

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.303
IA/844(AHM)2023
in
CP(IB) 265 of 2020

Proceedings under Section 30(6) & 31 IBC

IN THE MATTER OF:

Neha Chhawchharia RP of Steelera Engineers Pvt Ltd

.....Applicant

.....Respondent

Order delivered on: 21/08/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

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SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH COURT-1**

**IA/844(AHM)/2023
In
CP(IB)/265(AHM)/2020**

[An application under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India, Regulations, 2016]

In the matter of ***M/s. Steelera Engineers Private Limited***

Mrs. Neha Chhawchharia,
Resolution Professional of
M/s. Steelera Engineers Private Limited,

Having office at:

19L, Tower 3, South City Complex,
375 Prince Anwar Shah Road,
South City Complex, Kolkata,
West Bengal – 700068.

...Applicant

Order Pronounced On: 21.08.2024

CORAM:

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

Appearance:

For Applicant(s) : Mr. Jaimin Dave, Advocate, a/w.
 : Ms. Hirva Dave, Advocate.
 : Mrs. Neha Chhawchharia, RP in person.

ORDER

[Per: Bench]

1. This application is filed by the Resolution Professional of M/s. Steelera Engineers Private Limited bearing CIN:U51909GJ2016PTC093021, (Corporate Debtor) under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") r.w. Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Process of Corporate Persons) Regulations, 2016 seeking the following prayers:

- a. *Order be passed to approve the Resolution Plan dated 20th April 2023, along with its addendum dated 8th May 2023 submitted by Midpoint Commodeal Private Limited in respect of the Corporate Debtor;*
- b. *Pass such or further order and other relief(s) or directions be passed as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

2. It is stated that this Tribunal vide its order dated 16.11.2022 admitted the Corporate Debtor – M/s. Steelera Engineers Private Limited, to Corporate Insolvency Resolution Process ("**CIRP**") in Company Petition No. 265 of 2020 filed by an Operational Creditor – M/s. Rebartech Solutions Private Limited under Section 9 of the Code and thereby appointed Mr. Malhar

Rashmikanth Metha as the Interim Resolution Professional (“**IRP**”) of the Corporate Debtor.

3. The Committee of Creditors (“**CoC**”) in its 1st CoC Meeting held on 23.12.2022 appointed the present applicant Mrs. Neha Chhawchharia as the Resolution Professional (“**RP**”) and the same was approved by this bench vide its order dated 18.01.2023 in IA/61/AHM/2023. The copy of the order is hereby annexed at “**Annexure-A1**”.

4. It is stated that the Form-G was published in “Financial Express Ahmedabad, Financial Express Kolkata, Financial Express Mumbai, Financial Express New Delhi, Mumbai Lakshadeep Mumbai, Jansatta New Delhi, Ekdin Kolkata, (in English) and in Financial Express Ahmedabad (Gujarati) on 06.02.2023 inviting the Expression of Interest (“**EOI**”) and the last date for receipt of EOI was fixed as 21.02.2023. A copy of publications of Form G is annexed herewith as “**Annexure – A2**”.

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5. It is stated that EOI was received from Eleven parties during the said period and one EOI was received along with an Earnest Money Deposit of Rs. 5,00,000 (Rupees Five Lakhs Only) from M/s. Midpoint Commodore Private Limited, who is also a Financial Creditor of the corporate debtor and is having 99.87% voting rights in the CoC.
6. It is stated that as per Form G, the due date for submission of the Resolution Plan was 2nd April 2023, but as 2nd April 2023 being Sunday the due date for submission of the Resolution Plan was extended to 3rd April 2023.
7. It is stated that the applicant held the 6th CoC meeting on 10th April 2023 in which the Prospective Resolution Applicant sought an extension of 10 days from the date of meeting for the submission Resolution Plan. And the same was approved by the CoC which made the last date for submission of resolution plan as 20th April 2023. It is noted that the 6th CoC meeting was

scheduled to be held on 03.04.2023 but on constant request of the Financial Creditor being Midpoint Commodeal Private Limited and on one occasion for the want of quorum the meeting was rescheduled and as a result of the same eventually the 6th CoC meeting was convened on 10.04.2023. A copy of minutes of 6th CoC meeting dated 10th April 2023 is annexed herewith at **“Annexure – A3”**.

8. It is stated that applicant received the Resolution Plan on 20th April 2023 and with the approval of CoC member the applicant opened the submitted plan and made few observations on the said plan on 27th April 2023 and suggested the Prospective Resolution Applicant to file an addendum to the said plan. The Prospective Resolution Applicant agreed to submit an addendum by 2nd May 2023.

9. It is stated that the period of 180 days was expiring on 15.05.2023, CoC in its 8th meeting resolved that an application be made to the Hon'ble Tribunal for

extension of CIRP period beyond 180 days and accordingly an application was preferred by the applicant and vide order dated 13.06.2023 this Hon'ble Tribunal extended the CIRP period for further 90 days and till 14.08.2023. The copy of the order dated 13.06.2023 is annexed hereto at **"Annexure – A4"**.

10. On 09.05.2023 the applicant received the addendum dated 08.05.2023 to the Resolution Plan dated 20.04.2023. In furtherance of the same the Resolution Plan was opened in the 9th CoC meeting dated 15.05.2023. In the same meeting CoC approve the Resolution Plan by a 99.87% of voting rights and the same was declared as the Successful Resolution Applicant. The minutes of 9th CoC meeting dated 15.05.2023 is annexed hereto at **"Annexure – A5"**.

11. In the 9th CoC meeting dated 15.05.2023 the committee discussed the final list of creditors and also considered the grounds on the basis of which Resolution Plan will

be evaluated. The final list of creditor is annexed hereto
as **“Annexure – A6”**.

Sr. No.	Category of Creditor	Particulars	Amount Claimed	Amount of Claim Admitted	Amount of claim not admitted
1.	Secured Financial Creditors	Midpoint Commodeal Private Limited.	6,88,89,923	6,88,89,923	-
2.	Unsecured Financial Creditor	GDSK Jewels Private Limited.	82,541	82,541	-
3.	Operational Creditors (Government Dues)	Dy. Commissioner of State Tax	98,36,614	98,36,614	-
		Income Tax Department TDS	1,23,380	-	1,23,380
4.	Operational Creditors (other than workmen and employees and Government Dues)	Rebartech Solutions Private Limited	4,02,99,597	2,88,17,733	1,14,81,864

12. The applicant issued a Letter of Intent ("**LOI**") on 16.05.2023 to the Successful Resolution Professional and called the Successful Resolution Professional to submit Performance Guarantee ("**PGB**") within three days of unconditional acceptance of LOI. A copy of LOI with remarks of acknowledgement and acceptance of the LOI by Successful Resolution Professional is annexed hereto as "**Annexure – A7**".

13. The applicant stated that the successful resolution applicant failed to submit the Bank Guarantee within three days of unconditional acceptance of the LOI. And hence the applicant convened the 10th CoC meeting in which the delay was condoned by the CoC in submitting of the bank guarantee. The minutes of the 10th CoC meeting is annexed hereto as "**Annexure – A10**".

14. The applicant received the Bank Guarantee dated 20th June 2023 amounting to Rs. 50,00,000 (Rupees Fifty Lakhs Only) on 23.06.2023. A copy of

Bank Guarantee issued by Federal Bank Limited is annexed hereto as **"Annexure – A9"**. Further the Bank Guarantee dated 20.06.2023 was valid only till 19.12.2023 and hence a Bank Guarantee issued by Federal Bank Limited with extended period till 31.12.2024 is submitted through an additional affidavit filed on 31.07.2024 vide diary no. D 6083. The copy of Extended Bank Guarantee issued by Federal Bank Limited is annexed hereto at **"Annexure F"** of the additional affidavit.

