
5.	Unsecured Financial Creditors-Related Party	00	The Resolution Plan does not provide for any amount against the admitted claim of Unsecured

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			Financial Creditors- Related Party
	Total	16,50,000/-	

4. Ld. Counsel for the Resolution Professional has annexed a certificate of the Form-H to the Application under Regulation 39(4) In Form-H of the CIRP Regulations, 2016 to certify that the Resolution Plan as approved by the CoC meets all the requirements of the IBC and its Regulations.

**FORM H  
COMPLIANCE CERTIFICATE**

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

I, S Gopalakrishnan, an insolvency professional enrolled with ICSI IIP and registered with the Board with registration number IBBI/IPA-002/IP-N00151/2017-18/10398, am the resolution professional for the corporate insolvency resolution process )CIRP( of ]name of the corporate debtor )CD([.

2. The details of the CIRP are as under:

<b>Sl. No.</b>	<b>Particulars</b>	<b>Description</b>
1	Name of the CD	<b>Shankheshwar Properties Private Limited</b>

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2	Date of Initiation of CIRP	03 <sup>rd</sup> February 2023
3	Date of Appointment of IRP	03 <sup>rd</sup> February 2023
4	Date of Publication of Public Announcement	10 <sup>th</sup> February 2023
5	Date of Constitution of CoC	04 <sup>th</sup> March 2023
6	Date of First Meeting of CoC	10 <sup>th</sup> March 2023
7	Date of Appointment of RP	10 <sup>th</sup> March 2023 through E-voting which concluded on 14 <sup>th</sup> March 2023
8	Date of Appointment of Registered Valuers	14 <sup>th</sup> March 2023
9	Date of Issue of Invitation for EoI	05 <sup>th</sup> May 2023
10	Date of Final List of Eligible Prospective Resolution Applicants	14 <sup>th</sup> June 2023
11	Date of Invitation of Resolution Plan	04 <sup>th</sup> June 2023, further RFRP modified with the consent of the members of the CoC and Re-issued on 22 <sup>nd</sup> June 2023
12	Last Date of Submission of Resolution Plan	04 <sup>th</sup> June 2023 which was later extended to 22 <sup>nd</sup> July 2023 on revision of the RFRP.
13	Date of Approval of Resolution Plan by CoC	10 <sup>th</sup> August 2023

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14	Date of Filing of Resolution Plan with Adjudicating Authority	September 29, 2023
15	Date of Expiry of 180 days of CIRP	01 <sup>st</sup> August 2023
16	Date of Order extending the period of CIRP	09 <sup>th</sup> August 2023
17	Date of Expiry of Extended Period of CIRP	30 <sup>th</sup> October 2023
18	Fair Value	7,82,389/-
19	Liquidation value	94,330/-
20	Number of Meetings of CoC held	06

3. I have examined the Resolution Plan received from Resolution Applicant )Rupa Infotech and Infrastructure Private Limited( and approved by Committee of Creditors )CoC( of )Shankheshwar Properties Private 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 )Rupa Infotech and Infrastructure Private Limited( 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 creditors after

considering its feasibility and viability and other requirements specified by the CIRP Regulations.

iv) (The voting was held in the meeting of the CoC on 10<sup>th</sup> August 2023 where all the members of the `CoC were present.

5. The list of financial creditors of the CD, Shankheshwar Properties Private 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.	Rupa Infotech and Infrastructure Private Limited	100	Voted for

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.

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

(Amount in Rs.(

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)

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(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	-	-	-	-
		(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				
		Total[(a) + (b)]	-	-	-	-
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	14,86,93,656 /-	1,20,47,140/-	0	0.00%
		(b) Other than (a) above:				



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		(i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	6,24,80,000/-	6,18,60,640/-	1,50,000/-	0.24%
		<b>Total[(a) + (b)]</b>	<b>21,11,73,656/-</b>	<b>7,39,07,780/-</b>	<b>1,50,000/-</b>	<b>0.20%</b>
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i) Government	11,21,54,597	1.00	0	0.00%
		(ii) Workmen	-	-	-	-
		(iii) Employees	-	-	-	-
		(iv) Service Provider (Link	22,661/-	22,661/-	0	0.00%

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		Intime India Pvt Ltd)				
		(v) Service Provider (Manish Modi & Associates)	1,26,850/-	1,26,850/-	0	0.00%
		Total[(a) + (b)]	<b>11,23,04,108/-</b>	<b>1,49,512/-</b>	<b>0</b>	<b>0.00%</b>
4	Other debts and dues		-	-	-	-
<b>Grand Total</b>			<b>32,34,77,764/-</b>	<b>7,40,57,292/-</b>	<b>1,50,000/-</b>	<b>0.20%</b>

\*If there are sub-categories in a category, please add rows for each sub-category.

# Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

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	48,000	0	100%	0%
2	Preference	-	-	-	-

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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?	Clause 3.2 and 3.3 of 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?	Annexure III-A	Yes
Section 30)1(	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Annexure III-A	Yes
Section 30)2(	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause 2.8 (f)  Clause 6(2)	Yes  Yes

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	<p>(d) provides for the management of the affairs of the corporate debtor?</p> <p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?</p>	<p>Clause 6(3)</p> <p>Clause 8(8.4) &amp; 8(8.5)</p> <p>Clause 8(8.4)</p> <p>Clause 11</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Section 30)4(	<p>Whether the Resolution Plan</p> <p>)a( is feasible and viable, according to the CoC?</p> <p>)b( has been approved by the CoC with 66% voting share?</p>	<p>Yes, clause 6.7 of the Plan</p> <p>Yes, approved by the members</p>	<p>Yes</p> <p>Yes</p>

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		of the CoC constituti ng 100% voting share	
Section 31)1(	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Section 5; Page No. 21	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?	Section 7.3; Page 28 and Clause 11(1.1)	Yes
Regulation 38)1A(	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Yes; Clause 7(7.5)	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.  (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	No; Clause 11 (1.2)  N/A	Yes  N/A

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Regulation 38)2(	Whether the Resolution Plan provides: a) the term of the plan and its implementation schedule?  b) for the management and control of the business of the corporate debtor during its term?  c) adequate means for supervising its implementation?	Clause 8(8.1)  Clause 8(8.4)  Clause 8(8.1) & 8(8.4)	Yes  Yes  Yes
38)3(	Whether the resolution plan demonstrates that –  a) it addresses the cause of default?  b) it is feasible and viable?  c) it has provisions for its effective implementation?  d) it has provisions for approvals required and the timeline for the same?	Clause 5(5.2)  Clause 7(7.1)  Clause 8(8.1)  Clause 8(8.1)  Clause	Yes  Yes  Yes  Yes

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	e( the resolution applicant has the capability to implement the resolution plan?	5(5.2)	Yes
39)2(	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Clause 2(2.11)	Yes on September 28, 2023
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Clause 8(8.1)	Yes

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 40A	Actual Date
Section 16)1(	Commencement of CIRP and Appointment of IRP	T	03 <sup>rd</sup> February 2023 (order received on 08 <sup>th</sup> February 2023)
Regulation 6)1(	Publication of Public Announcement	T+3	10 <sup>th</sup> February 2023
Section 15)1)c(	Submission of Claims	T+14	23 <sup>rd</sup> February 2023

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/Regulation 12 )1(			
Regulation 13)1(	Verification of Claims	T+21	03 <sup>rd</sup> March 2023
Section 26)6A( / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	NA
Regulation 17)1(	Filing of Report Certifying Constitution of CoC	T+23	04 <sup>th</sup> March 2023
Section 22)1( and regulation 17)2(	First Meeting of the CoC	T+30	10 <sup>th</sup> March 2023
Regulation 35A	Determination of fraudulent and other transactions	T+115	06 <sup>th</sup> July 2023
Regulation 27	Appointment of two Registered Valuers	T+47	14 <sup>th</sup> March 2023
Regulation 36 )1(	Submission of Information Memorandum to CoC	T+54]	03 <sup>rd</sup> June 2023
Regulation 36A	Invitation of EoI	T+75	05 <sup>th</sup> May 2023
	Publication of Form G	T+75	05 <sup>th</sup> May 2023
	Provisional List of Resolution Applicants	T+100	30 <sup>th</sup> May 2023
	Final List of Resolution Applicants	T+115	14 <sup>th</sup> June 2023
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	04 <sup>th</sup> June 2023, further revised with the approval of the CoC and re-issued on 22 <sup>nd</sup> June 2023



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Section 30)6( / Regulation 39)4(	Submission of CoC approved Resolution Plan	T+165	19 <sup>th</sup> July 2023
Section 31)1(	Approval of Resolution Plan	T=180	10 <sup>th</sup> August 2023

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	Capital Reduction of equity share capital of the Corporate Debtor	Section 66 of the Companies Act, 2016	Hon'ble National Company Law Tribunal	In respect of reduction / cancellation of capital as contemplated by the Resolution Plan, Adjudicating Authority's approval of the Resolution Plan shall be deemed as compliance with the provisions of Chapter XV of the Companies Act, 2013, and no separate approval under Chapter XV of the Companies Act 2013 shall be required for reduction / cancellation of capital as contemplated in the Resolution Plan.

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2	any other approval is required under any law, other than the one mentioned above	-	Hon'ble National Company Law Tribunal or any other respective authority as may deemed fit.	within a period of one year from the date of approval of resolution plan by the NCLT or within such period as provided for in such law, whichever is later
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12. The Resolution Plan is not subject to any contingency.

