

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-III, MUMBAI BENCH**

**I.A. No. 403 of 2022
IN
C.P. No. 2279 of 2019**

In the matter of an Application 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

In the matter of

M/s. The Standard Scientific Co.

... Operational Creditor

v/s

**M/s. M. S. Mining and Consultancy
Private Limited**

... Corporate Debtor

I.A. No. 403/2022

**Shri Srigini Rajat Naidu,
Resolution Professional,**

M/s. M. S. Mining and Consultancy
Private Limited, O/at Block no. 11, 12,
1st Floor, Mount Annex., Opp. Oriental
Insurance Company, Moum Road Ext.,
Sadar, Nagpur – 400 001

....Applicant

Order reserved on: **05.06.2023**

Order pronounced on: **30.06.2023**

CORAM:

Hon'ble Shri H.V Subba Rao, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

For the Applicant: Mr. Avinash Khanolkar, Advocate

Per: Hon'ble Ms. Madhu Sinha, Member (Technical)

ORDER

1. This is an 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 (hereinafter referred to as the '**Code**') filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant **Mr. Srigrini Rajat Naidu**, which was approved by **76.56 %** voting share of the members of the Committee of Creditors (hereinafter referred to as '**COC**').

2. The facts leading to the Application are as under:

a. The Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') of the Corporate Debtor was initiated by this Bench by an order dated 17.03.2020 under Section 9 of the Insolvency and

Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') (Admission Order) and Ms. Manisha Sanjay Agrawal was appointed as the Interim Resolution Professional (hereinafter referred to as 'IRP').

- b. Further, during the 2nd COC meeting held on 21.09.2020, the COC members resolved to replace RP to carry forward the CIRP and proposed the name of the Applicant i.e. Srigini Rajat Naidu. Accordingly, the CoC preferred an Application bearing no. IA 1681 of 2020 seeking replacement of the RP which was granted by this Bench vide an Order dated 11.11.2020.
- c. Thereafter due to Covid- 19 situation and the Lockdown the statutory period of the CIRP got lapsed and therefore the Applicant moved an Application bearing no. IA 2478 / 2020 in CP (IB) 2279 / MB / 2019 seeking exclusion of lapsed time from the statutory period of the CIRP which stood allowed vide an Order dated 25.03.2021. Pursuant to the said Order the statutory time limit for completion of the CIRP has been shifted to 26.07.2021.
- d. Further, the Applicant carried out the CIRP and published a public notice in Form – G inviting the Expression of Interest to submit Resolution Plan for the Corporate Debtor (hereinafter referred as **the EOI**) on 03.12.2020.
- e. The Applicant further states that in furtherance of the Form-G issued by applicant, he received EOIs from 2 (two) Prospective Resolution

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Applicants (PRAs) within the stipulated time period. However, at the end only one entity submitted its plan with the Applicant namely M/s. Rudransh Agro & Co. on 30.04.2021.

f. The Applicant submits the claims received and admitted by Resolution Professional as under:

| Nature of creditor | Amount Claimed (Rs. in INR) | Amount Admitted (Rs. in INR) |
|--|------------------------------------|-------------------------------------|
| Financial Creditors (Secured) | 6,62,11,328/- | 6,62,11,328/- |
| Financial Creditors (Unsecured) | 2,02,77,000/- | 2,02,77,000/- |
| Sub Total- A | 8,64,88,328/- | 8,64,88,328/- |
| Operational Creditor (Other than , Taxes and Statutory Dues) | 1,58,01,785/- | 1,45,85,582/- |
| Taxes and Statutory Dues | 71,84,300/- | 71,84,300/- |
| Sub Total- B | 2,29,86,085/- | 2,17,69,882/- |
| Total A+B | 10,94,74,413/- | 10,82,58,492 /- |

It is noteworthy that the PRA has proposed to complete the modalities of the Resolution Plan within 90 days from the date of approval of the Resolution Plan by this Hon'ble Bench.

g. During the 2nd COC meeting, the members decided to appoint valuers namely; Mr. Rhishikesh S. Pardhy, Mr. CMA Harshad Deshpande, Mr. Kedar Arvind Chikodi, Mr. Arun Sonkusale and Mr. Chadradutt Marathe respectively to determine the fair value and liquidation value of the Corporate Debtor, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These valuers had

submitted their reports.