15. The applicant states that the Resolution Applicant is compliant U/s. 29A of the Insolvency and Bankruptcy Code, 2016. The copy of certificate issued by the applicant under section 29A and the affidavit/undertaking given by the Successful Resolution Applicant under section 29A is annexed here to as **"Annexure – A11"**.

16. The summary of the Resolution Plan is as under:-

1. **Payment of Insolvency Resolution Process Cost:** The unpaid IRP cost will be paid in priority to any other debt of the Corporate

Debtor. The Unpaid IRP cost is estimated at approx. Rs. 5,00,000/-. If the actual cost is more than Rs. 5,00,000/- then such will be paid over & above the total plan amount in this resolution plan.

2. **Payment to Workmen and Employees:** No claim has been filed by the workmen & Employee and hence no amount is proposed for the same.
3. **Payment to other than Workmen & Employees & Government Dues:** As against the admitted claims amounting to Rs. 2,88,17,733/- filled by operational creditors (other than workmen & employees and government dues) a total amount of Rs. 7,20,443/- is proposed to be paid as full & final settlement. And against the admitted claims amounting to Rs. 98,36,614/- filled by operational creditors (Government Dues) a total amount of Rs. 2,45,915/- is proposed to be paid as full & final settlement.
4. **Payment to Secured and Unsecured Financial Creditors Including the dissenting Financial Creditors:** Secured Financial Creditor will be paid an amount of Rs. 6,25,00,000/- as a full and final settlement of their admitted claim of Rs. 6,28,89,923/- and Unsecured Creditors will be paid an amount of Rs. 82,029/- as a full and final settlement of their admitted claim of Rs. 82,541/-.

17. With respect to the proposal for shareholders of Corporate Debtor, it is stated that:-

1. **Nature and Method of infusion of Capital:**

- a) An amount of Rs. 1,00,000/- will be infused by the Successful Resolution Applicant in exchange of 10,000 fully paid up equity shares of Rs. 10/- each within 30 days of the effective date.
- b) An amount of **Rs. 24,00,000/-** will be infused from own funds in form of loan or any other form within 30 days of the effective date.

2. Capital Restructuring and Distribution of funds:

- a) There will be restructuring of the corporate debtors share capital as part of the plan, wherein the entire shareholding of the existing promoters or any other person in the corporate debtor shall be cancelled without any pay-out. And 10,000 fully paid up equity shares of Rs. 10/- each will be issued against the capital infusion by the Successful Resolution Applicant.
- b) Upon completion of such capital reduction, the share capital of the corporate debtor will be 10,000 equity shares of Rs. 10/- each totalling to Rs. 1,00,000/-, as a result of which the corporate debtor shall become 100% subsidiary of the Successful Resolution Applicant.
- c) Upon approval of this plan, the existing promoter organisation shall not manage the affairs of the Corporate Debtor and shall cease to be shareholder and promoter of the Corporate Debtor.

18. It is stated that the addendum dated 08.05.2023 is annexed at page no. 333 to 344 of the application. For the brevity the addendum dated 08.05.2023 is not reproduced.

19. The position of claims are as under:-

Sr. No.	Category of Stakeholders	Amount claimed	Amount admitted	Amount provided under the Plan
1	Secured Creditors	62,889,923	62,889,923	6,25,00,000
2	Unsecured Financial Creditor	82,541	82,541	82,029

3	Operational Creditor	5,01,36,211	3,86,54,347	9,66,358
	Total	11,31,08,675	10,16,26,811	6,35,48,387

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

(Amount in Rs. lakh)						
Sl. No.	Category of Stakeholder *	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	62,889,923.00	62,889,923.00	62,500,000.00	99.38%
		Total[(a) + (b)]	62,889,923.00	62,889,923.00	62,500,000.00	
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	82,541	82,541	82,029	99.38%
		(ii) who voted in favour of the resolution plan	NA	NA	NA	NA
		Total[(a) + (b)]	82,541	82,541	82,029	

3	Operational Creditors	(a) Related Party of Corporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i)Government	9,836,614.00	9,836,614.00	245,915.00	2.50%
		(ii)Workmen	NA	NA	NA	NA
		(iii)Employees	NA	NA	NA	NA
		(iv) other operational creditor	40,299,597.00	28,817,733	720,443	2.50%
		Total[(a) + (b)]	50,136,211.00	38,654,347.00	966,358.00	2.50%
4	Other debts and dues	Contingent liabilities	-	-	-	-
Grand Total			113,108,675.00	101,626,811.00	63,548,387.00	62.53

*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.]

21. The source of the above is as under:

Particulars	Amount in Rupees
Financial Outlay	
Total Consideration for Resolution Debt IRP	
Cost:	
-Upfront i.e. within 30 days of Effective Date	6,50,00,000.00
Total	6,50,00,000.00
Source of Funds:	
From Own Contribution of Resolution Applicant or through equity & Loan by RA:	
Upfront (i.e. within 30 days of Effective Date)	25,00,000.00
Equity-	1,00,000.00
Loan, etc.-	24,00,000.00

To be set-off against the amount payable to Secured Financial Creditor being RA. (Note: This proposal was changed by the Resolution Applicant through an additional affidavit which is duly elaborated in paragraph no. 27 of this order)	6,25,00,000.00
Through Own Contribution of RA/any other associate of RA	6,50,00,000.00

22. 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	10,000	Nil	100%	0%
2	Preference	-	-	-	-

23. The compliances of the Resolution Plan is stated to be 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	Part-A, Page No. 12 to 16 of the Resolution Plan.	Yes

	of the operations of business of CD?		
Section 29 A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Affidavit under Section 29A submitted by the Resolution Applicant. As directed by the Hon'ble NCLT during the held hearing on 02.07.2024 to obtain 29A undertaking from the Prospective directors to be appointed by the RA in the CD. As the prospective directors are connecttted parties of RA due diligence is already done for them, copy of the 29A undertaking received by the RP and due diligence done by the RP are enclosed in the reply affidavit submitted by the RP.	Yes
Section 30(1)	Whether the resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit under section 29A submitted by the Resolution Applicant separately.	Yes
Section 30(2) of IBC	Whether the resolution plan – (A) Provides for the payment of insolvency resolution process costs? (B) Provides for the payment of the debts of operational creditors? (C) Provides for the payment to the Financial Creditors who did not vote in favour of the Resolution Plan?	Point No. 3, Page No. 22 of the Resolution Plan. Part- B, Section-I, Point No. 4, Page No. 22 of the Resolution Plan. Part- B, Section-I, Point No. 5, Page No. 22 & 23 of the Resolution Plan.	Yes Yes Yes

	(D) Provides for the management of the affairs of the Corporate Debtor? (E) Provides for the implementation and supervision of the Resolution Plan? (F) Contravenes any of the provisions of the law for the time being in force?	Section V, Section VA of Part-B (Financial Proposal) at page no. 41 to 43 of the Resolution Plan. Section V, Section VB of Part-B (Financial Proposal) at page no. 43 to 44 of the Resolution Plan. Part- B, Section-I, Point No. 10, Page No. 23 of the Resolution Plan, confirmation submitted by the resolution Applicant.	Yes Yes 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?	Section V, Section VA of Part-B (Financial Proposal) at page no. 41 to 43 of the Resolution Plan. Section -V, Section VB of Part-B (Financial Proposal) at page no. 43 to 44 of the Resolution Plan. Part B, Section I, Clause No. 10 at Page No. 23 of Resolution Plan, confirmation submitted by the resolution Applicant.	Yes Yes Yes, the Resolution Plan does not contravene any of the provision of the Law for the time being in force.
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation, according to the CoC.	Part B, Section IV at page no. 37 to 40 of the Resolution Plan.	Yes
Regulation 38(1)	Whether the amount due to the operational	Part B, Section II, Clause no. 6.6 at page no. 31 of the	Yes

	creditors under the Resolution plan has been given priority in payment over financial creditors?	Resolution Plan	
Regulation 38 (1A)	Whether the resolution plan includes a statement as to how it has dealt with the interest of all the stakeholders?	Part-Section-II, Clause 7 at Page No.33 of the Resolution Plan.	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 other resolution plan approved under the code. II. If so, whether the resolution applicant has submitted the statement giving details of such non-implementation ?	Confirmation submitted by the Resolution Applicant at Part B, Section-I, Clause No. -2 at Page No. 22 of Resolution Plan. the	Yes
Regulation 38(3) of CIRP Regulations	Whether Resolution demonstrates that- Plan (a) It addresses the cause of default?	Part-A, Clause 10-12 at page No.-14-16 of the Resolution Plan.	Yes Yes