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(:

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	Publication of Form G	Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For	The signed Balance-sheets were pending to be received from the suspended management of the corporate debtor, thus, after the receipt of the Balance-	Ratified

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		Corporate Persons) Regulations, 2016	sheets till the commencement of the CIRP Form-G was published.	
2	CIRP not completed within 180 Days	Section 12(1) of the Code, 2016	The resolution plan was received on and before the last date for receipt of Expression of Interest as per Form G publication. Thus, the RP with the approval of the members of the CoC sought extension of CIRP period which was allowed by the Hon'ble NCLT on August 09, 2023.	Ratified

14. The Resolution Plan is being filed 30 days before the expiry of the period of CIRP provided in section 12 of the Code.

14A. Whether the resolution professional has, in accordance with regulation 35A-

- (a) applied to the Adjudicating Authority on or before the one hundred and thirty-fifth day of the insolvency commencement date:  
Yes / No

(b) filed Form CIRP 8 with the Board on or before the one hundred and fortieth day of the insolvency commencement date: Yes

15. Provide details of section 66 or avoidance application 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	September 28, 2023	Not listed for hearing as yet.	N/A
2	Undervalued transactions under section 45	N/A	N/A	N/A
3	Extortionate credit transactions under section 50	N/A	N/A	N/A
4	Fraudulent transactions under section 66	September 28, 2023	Not listed for hearing as yet.	N/A

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

- a. Estimated liquidation cost: NA
- b. Estimated liquid assets available: NA
- c. Contributions required to be made: NA
- d. Financial creditor wise contribution is as under:

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1	Rupa Infotech and Infrastructure Private Limited	Rs. 1,50,000.00

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2	Sabari Developers LLP	Nil
Total		Rs. 1,50,000.00

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

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

The details of recommendation are available with the resolution professional.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D.]

16. I, S Gopalakrishnan, 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.

**Mr. S Gopalakrishnan**

**Resolution Professional**

**In the matter of Shankheshwar Properties Private Limited**

**Reg No. IBBI/IPA-002/IP-N00151/2017-18/10398**

**Address as registered with the Board:** 203, The Ghatkopar Nilkanth CHS, Jethabhai Lane, Ghatkopar (East), Mumbai, Maharashtra- 400077

**Email Id as registered with the Board:** [gopi63.ip@gmail.com](mailto:gopi63.ip@gmail.com)

Date: 29<sup>th</sup> September 2023

Place: Mumbai

5. In the circumstances mentioned hereinabove, the Applicant has filed Application seeking approval of this

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Tribunal on the Resolution Plan, submitted by the Resolution Applicant i.e Rupa Infotech and Infrastructure Private Limited stating that the plan is in accordance with the Section 30(2) and other provisions laid down under the code.

6. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
  - a. Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
  - b. Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
  - c. For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
  - d. The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
7. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.
8. The RP has filed Compliance Certificate in Form-H along with the plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the CoC in the

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6th meeting held on 10.08.2023 with 100% (Hundred percent).

9. In view of the pending proceedings u/s 66(1) r/w 43(1) and 44(1) of the Code the Resolution Plan states out that “*Any monies received pursuant to exercise of powers and obligations by the Resolution Professional under Sections 43 to 51 (both inclusive) and Section 66 of the IBC, shall vest with the Resolution Applicants. It is clarified that upon successful implementation of Resolution Plan and discharge of the Resolution Professional any application filed by the Resolution Professional under Section 43 to 51 & 66 of the Code shall be pursued by the Resolution Applicants directly and all cost and benefits to this account shall accrue to Resolution Applicants. After the approval of Plan, the Resolution Applicant shall be entitled to adopt any further legal action on behalf of the Corporate Debtor*”
10. In the case of “**K Sashidhar v. Indian Overseas Bank & Others**” (in **Civil Appeal No.10673/2018** decided on 05.02.2019) the Hon’ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The

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Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

11. 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)."*



12. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

**ORDER**

13. The Application **IA-4544/2023** in CP(IB)/1140/(MB-IV)/2020 is **allowed**. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

13.1. It shall be binding on the Corporate Debtor, 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 is due, guarantors and other stakeholders involved in the Resolution Plan.

13.2. The approval of the resolution plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate authorities in accordance with law. Further in terms of the judgment of ***Hon'ble***

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**Supreme Court** in the matter of “**Ghanshyam Mishra And Sons Private Limited V/S Edelweiss Asset Reconstruction Company Limited**”, on the date of approval of the Resolution Plan by the adjudicating authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.

- 13.3. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- 13.4. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- 13.5. 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.

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13.6. 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.

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

14. The Interlocutory Application i.e. IA-4544/2023 in CP(IB)/1140(MB)/2020 is allowed accordingly disposed of and IA 5057/2023 is dismissed.

Sd/-

**Anu Jagmohan Singh**  
**Member (Technical)**

Sd/-

**Kishore Vemulapalli**  
**Member (Judicial)**