h. The Liquidation and Fair Value of the Corporate Debtor is as follows:

| | |
|-------------------|-------------------|
| Liquidation Value | Fair value: |
| Rs. 2,12,77,327/- | Rs. 3,34,84,345/- |

i. The CoC held its meeting held on 22.11.2021 wherein the final Resolution Plan was tabled before the CoC for its consideration wherein the CoC had a detailed discussion over the Plan.

j. Accordingly, after the deliberate discussions over the Plan, the Applicant put the Resolution Plan for voting of the CoC and asked the CoC to communicate its decision on or before 29.11.2021. Accordingly, one of the CoC member namely Indian Bank (Erstwhile Allahabad Bank) who is having 76.56 % through an E-mail communication dated 26.11.2021 acceded for the proposed Resolution Plan. However, it is pertinent to note that the other member of the CoC who is an unsecured Financial Creditor viz. Shri Deepesh Asnani holding 23.44 % has, neither till closure of the voting period nor till date, communicated its decision over the proposed Resolution Plan. And therefore, it is construed that the other member of the CoC has abstained from voting. Accordingly, the Applicant communicated the result of voting vide an E-mail dated 29.11.2021 to the CoC. Accordingly, it is construed that the proposed Resolution Plan as submitted by the PRA has been stood approved by the CoC by its voting of 76.56%. Thereafter, the Applicant issued compliance

certificate in Form “H” was issued by the Resolution Professional.

2. The Salient Features of the Resolution Plan are as under:

a. The Resolution Applicant M/s. Rudransh Agro & Co. (hereinafter referred to as “Successful Resolution Applicant “SRA”) is partnership firm incorporated on 24 Oct. 2020 having its registered office at A/101, Sumati Apartment, Sai Krupa Society, Mhada Colony, Narendra Nagar. The business of the concern is focused to do all types of Manufacturing and Trading of Manganese Oxide & Manganese Dioxide etc. This concern already trying to be best& leading concern in the business of primary and incidental work relating to the Manufacturing and trading of Manganese Oxide & Manganese Dioxide.

b. The Partners of Resolution Applicant comprise of Partners mentioned as under:

| PAN | Full Name | Date of Joining |
|------------|---------------------------|------------------------|
| AHIPH9015K | MISS. BHARTI INDAL HUKRE | 24.10.2020 |
| BPJPK8840M | MR. KAUSTUBH KISHOR KOLHE | 14.10.2021 |
| ABHPK6458L | MR. KISHOR RAMBHAU KOLHE | 14.10.2021 |

c. Further, the Resolution Applicant proposed change in the

management pattern of the Corporate Debtor and has stated that new management would takeover the Corporate Debtor after approval of the Resolution Plan by this Hon'ble Bench.

- d. Further, it may also be noteworthy that the Resolution Applicant is seeking certain Reliefs / Concessions vide the Resolution Plan which are specifically stated under Para 19 of the Resolution Plan. In respectful submissions of the Applicant the CoC has not made any observation over the said Reliefs / Concessions. And therefore, the same are being left with the judicial wisdom of this Hon'ble Bench. Further, the Resolution Applicant has also made a deposit of the Earnest Money Deposit (EMD) amount of ₹ 20,00,000/- as per the undertaking given in the Resolution Plan.

e. Monitoring and Implementation of Resolution Plan:

Further that, vide the Resolution Plan the Resolution Applicant proposes that to appoint a monitoring / steering committee for having watch over the implementation of the Resolution Plan. The proposed structure of the committee is as follows :

- 1) Shri Srigini Rajat Naidu (RP) – Chairperson
- 2) Bank Manager – Member from the CoC (Secured Financial Creditor)
- 3) Smt. Bharti Hukare – Member from the PRA

4) Kishor Rambhau Kolhe – Member from the PRA

CMA Srigini Rajat Naidu will be paid the honorarium of Rs. 30,000/- (Rs. Thirty Thousand Only) per month during the tenure of the said Resolution Plan. All genuine expenses related to Steering Committee will be borne by Resolution Applicant through its own sources.