	(b) It is feasible and viable?	Part-A at page No. 12- 16 of the Resolution Plan, also contested by the COC members in the 9 th COC meetings.	Yes
	(c) It has provisions for its effective implementation?	Part-B, Section IV at Page No. 40 of the Resolution Plan.	Yes
	(d) It has provisions for Approvals required and timeline for the same?	Part-B, Section- III, Clause 2.11 at Page No. 39 to 40 of the Resolution Plan.	Yes
	(e) Resolution applicant has capability to implement the resolution plan?	Part-A at page No. 12-16 of the resolution plan.	Yes
Regulation 39(2) of CIRP Regulations	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No application filed by the RP in this regards, since as per the Transaction Audit Report none of the Transactions falls under these section.	Yes
Regulation 39(4) of the CIRP Regulations	Provide details of the performance security received, as referred to in sub-regulation (4A) of the regulation 36B.	DD dated 15.02.2023 amounting to Rs. 5,00,000/- received from Resolution Applicant along with EOI which was not refunded and kept as part payment for Performance Security. DD dated 19.04.2023 amounting to Rs. 5,00,000/- received from the Successful Resolution Applicant. In aggregating to 10,00,000/- Rs. Performance Guarantee of Rs.50,00,000/- was received by the RP on 10.06.2023 (last date being	

		18.05.2023) along with the request for condonation for delay in the submission of the PG which was duly accepted by the COC members in the 10th COC meeting held on 23.06.2023 performance guarantee of Rs. 50,00,000 submitted earlier got expired and a new performance guarantee of Rs. 50,00,000 was given by RA on 22.07.2024	
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24. The Monitoring Committee shall supervise the implementation of the Resolution Plan with the help of the newly constituted board till the implementation of the proposed transaction under the Resolution Plan i.e., payment of the committed cash payment/amount to the Secured Financial Creditor (Lenders). The Committee shall be constituted within seven business days of the effective date and shall include total 3 members comprising of:

- (i) One Representative of Resolution Professional;
- (ii) One Representative of CoC; and
- (iii) A Qualified Insolvency Resolution Professional.
(Implementing Agency).

The members of the monitoring committee shall be appointed by the CoC in consultation with resolution

applicant, which shall monitor the implementation of the plan after the Effective Date until its Closure.

Implementing Agency:

Upon approval of the resolution plan by the NCLT, any Qualified Insolvency Professional as decided by the COC & RA, shall be appointed as the "Implementing Agency (IA)" of the Corporate Debtor in order to oversee the implementation of the Resolution Plan from the date of approval of the plan by NCLT till its closing date.

The IA shall be paid the costs in consideration of fulfilling his obligations under this plan. His/hers fees shall be jointly decided by RA & CoC.

Implementing Schedule:

Sr. No.	Activity	Estimated Time Line
1.	NCLT Approval Date	X (Effective Date)
2.	Signing of Definitive Agreement & Formation of Monitoring Committee (MC)	Within X + 10 days
3.	Fund Infusion by RA	Within X + 30 days
4.	Extinguishment of existing Promoter's Shareholding	Within X + 30 days
5.	Payment of CIRP Costs	Within X + 30 days
6.	Payment of upfront amounts to various stakeholders as contemplated under the plan	Within X + 30 days
7.	Secured Creditors to release all charges & handover all original title deeds and related documents to CD	Within X + 30 days

25. This application was heard from time to time and interim orders seeking certain clarifications were given by this Tribunal.

On 02.07.2024, this Tribunal asked the following clarifications:-

1. *The Form-H declares that there were nine (9) meetings of the CoC. It was stated that 10th meeting of CoC was also held post the finalization of the Form-H. RP to file updated the Form-H by way of Additional Affidavit.*
2. *It is seen that on Page No. 241, Summary of Financial Proposal is provided. Under Point No. 2, it is written as under – “to be set-off against the amount payable to Secured Financial Creditor being RA is Rs.6.25 Crores.” In the plan application, nowhere, it is mentioned, what is to be the mechanism of the said set-off. We direct the RP to obtain an additional affidavit from the RA as to be mechanism of such set-off which is been offered in this plan and also regarding the balance of the admitted claim, if any. RP to file the affidavit of RA before this Tribunal.*
3. *Latest net worth certificate of the RA to be filed.*
4. *RP to update regarding the Performance Security.*
5. *RP is directed to place on record admitted claim form submitted by the Sales Tax Department for an amount of Rs. 98,36,614/-.”*

26. In response to the said interim order, the RP has filed clarification through affidavit dated 27.07.2024 received under diary no. D6083 dated 31.07.2024. Along with

the said affidavit, the RP has filed the following documents:-

<i>Annexure</i>	<i>Particulars</i>	<i>Page No.</i>
<i>B</i>	<i>A cop of updated Form-H</i>	<i>8-22</i>
<i>C</i>	<i>A copy of the additional affidavit containing the mechanism as submitted by SRA</i>	<i>23-26</i>
<i>D</i>	<i>A copy of the latest net worth certificate of the SRA</i>	<i>27</i>
<i>E</i>	<i>A list of the names of the proposed director in the corporate debtor under resolution process</i>	<i>28</i>
<i>F</i>	<i>A copy of the amended Bank Guarantee No.2162IBG137117 dated 19.07.2024</i>	<i>29-31</i>
<i>G</i>	<i>A copy of the claim form submitted by the office of the Deputy Commissioner of State Tax, GST Department</i>	<i>32-51</i>

27. One of the concerns of this Tribunal was regarding set-off against the amount payable to secured financial creditor who is also the RA in the matter. To address the same, the RA through the RP has filed an affidavit dated 24.07.2024. In paragraph no. 3 to 5 of the said affidavit dated 24.07.2024, the SRA stats as under:-

3. That the Successful Resolution Applicant has put forward a plan wherein it has given a financial proposal of Rs. 6,50,00,000/- (Six Crore Fifty Lakhs).
4. It is proposed in the plan that the Successful Resolution Applicant being the sole Secured Financial Creditor, will adjust the settlement amount receivable of Rs. 6,25,00,000/- against full and final settlement against the admitted claims of Rs. 6,28,89,923/- payable. It is stated that the amount adjusted as final settlement for an amount of Rs. 6,25,00,000/- will remain be shown as Secured Loan given to Corporate Debtors carrying interest rate @7.5% per annum and will not be called back by the Successful Resolution Applicant during next 5 years, however if the corporate debtors wish to pay back the loan, the Successful Resolution Applicant will accept the repayment and till that time it will be continuing as Secured Loan in the books of accounts of the Corporate Debtor.
5. It is stated that the balance amount of Rs.25,00,000/- will be brought by the Successful Resolution Applicant in the following manner as follows:-