f. **Effective Date (E)**: shall mean the date on which the Resolution Plan is approved by Adjudicating Authority (NCLT).

g. The Resolution Plan proposes a total Consideration of **Rs. 3,45,00,000/- (Three Crore Fourty Five Lakh Only)**

3. **The details of the proposed payments are as follows:**

A. CORPORATE INSOLVENCY RESOLUTION PROCESS COSTS:

The Financial Proposal has been prepared on the basis of the information provided by the Resolution Professional in the Information Memorandum and subsequent correspondence received there from. The Resolution Applicant proposes to acquire the Corporate Debtor through this Resolution Plan entailing a proposed outlay of **Rs. 3,45,00,000/- (Three Crore Five Lakh Only)**

i. Implementation of the Resolution Plan

The Resolution Plan shall be implemented within a period of Three month from the Effective Date, within which the payments shall be made to all the creditors as contemplated in the Resolution Plan. The Resolution

Applicant proposes to provide for the supervision of the implementation of the resolution plan in following phases

Phase 1

This phase comprises the time within which the payments in respect of the entire CIRP Costs, part payment of financial creditors, operational creditors and other creditors as proposed in this Resolution Plan. The RA in this phase shall also make sure the smooth execution of the plan for the term of infusion of funds in the form of Partners Own fund by the Resolution Applicant i.e.30days of RS 1, 12, 00,000/- (One Crore Twelve Lakh only) and same Amount by way of Partner own fund.

Phase 2

Upon completion of activities of Phase 1 as explained above, the Resolution Applicant shall bring an amount of Rs. 1,10,00,000/- (Rs One Crore Ten Lakh Only) over a period 60 Days and same Amount by way of Partner own fund.

Phase 3

Upon completion of activities of Phase 2 as explained above, the Resolution Applicant shall bring the remaining amount of Rs.1, 23, 00,000/- (Rs One Crore Twenty Three Lakh Only) over a period of 90 Days by way of Partner's own fund.

| Time Limit | Amount | Nature of Fund | Applicant of funds (Purpose) |
|-------------------|---------------|-----------------------|-------------------------------------|
|-------------------|---------------|-----------------------|-------------------------------------|

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| | | | |
|--|--|----------------|--|
| Upfront payment within 30 Days of approval by NCLT | 1,12,00,000/- (Including EMD of Rs.20 lakh) | Towards Equity | <p>1.) Payment of CIRP Cost(Rs. 40.00 Lakh)</p> <p>2.) Payment of Operational Creditors (Rs. 1.00 lakh)</p> <p>3.) Payment to Operational Creditors (Duties & Taxes Rs. 0.50 Lakh and Other Payable Rs. 0.50 Lakh)</p> <p>4.) Payment to Financial Creditors Rs. 70 Lakh) +</p> <p>5.) Payment to Unsecured Financial (Rs. 5.00 Lakh)</p> |
| Upfront payment within 60 Days of approval by NCLT | 1,10,00,000/- | Towards Equity | Payment to Financial Creditors |
| Upfront payment within 90 Days of approval by NCLT | 1,23,00,000/- | Towards Equity | Payment to Financial Creditors |
| | 3,45,00,000/- | | |

B.) PAYMENTS TO BE MADE TO OPERATIONAL AND FINANCIAL CREDITORS

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The amount of money will be paid to secure creditors in the following manner:

| Particulars | Rs. |
|--|-------------|
| 1. Cost of CIRP to be paid/reimbursed, within 30days from the date of receipt of Certified True Copy of Order of Hon NCLT, approving Resolution Plan, and simultaneously, handing over the charge to Resolution Applicant. | 40,00,000/- |
| 2.Operational Creditor to be paid within 30 days from the date of receipt of Certified True Copy of Order of Hon. NCLT, approving Resolution Plan. | 1,00,000/- |
| Operational Creditor (Duties & Taxes) to be paid within 30 days from the date of receipt of Certified True Copy of Order of Hon. NCLT, approving Resolution Plan. | |
| 4. Operational Creditor (Other Payable) to be paid within 30 days from the date of receipt of Certified True Copy of Order of Hon. NCLT, approving Resolution Plan. | 50,000/- |
| 5. Financial Creditor (Unsecured of Mr. Deepesh Asnani) to be paid within 30 days from the date of receipt of Certified True Copy of Order of Hon. NCLT, approving Resolution Plan. | 5,00,000/- |