Equity	1,00,000
Unsecured Loan	24,00,000

28. Along with the said additional affidavit dated 27.07.2024, the RP has also filed revised Form-H. At page no.16 of the said affidavit, compliance of

Regulation 38(2) and 38(3) have been referred by the RP
which is as below:-

<i>Regulation 38(2)</i>	<i>Whether the Resolution Plan provides: 1.2</i>		
	<i>(a) The term of the plan and its implementation schedule?</i>	<i>Part-B, section-IV at page No.-40 of the Resolution Plan</i>	<i>Yes</i>
	<i>(b) For the management and control of the business of the corporate debtor during its term?</i>	<i>Section -V, section VA, at Page No.- 41 to 43 of the Resolution Plan</i>	<i>Yes</i>
		<i>Section VB, at page No.- 43 to 44 of the resolution plan</i>	<i>Yes</i>
	<i>(c) Adequate means for supervising its implementation?</i>		

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38(3)	Whether the resolution plan demonstrates that-		
	(a) It addresses the cause of default?	Part-A, Clause 10-12 at page No. 14-16 of the Resolution Plan	Yes
	(b) It is feasible and viable?	Part-A at page No. 12-16 of the Resolution Plan, also consented by the COC members in the 9 th COC meeting.	Yes
	(c) It has provisions for its effective implementation?	Part-B, Section IV at Page No.40 of the Resolution Plan	Yes
	(d) It has provisions for approval required and the timeline for the same?	Part-B, Section-III, Clause 2.11 at Page No.39 to 40 of the Resolution Plan.	Yes
		Part-A at page No.12-16 of the Resolution Plan	

	(e) The resolution applicant has the capability to implement the resolution plan?		Yes
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29. The relevant clauses of the Resolution Plan referred by the RP in Form-H are reproduced below:-

Part-B, section-IV at page No.-40 of the Resolution Plan

1. *The validity of this plan for the purpose of consideration and approval shall be 6 months, i.e. Up to 19th October, 2023, unless an extension is agreed upon by the RA. Upon approval of Resolution Plan by Hon'ble NCLT, the term of the Plan shall commence on the date on which the NCLT approves the Plan in accordance with section 31 of the Code and shall continue until the closing Date. Notwithstanding anything contained in this Plan, no part of this Plan shall become effective or enforceable until either (i) the Plan is approved by the NCLT in the manner proposed by the RA and approved by the CoC; or (ii) if approved by the NCLT with any variance, then in the form and substance reasonably acceptable to the CoC and the RA. Upon approval of the Plan by the NCLT, this Plan shall ipso facto form part of the NCLT order.*
2. *Subject to the satisfaction of the other provisions of this Plan, the mechanisms for the Implementation of the Plan are discussed under:*
 - 2.1. *On the Effective Date, the Resolution Applicant (with the assistance of the IA/COC/MC) shall commence undertaking the actions set out in Section-III (Implementation Provisions) of Part B (Financial Proposal) of the Plan, and all other actions required in relation thereto, in the order provided.*

Sr. No.	Activity	Estimated Time Line
1.	NCLT Approval Date	X (Effective Date)
2.	Signing of Definitive Agreement & Formation of Monitoring Committee (MC)	Within X + 10 days
3.	Fund Infusion by RA	Within X + 30 days
4.	Extinguishment of existing Promoter's Shareholding	Within X + 30 days
5.	Payment of CIRP Costs	Within X + 30 days
6.	Payment of upfront amounts to various stakeholders as contemplated under the plan	Within X + 30 days
7.	Secured Creditors to release all charges & handover all original title deeds and related documents to CD	Within X + 30 days

Section -V, section VA, at Page No.-41 to 43 of the Resolution Plan

Management and control of the Corporate Debtor after approval of Resolution Plan

1. Peaceful Handover of the Corporate Debtor to the Resolution Applicant (Peaceful Handover)

The Resolution Applicant proposes this Resolution Plan, once approved by the Adjudicating Authority, would begin its implementation only after the CD is handed over to the Resolution Applicant in its entirety and without any agitation by any of the party related to the CD, inducing but not limited to workers, employees, erstwhile promoters etc. In case, the said process is concluded after Effective Date, the Effective Date shall be construed as the date of conclusion of the said process. Thus, the Effective Date would be construed accordingly.

2. Release of Resolution Professional and Dissolution of COC

The Resolution Professional appointed by the NCLT and the CoC formed by the Resolution Professional during the conduct of the Corporate Insolvency Resolution Process (CIRP). The Resolution Professional shall be released from his duties and responsibilities and the CoC shall be dissolved with effect from the Effective Date. The members of the CoC may separately monitor the activities of the CD and the implementation of the Resolution Plan in accordance laid herewith.

3. Interim Period between date of completion of CIRP and

Effective Date

With effect from the date of completion of CIRP and until the Effective Date, the Resolution Professional shall manage the CD and exercise all the powers & responsibilities. Voting rights of the existing shareholders shall stand suspended and shall not be exercised. If there is any matter that requires shareholders resolution, it shall be approved by the NCLT.

4. Going Concern

The CD shall continue as a going concern and operate in its normal course of business upon implementation of the Resolution Plan. With effect from the Effective Date, the management of all the affairs of the CD would be done through the Reconstituted Management/ Board.

5. Reconstituted Management/Board of Directors

- 5.1. The RA shall hold (either by itself or/with its nominee) 100% shareholding in the restructured share capital of CD. The RA shall control and manage the affairs and business of the CD or the business of CD shall be carried on by the new management as appointed by RA, only after full payment made by RA as per Resolution Plan.
- 5.2. Pursuant to the approval of the Plan by the NCLT, all existing Directors shall vacate the office of Directors of the CD immediately with effect from the Effective Date
- 5.3. Subsequently, with effect from the Effective Date, the CD shall be managed by a Reconstituted management/ Board by any person(s) as nominated by RA.

The Directors on the Reconstituted Board shall be appointed on the Effective Date, without any additional approval from the Shareholders and will be accountable for the day-to-day operations of the CD.

Accordingly, the necessary form to be filed with the MCA (Ministry of Corporate Affairs) by receipt of special powers, intimating cessation of existing Directors and appointment of new Directors without affixation of Digital signatures.

The Resolution Applicant will appoint such number of directors on the board of the CD, including independent directors, as may be necessary.

Resolution Applicant shall also exercise veto rights that it deems fit in the interest of retaining the CD as a going concern. The erstwhile promoters would have no control, veto rights, and directorship on the CD.

5.4. Entire management control of the CD will vest on the Resolution Applicant, for the management of the day-to-day affairs. At the same time the Resolution Applicant believes that in the given complexities of this kind of business, the Resolution Applicant will evaluate the need of human resource to revive the CD.

5.5. Any change in the members who are managing the CD shall not affect the validity and enforceability of any agreement, lease deed, contract, etc. executed by the CD with various parties, authorities, companies, etc. save and except the provisions and scope of alterations / modifications / amendments as well as such reliefs and concessions provided to the Resolution Applicant and the CD under this Resolution Plan.

5.6. Change of Signatories to Bank Accounts, Issue and Allotment of the Promoter Equity Shares and Availing of Loan:

The director of the Corporate Debtor or the newly appointed Board of Directors constituted in accordance with Clause 5.3 above shall convene a meeting (at a shorter notice, if required) of the Board of Directors on the Transfer Date and pass the following resolutions unanimously:

- a. Approving the change of Existing signatories in records of Designated Bank Account, Creditor Escrow Account*

and other bank accounts maintained by the Resolution Professional and Persons authorised by him, with insertion of the new members from the reconstituted Board of Directors or any other person authorized by them;

- b. Approving the issuance and allotment of the Promoter Equity shares to the Resolution Applicant and its nominee(s) in dematerialised/Physical form, free of all Encumbrances in consideration for the Equity Subscription Amount as well as cancellation/ extinguishment of existing share certificates held in the name of existing promoters or shareholders.
 - c. Authorising the Existing Directors or any other authorised person of the Corporate Debtor to make the relevant entries and update the register of members of the Corporate Debtor to reflect the aforesaid changes;
 - d. authorising the Existing Directors of the Corporate Debtor to file requisite forms and returns on behalf of the Corporate Debtor with the Registrar of Companies, Gujarat for the aforesaid issuance, allotment & transfer of the Promoter Equity Shares to the Resolution Applicant and/or its nominees;
 - e. Approving/authorising such other matters as may be necessary and incidental in relation to the above or which may be required to give effect to this Resolution Plan.
 - f. The consent of the shareholders of the Corporate Debtor for (a) issue and allotment of the Promoter Equity Shares as required under Sections 42 and 62 of the Companies Act, and (b) availing of borrowings in respect of the Loan Amount under Section 180(1)(c) of the Companies Act shall be deemed to have been obtained.
- 5.7. RA will appoint Statutory Auditors as per the Companies Act, 2013 & other applicable laws, if any. Appointment of Key Managerial Personnel (KMP) shall be made by RA, if required under Companies Act, 2013.
- 5.8. **EXISTING EMPLOYEES:** For financial sustainability and also keeping in view the fact that the unit requires major revamping, the Resolution Applicant shall be free to appoint its own resources including manpower, labour, workforce and subject to the applicable laws, shall not be bound by any Government authority to appoint any

of the old employee / workmen or shall not follow such practices which requires employing its workmen/employee from any particular state or region. Subject to applicable laws, Resolution Applicant will follow its own well-designed model/policies of employment which will include contractual / fix term/ probation/regular or deputation or on consultant basis.

Section VB, at page No.-43 to 44 of the resolution plan

1. Implementing Agency

1.1. Pursuant to the approval of the Plan by the NCLT, any qualified Insolvency Professional, as decided by the COC & RA, shall be appointed as the "Implementing Agency" (IA) of the Corporate Debtor in order to oversee the implementation of the Resolution Plan from the date of approval of the Plan by the NCLT, Ahmedabad Bench till the Closing Date.

1.2. The IA shall be paid the costs in consideration of fulfilling his obligations under this Plan; His/ Her fees should be jointly decided by RA & COC.

2. Supervision after the Effective Date and until expiry of the Term

2.1. Within 7 Business Days of the Effective Date, a three-member committee (Monitoring Committee") shall be constituted comprising one representative of the Resolution Applicant, representative of the CoC and a qualified Insolvency Resolution Professional (implementing Agency) to be appointed by CoC in consultation with resolution applicant, which shall monitor the implementation of the plan after the Effective Date and until its closure.

2.2. The Monitoring Committee shall have the following responsibilities:

a. monitoring the implementation of this Resolution Plan, during the Term of the Plan.

b. Obtain all original documents, including all agreements, deeds, contracts, correspondences, communications, letters or any other document, pertaining to any division of the corporate debtor or pertaining to the CD as a whole, in a peaceful and unconditional manner;

c. Provide regular updates to the financial creditors, until the financial creditors receive the amounts payable to them pursuant to this Resolution Plan;

d. Ensure that all assets of the CD remain vested in the CD, shall be free from all encumbrances and/or without any encroachments (including but not limited to occupancy or possession by the erstwhile director/s or promoter/s or their men/agents/servants) upon implementation of the Plan;

e. Issue a certificate that the Resolution Plan has been duly implemented and the payments contemplated in this Resolution Plan have been duly disbursed. In issuing this certificate, if a person has not collected its payment, despite of being notified by CD. Issuance of a certificate by the Monitoring Committee shall discharge the Resolution Applicant from their obligation to implement this Resolution Plan in accordance with its Terms & Conditions as imposed.

2.3. The IA and MC shall be dissolved on the Closing Date.

Part-A, Clause 10-12 at page No. 14-16 of the Resolution Plan

10. Cause Of Default by Corporate Debtor:

As per the information available in the Information Memorandum and the Data Room provided by the RP, the reasons for default by the Corporate Debtor and subsequent commencement of CIRP is a result of purported collusion between some of the erstwhile employees and/or past director of the Corporate Debtor with third parties thereby causing financial/business losses to the Corporate Debtor.

11. Reasons for bidding by Resolution Applicant:

The major reasons for bidding by the Resolution Applicant are as follows:

- The RA has requisite financial resources to run, renovate, expand the existing manufacturing facility to make it profitable in medium to long run.
- The RA wishes to expand its business in wholesale of mechanical parts mainly couplers and servicing

with regular growing Industrial demands in Indian Market, with an object to maximize its profit.

- RA has appetite to expand / acquire & firmly believe in long term sustainability.*
- RA will hire such professionals who have very strong understanding management skills to manage affairs of the CD*

12. Business Plan/ Turnaround Strategy of the Resolution Applicant

Business Strategy

- The resolution applicant has the intent & the capability to implement the resolution plan*
- Resolution Applicant is having the experienced manpower and technical support and therefore can turn the Corporate Debtor to a viable entity in short span of time.*
- The RA proposes to incur Business Improvement/ Working Capital of around Rs. 5 Lakhs within 30 days of NCLT approval date, assuming that the Corporate Debtor is a going concern and there is as such no major need of infusing more funds. However, if there is any further requirement, the RA has sufficient sources and funds to meet any such requirement.*

Other Strategies

- Re-establishing administration, governance, management process and financial systems.*
- Re-establishing relationship with customer base and sharing the Resolution Applicant's long-term vision and commitment.*
- Hiring professional employees/ workers in different streams for efficient and cost-effective working.*
- Developing a detailed budget, introducing key Performance indicators and establishing plans to reduce cost and improve productivity.*
- The Resolution Applicant propose to hire a group of professional in different streams like*

accounts and sales as per the requirements. The Resolution Applicant also proposes to use its present resources in the best interest for the revival of the CD.

SWOT Analysis:

Strengths

- RA shall build on Strong and established position of CD in the market by implementation of important business plans & policies
- The organisation shall hire rich experienced skilled managers in managing the business of reselling high-precision engineering products (couplers) of the CD.
- RA shall hire Strong motivated team to run the show with minimum intervention required by the management.
- RA shall support a culture of 'out-performance' resulting in the highest efficiency.

Weakness

- The business for Coupler and Threading is highly competitive and is largely affected by the technological advances
- Mitigating factor: The Company shall hire requisite manpower in the field for manufacturing & marketing including the market proper selling network for its end products; with an expectation of not facing any obstacles/issues in selling their products and also the company will invest in research & development and implement necessary technology up gradation as may be required.

Opportunities

- Strong Financials with Liquid Assets in the form of cash and cash equivalents worth Rs. 348.18 Lakhs available as per the Balance Sheet as on 21-22 for acquisition & future capacity expansion.
- It has the intent & the potential to grow and take up more projects.

Threats

- Adverse Govt Policy, if any, in future may affect the industry.
- General Economic slowdown may affect the growth of the Company.

Part-A at page No. 12-16 of the Resolution Plan, also consented by the COC members in the 9th COC meeting.

1. Overview of the Resolution Applicant

Midpoint Commodeal Private Limited (MCPL/RA) CIN-U74999WB2010PTC153441) is a closely held private limited company, incorporated on 25th September 2010 under the provisions of Companies Act, 1956. The RA is having its registered office at 11, Unit No-1, Crooked Lane, Kolkata 700069, West Bengal.

This is to declare that the Resolution Applicant is a Secured Financial Creditor and a member of CoC. However, under IBC Code, 2016 MCPL is empowered to submit its Resolution plan for CO Further, according to the provisio to Sub-section (5) of Section 30 of the Code "...the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor", thereby implying that the RA, being a member of CoC, can submit resolution plan and cast its vote on the same.