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| | |
|---|--------------------|
| 6. Financial Creditor (Secured)to be paid within 30 days from the date of receipt of Certified True Copy of Order of Hon. NCLT, approving Resolution Plan. | 65,00,000/- |
| 7. Payment to Financial Creditors (Secured) to the extent of amount as depicted in the Information Memorandum issued by Resolution Professional, within 60 days from the date of receipt of Certified True Copy of Order of Hon. NCLT, approving Resolution Plan. | 1,10,00,000/- |
| 8.Payment to Financial Creditor (Secured)in class to be paid within 90 days from the date of receipt of Certified True Copy of Order of Hon. NCLT, approving Resolution Plan. | 1,23,00,000 |
| Total | 3,45,00,000 |

- i. In the above manner the entire payment of Rs 3, 45, 00,000/- (Three Crore Fourty Five Lakh Only) shall be made within 3 months from the date of receipt of Certified True Copy of Order of this Bench, approving Resolution Plan. The Resolution Applicant proposes to freeze the total claims of the Operational Creditors claim at an amount of Rs1,00,000/-.(One Lakh only). Therefore, in the event of any revision of claim subsequently, the same shall be adjusted and shared within the total amount as stated above. There are Two Financial Creditors in the company i.e. Indian

Bank Erstwhile Allahabad bank (Secured Financial Creditor) and Mr. Deepesh Asnani (Unsecured Financial Creditor).

- ii. Any claim from any person claiming to be a Creditor including Financial Creditor or Operational Creditor of any nature including Taxes, Duties, Cess Statutory Dues and workmen or any other creditor of the Corporate Debtor, that have not been filed with the Resolution Professional, or if filed, has not been admitted by the Resolution Professional, or if verified, but has not been informed to the Resolution Applicant before approval of the Plan, shall stand settled /waived/written off / extinguished with regard to CD and / or RA.
- iii. Upon receipt of the payments in the manner as set out in the present plan, the Creditor shall issue a certificate of discharge and no-claims in favor of the Corporate Debtor and also return all the security documents, if any, (including but not limited to the documents pertaining to immovable assets of the Corporate Debtor) relating to the Corporate Debtor to the Resolution Applicant. However, the Creditor will be entitled to continue to retain the documents relating to the Collaterals, Personal Guarantees, Corporate Guarantees of old Promoters for the enforcement to recover their remaining unpaid dues over and above the payments made by the Resolution Applicant towards

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the Obligations of the Corporate Debtor under this Resolution Plan.

- iv. The Resolution Applicant has proposed payments under the said Resolution Plan on the basis of the Information Memorandum provided by the Resolution professional. The Resolution Applicant states that the Resolution Professional shall ensure that all the assets listed under the information Memorandum or any other assets not listed but are forming part of the closing inventories and other debit balances which can be recovered (if any) shall be made available and transferred to the Resolution Applicant without any encumbrance and in a peaceful manner.
- v. In case any Claim is raised relating to the period prior to the approval of the Resolution Plan by the Adjudicating Authority, the same would be treated as having been settled /waived / written off/ extinguished with respect to the Corporate Debtor and /or RA.

C.) PAYMENT OF OPERATIONAL CREDITOR, TAXES AND STATUTORY DUES

| Particulars | Rs. |
|---|-------------------|
| Payment to Operational Creditor's, taxes and Statutory dues to the extent of amount as depicted in the Information Memorandum issued by Resolution Professional, within 30 days from the date of receipt of Certified True Copy of Order of Hon. NCLT, approving Resolution Plan. | 1,50,000/- |
| TOTAL | 1,50,000/- |