2. Activity

MCPL is a private limited Company, limited by Shares, registered with Registrar of Companies, West Bengal, Registration No. 153441. The company is engaged in business of traders, buyers, sellers, suppliers, commission agents, brokers, merchants, sub-agents, wholesalers, retailers, indenting agents, stockists, distributors, dealer of all types of homecare products and dealing in herbs, herbal products, household

goods, industrial goods, engineering goods, electrical and electronics products etc.

The RA has reported a turnover of INR 98.85 Lakhs for the Financial Year 21-22 and has net worth of INR 170.59 crores for FY 21-22, and hence is eligible for becoming Resolution Applicant in the CIRP of the Corporate Debtor.

3. Board of Directors:

All the directors of KYC complaint. The details of the KYC of the Directors are given as under submitted

Full Name	Designation	Identification No	Present Residential Address
Sandeep Kumar Rungta	Director	DIN-06653179 PAN-ADCPR4318R Aadhar-7151 6164 1659	H707 Vesu Road, Surat Suman Nagar, Magdalla Gujarat 395 007
Ashish Singh	Director	DIN-07184795 PAN-BDAPS6231H Aadhar-6418 2093 1078	117/581, Pandu Nagar, Hans Nagar, Kanpur, Uttar Pradesh-208005

4. Shareholding Pattern:

As on 31st March 2022 Share Capital is as follows:

Particulars	Rs. In Lakh
Authorized Capital	
2,10,000 Equity Shares of Rs.10/- each	21.00
TOTAL	21.00
Issued, Subscribed & Paid Up Capital	
1,92,965 Equity Shars of Rs.10/-	19.30
TOTAL	19.30

The detailed shareholding pattern as on 31st March 2022 is as follows:

<i>Category</i>	<i>No. of Shares</i>	<i>%</i>
<i>EQUITY SHARES</i>	<i>NIL</i>	<i>NIL</i>
<i>(A) Promoter Holding</i>	<i>NIL</i>	<i>NIL</i>
• <i>Individual</i>	<i>NIL</i>	<i>NIL</i>
• <i>Bodies Corporate</i>	<i>NIL</i>	<i>NIL</i>
<i>(B) Non-Promoter Holding/ Public Holding</i>	<i>NIL</i>	<i>NIL</i>
• <i>Fls & Banks/ Insurance Companies</i>	<i>NIL</i>	<i>NIL</i>
• <i>Individuals/ Body Corporate/ Others:</i>		
<i>LAKHI DEVI PATEL</i>	<i>50</i>	<i>0.03</i>
<i>VISHAL KANODIA</i>	<i>15</i>	<i>0.01</i>
<i>KHUSBOO</i>	<i>5</i>	<i>0.00</i>
<i>KANODIA</i>	<i>50</i>	<i>0.03</i>
<i>CHALLARAM</i>		
<i>GHORAMI</i>	<i>68</i>	<i>0.04</i>
<i>SUBHASH JADAV</i>		
• <i>Bodies Corporate</i>		
<i>CHITTY TRADERS LLP</i>	<i>39,800</i>	<i>20.63</i>
<i>DEPRAVE TRADING LLP</i>	<i>39,800</i>	<i>20.63</i>
<i>DINGLE SUPPLIERS LLP</i>	<i>16,830</i>	<i>8.72</i>
<i>DISARM MERCANTILE LLP</i>	<i>16,847</i>	<i>8.73</i>
<i>BODKIN SALES LLP</i>	<i>39,750</i>	<i>20.60</i>
<i>DEPONE TRADELINK LLP</i>	<i>39,750</i>	<i>20.60</i>

TOTAL (A+B)	1,92,965	100.00
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5. Capital Market:

The Company is a private limited company and its shares are not listed to any stock exchanges.

6. Credit facilities:

The RA does not enjoy any credit facilities from any bank or financial institutions.

7. External Credit Ratings:

Since the RA does not enjoy any credit facilities from any bank or financial institution hence it has no external credit rating.

8. Credit worthiness and financial capability of the Resolution Applicant:

MCPL has registered gross total revenue of INR 98,85,200 in FY 2021-22. The RA has a Tangible Net worth of INR 170.59 crores as per the audited balance sheet as at 31 March 2022.

The audited financial statements of the Resolution Applicant for the financial years ending 31" March 2022, 31 March 2021 and 31 March 2020 have been separately enclosed.

Some of the key financial indicators of the last three years are as under

(Rupees in Lakh)

Financial Year Ended	FY 2021-22	FY 2020-21	FY 2019-20
Total Income (Revenue from Operation + Other Income)	288.19	294.15	317.56
Net Worth	17,059	7,033	7,033

PAT	22.26	29.51	22.79
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9. Key Management Personnel of the Organisation

The details of Key Managerial Personnel of the MCPL are given as under:

Full Name	Designation	DIN	Work Experience
SANDEEP KUMAR RUNGTA	Director	06653179	More than 10 years of Experience
ASHISH SINGH	Director	07184795	More than 10 years of Experience

10. Cause of Default by Corporate Debtor:

As per the information available in the Information Memorandum and the Data Room provided by the RP, the reasons for default by the Corporate Debtor and subsequent commencement of CIRP is a result of purported collusion between some of the erstwhile employees and/or past director of the Corporate Debtor with third parties thereby causing financial/business losses to the Corporate Debtor..

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The major reasons for bidding by the Resolution Applicant are as follows:

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- Re-establishing relationship with customer base and sharing the Resolution Applicant's long-term vision and commitment.
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- Developing a detailed budget, introducing key Performance indicators and establishing plans to reduce cost and improve productivity.
- The Resolution Applicant propose to hire a group of professional in different streams like accounts and sales as per the requirements. The Resolution Applicant also proposes to use

its present resources in the best interest for the revival of the CD.

SWOT Analysis:

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- *RA shall build on Strong and established position of CD in the market by implementation of important business plans & policies*
- *The organisation shall hire rich experienced skilled managers in managing the business of reselling high-precision engineering products (couplers) of the CD.*
- *RA shall hire Strong motivated team to run the show with minimum intervention required by the management.*
- *RA shall support a culture of 'out-performance' resulting in the highest efficiency.*

Weakness

- *The business for Coupler and Threading is highly competitive and is largely affected by the technological advances*
- *Mitigating factor: The Company shall hire requisite manpower in the field for manufacturing & marketing including the market proper selling network for its end products; with an expectation of not facing any obstacles/issues in selling their products and also the company will invest in research & development and implement necessary technology up gradation as may be required.*

Opportunities

- *Strong Financials with Liquid Assets in the form of cash and cash equivalents worth Rs. 348.18 Lakhs available as per the Balance Sheet as on 21-22 for acquisition & future capacity expansion.*
- *It has the intent & the potential to grow and take up more projects.*



Threats

- Adverse Govt Policy, if any, in future may affect the industry.
- General Economic slowdown may affect the growth of the Company.

Part-B, Section IV at Page No. 40 of the Resolution Plan

Already reproduced above.

Part-B, Section-III, Clause 2.11 at Page No. 39 to 40 of the Resolution Plan

2.11 List of approvals is as under:

Nature of Approval	Approving Authority	Timeline
Issue of Fresh Equity Shares by Corporate Debtor	NCLT	Deemed to be approved with approval of this Resolution Plan
Cancellation of existing Equity Shares of Corporate Debtor	NCLT	
Increase in Authorised Capital, if required	NCLT	
Change in Constitution of existing Board with appointment of New Directors & cessation of existing Directors	NCLT	
NOC for satisfaction of existing Charge of CD by Secured Financial Creditors	NCLT	

Any other matter, deemed necessary, eg: eligibility of RA to carry forward losses of CD upto the closure date & adjust the same in future	NCLT	
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The RA undertakes to get any further approvals, as required by Applicable Law, for implementation of the Resolution Plan.

Part-A at page No. 12-16 of the Resolution Plan

Already reproduced above.

30. It will not be out of place to mention here that in the matter of CIRP of the Corporate Debtor, the Applicant in the main CP of Rebarteh Solutions Pvt Ltd., has filed the interlocutory applications, bearing IA/1133(AHM)2023 and IA/1101(AHM)2023 which were disposed of by this Tribunal vide order dated 06.06.2024.
31. The RP has filed a reply in IA/1133(AHM)2023 which is recorded in para-V at page no.12 of the said order dated 06.06.2024 which is as below:-

“v. It is submitted as per the transaction auditor; Corporate Debtor has availed loan from Respondent No. 2 since Respondent No. 2 offered larger amount of loan at a lower rate of interest as compared that of loan received

from related party. Hence, payment received from Respondent No. 2 were being utilized for repayment of outstanding loan received from related party since in ordinary course of business. Furthermore, part of the loan amount was also utilized for paying off operational creditor. In light of these facts, it was concluded that the decision was taken in business prudence and refund of loan is to be treated non-preferential".

Both the said IAs was dismissed by this Tribunal.

32. This bench has noticed that IA No. 1133 of 2023 and IA No. 1101 of 2023 were filed under section 60(5) of the Code, in which the conduct of the Resolution Professional was brought under question by alleging that the Resolution Professional has not performed her duties in adherence with the provisions of IBC and respective Regulations.

- In the order dated 06.12.2023 passed in IA No. 1133 of 2023, Ms. Shalini Shah, Deputy General Manager of IBBI had stated that, IBBI has commenced investigation against the RP in respect of the Prayer-D of the application.
- However, a communication made by IBBI to the Resolution Professional in respect of the

said disciplinary proceedings, IBBI has provided that the *“deviation is of technical in nature and hence board has taken a lenient view and advised the resolution Professional to be vigilant and take due care and precautions in your future assignments.”*

- And hence both the said IA's were disposed off by This Tribunal vide an order dated 06.06.2024.

33. The bench has analysed the CIRP process of the Corporate Debtor, which was initiated vide an order dated 16.11.2022 passed in CP(IB) No. 265 of 2020 which was filed under section 9 by M/s. Rebartech Solutions Private Limited. The dates and events of the CIRP process are as mentioned below:

Sr. No.	Particulars	Date	Remarks
1.	Date of filing Section 9 application	03.06.2020	-
2.	Commencement of CIRP	16.11.2022	CP(IB) No. 256 of 2022
3.	Publication of Public	25.11.2022	-

	Announcement		
4.	First Meeting of CoC	23.12.2022	Minutes not on record
5.	Second Meeting of CoC	-	Minutes not on record
6.	Third Meeting of CoC	04.02.2023	Minutes not on record
7.	Fourth Meeting of CoC	-	Minutes not on record
8.	Fifth Meeting of CoC	-	Minutes not on record
9.	Sixth Meeting of CoC (PRA sought 10 days extension for submission of Resolution Plan)	10.04.2023	Only SRA has attended the meeting
10.	Seventh Meeting of CoC	-	Minutes not on record
11.	Eighth Meeting of CoC (Resolution to make an application to Hon'ble NCLT for extension of 90 days)	01.05.2023	Minutes not on record
12.	Ninth Meeting of CoC (Approval of Resolution Plan and Consideration of Feasibility and Viability of the Resolution Plan)	15.05.2023	Only SRA has attended the meeting
13.	Tenth Meeting of CoC	23.06.2023	Only SRA has

			attended the meeting
14.	Eleventh Meeting of CoC	-	Minutes not on record
15.	Twelfth Meeting of CoC		Minutes not on record
16.	Thirteenth Meeting of CoC		Minutes not on record
17.	Issuance of Form-G	06.02.2023	-
18.	180 th Day from initiation of CIRP	15.05.2023	-
19.	Extension of 90 Days granted by This tribunal	13.06.2023	Extension granted till 14.08.2023
20.	Issuance of RFRP, Evaluation Matrix, Information Memorandum	03.03.2023	-
21.	Issuance of LOI	16.05.2023	-
22.	Bank Guarantee of Rs. 50,00,000/- by the SRA	20.06.2023, Valid till 19.12.2023	Extended till 31.12.2024
23.	IA No. 844 of 2023 filed for approval of Resolution Plan by This Tribunal	28.07.2023	Vide Diary No. E-1253

34. The Committee Of Creditor is comprising of Two(2) Financial Creditor, Namely;

Sr. No.	Name of the Financial Creditors	Voting Share (%)
1.	Midpoint Commodeal Private Limited	99.87
2.	GDSK Jewels Private Limited	0.13%

Though the Committee of Creditor of the Corporate Debtor is having Two Financial Creditors in its constitution, It is pertinent to note that all the meetings of which the minutes are attached with this Application and in which all the important decisions in relation to this CIRP process is attended and voted by the Successful Resolution Applicant i.e, Midpoint Commodeal Private Limited only.

35. The plan was approved in the 9th CoC meeting which was convened on 15.05.2023, in which the resolution plan was approved through a resolution by 99.87% voting in favour of the Resolution Plan along with that the Feasibility and Viability of the Resolution Plan was 

also discussed and considered by the CoC. The resolution passed in the 9th CoC meeting convened on 15.05.2023 is hereby reproduced:

“RESOLVED THAT, considering the feasibility and viability of the Resolution Plan dated 20.04.2023 and addendum dated 08.05.2023 received by the RP from the only Resolution Applicant being Midpoint Commodeal Private Limited who is also one of the CoC members having 99.87% votes.”

36. In respect of valuation this bench have noticed that the Form-H which was attached at **“Annexure A-17”** with the IA/844/2023 provides the Liquidation Value of the Corporate Debtor amounting to Rs. 4,01,51,546/- and the Fair Value of the Corporate Debtor amounting to Rs. 6,65,04,082/-. And this amount of valuation is backed by Valuation Report given by two different valuers. While the Form-H which is attached at **“Annexure B”** to the Additional Affidavit which is filed on 31.07.2024 vide Diary No. D 6083 provides the Liquidation Value of the Corporate Debtor amounting to Rs. 3,19,30,306/- and the Fair Value of the Corporate

Debtor amounting to Rs. 5,47,59,454/-. And the values arrived in the amended Form-H is not backed by any valuation report though it is pertinent to note that the values in both the Form-H are significantly different and the rationale for the same difference in values are not explained by the Resolution Professional.

37. Furthermore, **Part B, Section IV: Term of the Plan and its implementation schedule**, the relevant portion is hereby reproduced:

“The validity of this plan for the purpose of consideration and approval shall be 6 months, i.e. up to 19th October, 2023, unless an extension is agreed upon by the RA. Upon approval of Resolution Plan by Hon'ble NCLT, the term of the Plan shall commence on the date on which the NCLT approves the Plan in accordance with section 31 of the Code and shall continue until the closing Date. Notwithstanding anything contained in this Plan, no part of this Plan shall become effective or enforceable until either;

*(i) the Plan is approved by the NCLT in the manner proposed by the RA and approved by the CoC; or
(ii) if approved by the NCLT with any variance, then in the form and substance reasonably acceptable to the CoC and the RA. Upon approval of the Plan by the NCLT, this Plan shall ipso facto form part of the NCLT order.”*

Upon evaluation of the above stated clause, it is apparent that this plan was valid for consideration

and approval by this Tribunal only till 19.10.2023 and whether any extension is given in this deadline by the Resolution Applicant is neither pressed before us by the counsel for the Resolution Professional, nor any document stating that any extension beyond 19.10.2023 is given by the Resolution Applicant is produced before us.