- i. As per the information memorandum shared by the Resolution Professional, The claims of the Operational Creditors including that of the Government, excluding workmen are for an amount of Rs. 2,29,86,085/-. Out of this amount, an amount of Rs.2, 17, 69,882/- has been admitted by the RP.
- ii. Due to the paucity of available funds, the operational creditors, shall not be paid, more than Rs 1, 00, 000/-. This amount is to be paid pro rata amongst the operational creditors. All the amounts which are due to the operational creditors, which is not reflected in the information memorandum issued by Resolution Professional, shall stand erased from the books of the Corporate Debtor.
- iii. Due to the paucity of available funds, the other operational creditors, Comprising of Dues to Central Excise, Service Tax, Sales Tax, MVAT, GST, TDS, Late Fees on TDS, Cases in Appeal at Tribunal for Income Tax and Service Tax and Central Excise, and Provident Fund and Employees State Insurance Contribution Dues) and excluding the workmen shall not be paid more than Rs. 50,000/-. All the amounts which are due to the above mentioned operational creditors, excluding the workmen, and excluding any other operational creditors, if any, which is not reflected in the information memorandum, and also not reflected in the above referred addendum of Contingent Liability as appended to Information Memorandum, issued by Resolution Professional, Shall stand erased from the books of the Corporate Debtor

D.) PAYMENT TO INSOLVENCY PROFESSIONAL:

- i. In relation to any payments or settlements made by the Resolution Applicant to the Insolvency Professional, as provided for in this chapter, the insolvency professional so appointed shall hold all such payments in trust for the benefit of the respective creditors on whose behalf it has received such payments promptly make all distributions to such creditors, as per the provisions of this Resolution Plan.
- ii. The obligation of the Resolution Applicant shall stand satisfied upon payment of such amounts to the previously notified account, as the case may be.

E.) ALL OTHER LIABILITIES AND DEBT

- i. Other Liabilities including Contingent Liabilities except to the extent of payments to be made to the Creditors as per this Resolution Plan, the Resolution Applicant shall have no liability towards any other Creditor and/or Operational Creditors including workers, taxes and statutory dues and / or any other creditors with respect to any claims whether filed or not filed and whether admitted or not admitted relating in any manner to the period prior to the Effective Date. All such liabilities shall immediately, irrevocably and unconditionally shall settled /waived / written off /extinguished with respect to the

Corporate Debtor/Resolution Applicant/New Management.

- ii. The Personal Guarantors shall not have any recourse / right of the Subrogation vis- à-vis the Corporate Debtor or the Resolution Applicant. In accordance with the forgoing, all claims (whether final or contingent, whether disputed or undisputed and whether notified/claimed or not against Corporate Debtor) of all Taxes, Duties, dues of the Government & Statutory Authorities relating to the period prior to the Effective Date and for giving effect to this Resolution Plan, shall stand settled /waived /written off / extinguished with respect to the Corporate Debtor / Resolution Applicant.
- iii. Any and all Legal /Administrative proceedings including but not limited to any notices, inquiry, investigation, adjudication proceedings, assessment proceedings, breach of contract, regulatory orders etc. initiated before any Court/Tribunal/Forum and Consumer court by or on behalf of any Financial Creditor/ Operational Creditors any other creditors /Government / Statutory Authorities to enforce any rights or claims against Corporate Debtor /Resolution Applicant shall stand immediately, irrevocable and unconditionally withdrawn, abated, settled written off and / or extinguished in respect of the period prior to the Effective Date, and all such claims shall immediately, irrevocable and unconditionally stand settled / waived /written off/extinguished with respect to the

Corporate Debtor / Resolution Applicant.

- iv. As per the Information Memeorandum and other information provided by the Resolution Professional, there are few pending litigations as on, date. The Resolution Applicant shall not be liable for any payment against any such liability arising out of such litigations and any other similar liabilities including Liabilities on account of Bank Guarantees, indemnity bond, Consumer Court awards promissory note or any kind of promise even if not mentioned herein.
- v. For removal of any ambiguity or any doubt, it is clarified that if any award or benefit is accruing in favor of the Corporate Debtor in relation to any pending litigations whether before or after the takeover of the Corporate Debtor by the Resolution Applicant; shall not extinguish, and shall remain alive and shall be rightfully pursued by the Corporate Debtor for payments to the resolution applicant.
- vi. By virtue of the Order of the Hon'ble NCLT approving this Resolution Plan, new inquiries, investigations, notices, suits, claims, disputes, litigation, arbitration or other judicial proceeding and regulatory or administrative proceedings will not be initiated or admitted for any period prior to the Effective Date or arise on account of the acquisition of control by the Resolution Applicant over Corporate Debtor pursuant to this Resolution Plan, against Corporate Debtor or any of its employees or