Further, in the same clause it is stated that any changes directed by this Tribunal in the plan while approving it, is subject to the approval of such changes by the CoC and the Resolution Applicant and in the opinion of this Bench due to the said clause, this plan results in a conditional plan.

38. We have analysed the reply of the RP and the affidavit filed by the RA through the RP regarding the manner of set-off of the admitted claim of the Financial Creditor who in the present case is also SRA. For the sake of brevity, the following table on the proposition of SRA is reproduced below:-

Sr. No.	Particulars	Amount (in Crores)
1.	Total Claims of Successful Resolution Applicant	6,28,89,923.00
2.	Total Claim Admitted	6,25,00,000.00
3.	Total Amount Waived	3,89,923.00
4.	Amount Converted to Equity	1,00,000.00
5.	Amount Retained as Secured Loan	6,25,00,000.00
6.	Fresh Infusion: Unsecured Loan	24,00,000.00
7.	Total amount retained as loan (Secured or Unsecured)	6,49,00,000.00

The loan amounting to Rs. 6,25,00,000.00 will be retained as a secured loan carrying an interest @ 7.5% per annum.

39. It is seen that the total debt including (secured plus unsecured) of the SRA post approval of the Resolution Plan (if at all) remains to be a sum of Rs.6.49 crores. The rate of interest of secured loan is stated to be 7.5% per annum whereas no interest is specified in the entire application regarding the interest of unsecured loan.
40. As to the repayment of loans (secured and unsecured), the relevant portion of the affidavit of SRA is reproduced below:-

"It is proposed in the plan that the Successful Resolution Applicant being the sole Secured Financial Creditor, will adjust the settlement amount receivable

of Rs. 6,25,00,000/- against full and final settlement against the admitted claims of Rs. 6,28,89,923/- payable. It is stated that the amount adjusted as final settlement for an amount of Rs. 6,25,00,000/- will remain be shown as Secured Loan given to Corporate Debtors carrying interest rate @7.5% per annum and will not be called back by the Successful Resolution Applicant during next 5 years, however if the corporate debtors wish to pay back the loan, the Successful Resolution Applicant will accept the repayment and till that time it will be continuing as Secured Loan in the books of accounts of the Corporate Debtor”.

41. In our view, no fixed repayment of the secured/unsecured loan is specified by the SRA/RP in the present application despite giving ample opportunity more particularly vide order dated 02.07.2024. It is seen that the RP has not placed before us the financial projections of the Corporate Debtor to establish that the Corporate Debtor has the ability to service the secured and unsecured loans relating to Rs.6.49 crores and the interest thereon.

42. We have raised specific question during the hearing on 06.08.2024 to the learned counsel appearing for the Applicant/RP that whether any financial projections

were approved by CoC. In answer to the question, the learned counsel stated that there is no such approved financial projection. However, the feasibility and viability of the Resolution Plan was verified by the 9th CoC meeting which was convened on 15.05.2023.

43. **ANALYSIS AND FINDINGS OF THIS TRIBUNAL**

I. Further, The Term of the Plan and its implementation schedule as laid down in Part B, Section IV of the plan which is elaborated in point 38 of this order, provides that this plan was valid for consideration and approval by this tribunal only till 19.10.2023 and any extension given in this deadline by the Resolution Applicant is neither pressed before us by the counsel nor any document stating that any extension beyond 19.10.2023 is given by the Resolution Applicant is produced before us.

Further, it is stated that any changes directed by This Tribunal in the plan while approving it, is subject to the approval of the CoC and the

Resolution applicant and in our opinion due to this clause this plan results in a conditional plan.

- II. In this case where the SRA and the Financial Creditor entrusted with 99.87% voting power in the decision of CoC are the same entity and in addition to that when this entity being both the SRA and a Financial Creditor with 99.87% voting power is the only attendee of the CoC meetings in which all the important decisions were been taken, by availing shelter u/s 30(5) of the Insolvency and Bankruptcy Code, 2016.

ORDER

44. In our view, the present Resolution Plan is not passing the muster of Regulation 38(2) and 38(3) of the CIRP Regulations as the same is not addressing the cause of default and debt on the book of the Corporate Debtor Post the approval, a debt of Rs. 6,49,00,000/- is proposed to be continued in the book of the Corporate Debtor with no definite repayment schedule. And as such the Cause of Default is not addressed.

45. Further in our opinion the plan is a conditional plan for the reasons which are enumerated in Paragraph No. 37 of this order.
46. In respect of valuation, the Form-H filed with the IA/844/2023 and the Form-H filed with the Additional Affidavit provides different valuations which are duly recorded in Paragraph No. 36 of this order.
47. In view of the above, the Resolution Plan stands **Rejected.**
48. The provisions under Section 33(1)(b) of the Code are reproduced below:

(1) Where the Adjudicating Authority, -

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall -

- (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
- (ii) issue a public announcement stating that the corporate debtor is in liquidation; and*
- (iii) require such order to be sent to the authority with which the corporate debtor is registered.*

49. As a consequence to rejection of the Resolution Plan this Adjudicating Authority and as the CIRP period of the Corporate Debtor has expired on 15.05.2023 and extension of 90 days which was granted by this tribunal

has expired on 14.08.2023, the Tribunal relying on the provisions of Section 33(1) (b) is forced to order for Liquidation of the Corporate Debtor.

50. In terms of the above, **we hereby order for liquidation of the Corporate Debtor.**

51. IBBI vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under section 34 (4) (b) of the Code, had recommended that an IP other than the RP/IRP may be appointed as liquidator in all the cases where liquidator (*read liquidation*) order is passed henceforth. In terms of the above circular of IBBI, we hereby appoint **Mr. Jigar Tarunkumar Bhatt**, an IPA having registration no. **IBBI/IPA-001/IP-P-01917/2019-2020/13005**, as per the panel suggested by IBBI for this Bench for the period of July1, 2024 to December 31, 2024 as the Liquidator of the Corporate Debtor to carry the liquidation process subject to the following terms of the directions: -

a) The Corporate Debtor **M/s. Steelara Engineers**

Private Limited shall be ordered for liquidation in

terms of the provisions of section 33(1)(b) of the Code r.w. Regulations made there under which shall be effective from the date of this order.

- b) The Moratorium declared under section 14 of the Code shall cease to have effect from the date of the order of liquidation.
- c) As per section 34(4)(b) of the Code, **Mr. Jigar Tarunkumar Bhatt** an IPA having registration no. **IBBI/IPA-001/IP-P-01917/2019-2020/13005** is hereby appointed as a Liquidator of the Corporate Debtor I.e. **M/s. Steelara Engineers Private Limited**. The Liquidator so appointed shall complete the liquidation process as per the provisions of the Code r.w. the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- d) All the powers of the Board of Directors, key managerial persons, and the partner of the Corporate Debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the Liquidator.
- e) The personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.

- f) The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and same shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.
- g) Once the liquidation process is initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor. The Liquidator has the liberty to institute a suit and other legal proceedings on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of section 33 of the Code.
- h) This liquidation order shall be deemed to be notice of discharge to the officers, employees, and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- i) This Adjudicating Authority directs the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation. The Liquidator will also serve a copy of this order to the various

Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.

- j) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations, and also file its response for disposal of any pending Company Applications during the process of liquidation.
- k) The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed liquidator forthwith.
- l) The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, IBBI, the resolution professional, and the Liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities.

52. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
53. **IA(Plan)/844/AHM/2023** filed in **CP(IB) No. 265 of 2020** shall stand **disposed off** accordingly.
54. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps.

-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

RS

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)