directors who are appointed or who remain in employment or directorship after the acquisition of control by the Resolution Applicant over Corporate Debtor or pursuant to the implementation of the Resolution Plan.

- vii. In case any Claim is raised relating to the period prior to the approval of the Resolution Plan by the Adjudicating Authority, the same would be treated as having been stand settled / waived /written off/extinguished with respect to the Corporate Debtor / Resolution Applicant.

F.) TREATMENT OF CONTRACTUAL CLAIMS AND LIABILITIES:

- i. Any contracts of Corporate Debtor existing before the effective date shall be continued or terminated at the sole discretion of the Resolution Applicant and the Resolution Applicant shall not be liable to pay any breach/damage/loss arising out of the said contract to the other party or any third person and the same shall stand settled / waived /written off /extinguished with respect to the Corporate Debtor / Resolution Applicant.
- ii. It is clarified that all shareholders' agreements, sale purchase agreements, share subscription agreements and any other agreements governing the affairs of Corporate Debtor and / or governing the inter-se rights of the Shareholders shall stand settled / waived /written off/extinguished with respect to the Corporate

Debtor / Resolution Applicant.

G. TREATMENT OF ALL OTHER UNSPECIFIED, CONTINGENT, HIDDEN LIABILITIES AND/OR CLAIMS

- i. All other liabilities of Corporate Debtor (to the extent not specified and/or dealt with in this Chapter or any other Chapter of this Resolution Plan), including but not limited to contingent liabilities, taxes, statutory liabilities, customer claims, service provider claims, duties, responsibilities and all other obligations of any nature whatsoever and all dues payable to the other creditors, including any claims or demands or liabilities in connection with Or against Corporate Debtor, whether under Applicable Law, equity or contract, whether admitted or not, due or contingent, crystallized or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Information Memorandum, the balance sheet or the books of accounts of Corporate Debtor, in relation to any period prior to the Effective Date shall be deemed to be owed and due as of the Insolvency Commencement Date, the liquidation value of which is NIL and therefore no amount is payable in relation thereto. All such liabilities shall immediately, irrevocably and unconditionally stand settled /waived /written off /extinguished with respect to the Corporate Debtor and / or the Resolution Applicant on the Effective Date pursuant to the Hon'ble NCLT Approval Order. The order of

the Hon'ble NCLT approving the Resolution Plan shall operate as automatic extinguishment of all other liabilities of Corporate Debtor, without the requirement of an/ further act or deed by the Corporate Debtor and / or RA.

- ii. In case any Claim is raised relating to the period prior to the approval of the Resolution Plan by the Adjudicating Authority, the same would be treated as having been settled /waived /written off /extinguished with respect to the CD and / or RA

H. TREATMENT OF SECURITY AND GUARANTEE PROVIDED BY CORPORATE DEBTOR

- i. By virtue of the Hon'ble NCLT Approval Order, on the Effective Date, all assets of Corporate Debtor, that are subject to any encumbrance, security and/or lien, whether in favor of the lenders of Corporate Debtor or in favor of any third party, shall stand settled / waived/written off /extinguished with respect to the Corporate Debtor and / or the Resolution Applicant. This would inter alia include: the security mentioned in the Information memorandum of Corporate Debtor except for the ether collaterals, the Corporate Guarantee or the Personal Guarantees given by the erstwhile directors / suspended board / any other person.
- ii. All corporate guarantees, indemnities, letters of comfort, undertakings provided by Corporate Sector, in respect of any third-party liability (including of Subsidiaries) till the Effective Date pursuant to approval of the Resolution Plan by the by the

Adjudicating Authority shall stand settled / waived /written off /extinguished with respect to the Corporate Debtor / Resolution Applicant.

I. CLAIMS BY CORPORATE DEBTOR

- i. All existing and future claims by Corporate Debtor and all its existing and future rights, entitlement, etc. with Government Authorities or any other Person (including third parties) shall not be affected and shall remain enforceable after the Effective Date. Nothing in this Resolution Plan shall be deemed to affect the rights of Corporate Debtor and/ or the RA to recover from and /or asset claims or rights against any Person and there shall be no set off of any such amounts recoverable by Corporate Debtor or any liability of third party towards Corporate Debtor extinguished pursuant to this Resolution Plan.

The Applicant states that the Resolution Applicant is eligible to submit resolution plan. The Successful Resolution Applicant has given an Affidavit satisfying the eligibility criteria as per the provisions under section 29A of the Insolvency & Bankruptcy Code, 2016.

4. OBSERVATIONS AND FINDINGS:

- a) As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.

- b) As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- c) The Resolution Applicant has agreed to meet the cost of project from existing resources including infusion of equity/debt through the parent company, from sale of unsold inventories and if required from raising finance through external sources.
- d) The Resolution Applicant has also agreed that dissenting Financial Creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor. The Respondent has proposed to liquidation value to Unsecured Financial Creditors who dissent from the plan.
- e) Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- f) Provides for a term of the plan, implementation

schedule and supervision of the Resolution Plan under IBC Section 30 (2)(d) & IBBI Regulation 38(2)(c).

- g) The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- h) The Resolution Plan does not contravene any of the provisions of the law for the time being in force - please include a statement to this effect in the Resolution Plan as per Section 30(2)(e).
- i) The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- j) As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan - to the financial creditors, who have a right to vote under Sub-section (2) of Section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- k) The Resolution Applicant or any of its related parties has not 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.

1) The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:

- i. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors [Regulation 38(1)].
- ii. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2)(c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
- iii. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company [Regulation 38(1)(a)].
- iv. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
- v. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under Sub- section (2) of

Section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.

- vi. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- vii. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- viii. Provides for the management and control of the business of the Corporate Debtor during its term.
- ix. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.

- x. That the Resolution Applicant or any of its related parties has never 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. This is in compliance of Regulation 38(1)(b) of the Regulations.

- xi. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other Creditors, Guarantors, Members, Employees and other Stakeholders of the Company, keeping in view the objectives of the Code [Regulation 38(1A)].

5. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** 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 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.

6. The Hon’ble Apex Court at para 42 in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online**, 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.

*“Para 42- 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).”*

7. In view of the above ruling of the Apex Court, the legislature has

given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.

8. 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 Resolution Plan is feasible and viable. The Resolution Plan is duly approved with 76.56% of voting by CoC as per the Code. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved. Accordingly, the same is approved by passing the following:

ORDER

1. The Interlocutory Application No. 403 of 2022 is allowed. The Resolution Plan submitted by M/s. Rudransh Agro & Co. is hereby

approved. It shall become effective from this date and shall form part of this order. 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 payment of dues arising under any law for the time being in force is due.

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. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in ***Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited***, the relevant para's of which are extracted herein below:

“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 part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the 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 part of the resolution plan;

amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

consequently, all the dues including the statutory dues owed to the Central Government, any State Government or

any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

3. The Applicant in the present Applicant states that the Interlocutory Application bearing no 60/2020 filed for the avoidance application may be pursued by the Resolution Applicant. Further in terms of the Affidavit in Reply filed by the Resolution Professional In terms of the Affidavit in reply filed by the Resolution Professional in I.A 459 of 2022 (para 27) states that, the recoveries under the Avoidance Application i.e. I.A. 60 of 2020 filed under Section 66 of the Code shall be distributed in the Committee of Creditors on pro-rata basis.
4. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned 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.
5. The moratorium under Section 14 of the Code shall cease to have effect from this date.
6. The Applicant and the Monitoring Committee shall supervise the

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

7. 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.
8. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
9. The Interlocutory Application No. 403 of 2022 is accordingly allowed and disposed of.

SD/-

MADHU SINHA
MEMBER (TECHNICAL)

//Renuka//LRA//

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)