

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL *INDORE Bench*
AT AHMEDABAD
COURT 1

IA 429 of 2019 in TP 77 of 2019 in [CP(IB) 209 of 2017

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF *INDORE* BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.05.2020

Name of the Company: Mansarovar Agro Sacks Pvt Ltd
V/s
Sunil Kumar Kedia RP for BP Foods BP
Food Products Pvt Ltd & Anr

Section: Section 60(5) of Insolvency & Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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ORDER


The case is taken up through video conferencing.

The case is fixed for pronouncement of order today.

The order is pronounced in open Court.

The present matter, i.e, **IA 429 of 2019 in TP 77 of 2019 [CP (IB) 209 of 2017]** is rejected as per order in detail is recorded separately.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 26th day of May, 2020
sen

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD**

**IA No.16 of 2020 in
CP (IB)No.209/9/NCLT/AHM/2017**

(Application by Resolution Professional of M/s.B.P. Food Products Private Limited for approval of Resolution Plan)

In the matter of:

Mr. Sunil Kumar Kedia

Resolution Professional
B.P.Food Products Private Limited
210-B, 21st Century Business Centre
Near Udhna Darwaja
Ring Road, Surat
Gujarat-395 002

..... Applicant

Appearance:

Mr. Sunil Kumar Kedia, Resolution Professional, present in person.

Advocates, Mr. Rohit Lalwani and Mr. Atul Sharma, for the Resolution Professional.

Ms. Shivna Majumdar on behalf of CA Mr. Hiten Parekh, for the Suspended Management.

And

**IA No.429 of 2019 in
CP (IB)No.209/9/NCLT/AHM/2017**

(Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Mansarovar Agro Sacks Private Limited

Plot No.58/A & B/5
Phase-I, IDA
Jeedimetla
Hyderabad-500 055

... Applicant

Versus

Mr. Sunil Kumar Kedia

Resolution Professional
B.P.Foods Products Private Limited
210-B, 21st Century Business Centre
Near Udhna Darwaja
Ring Road, Surat
Gujarat-395 002

... Respondent No.1

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**Committee of Creditors of
B.P. Foods Products Private Limited**

Through its Lead Bank
IDBI Bank Limited
IDBI Complex Office
C.G. Road, Near Lal Bunglow
Ellisbridge, Ahmedabad
Gujarat-380 006

... Respondent No.2

Appearance:

Advocate, Mr. Tirth Nayak i/b Advocate, Mr. Ankit M. Talsania, for
the Applicant.

Mr. Sunil Kumar Kedia, Resolution Professional, present in person.

Advocates, Mr. Rohit Lalwani and Mr. Atul Sharma, for the
Resolution Professional.

Ms. Shivna Majumdar on behalf of CA Mr. Hiten Parekh, for the
Suspended Management.

Order delivered on 26th May, 2020.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)

And

Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)

COMMON ORDER

[Per: Mr. Harihar Prakash Chaturvedi, Member (J)]

1. The Resolution Professional has preferred IA No. 16 of 2020 in CP (IB) 209 of 2017, for approval of this Adjudicating Authority a Resolution Plan (fresh application-revised application), which has been approved by the Committee of Creditors (CoC), with requisite majority, i.e. 70.50%. The Resolution Plan has been submitted by the successful resolution applicant, namely, **M/s. Om Shri Shubh Labh Agritech Private Limited.**

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2. M/s. Mansarovar Agro Sacks Private Limited, **being the Operational Creditor, i.e. the petitioner in main IB Petition) and objector**, has filed IA No. 429 of 2019 in CP (IB) 209 of 2017, sought for appropriate modification while approving the Resolution Plan so that interest of all stakeholders of Corporate Debtor company can adequately be protected and to disallow any discrimination among any class of creditors of the corporate debtor company in the proposed Resolution Plan otherwise the Resolution Plan is liable **to be rejected** by this Adjudicating Authority.

The relief/direction, as being sought from this Adjudicating Authority, are stated as under:-

- i) To direct the Resolution Professional/CoC to take steps to ensure that there are appropriate modifications in the Resolution Plan in such manner that the interest of all the stakeholders of the Corporate Debtor is protected and that there is no discrimination amongst any creditors of the Corporate Debtor in the Resolution Plan.*
- ii) In the event the Resolution Applicant is unable to or is unwilling to carry out the modifications as indicated above, the Hon'ble Adjudicating Authority may be pleased to declare the impugned Resolution Plan, in its present form as approved by the CoC as contrary to the I & B Code and hence be rejected in its present form.*

3. Since both the IAs are based on common issue of approval or otherwise of Resolution Plan, these IAs are being dealt with jointly and disposed of by the present common order.

4. The interlocutory application, i.e. IA No.16 of 2020, is filed under Section 30(6) read with Section 31(1) of the Insolvency and Bankruptcy Code, 2016 and Regulation 39(4) of the Insolvency and Bankruptcy Board of India (CIRP Regulations) 2016. The Applicant,

Shri Sunil Kumar Kedia, is the Resolution Professional of the Corporate Debtor M/s. B.P. Food Products Private Limited.

5. The applicant states that the Corporate Debtor company is situated in the state of Madhya Pradesh, hence, the same falls within the jurisdiction of National Company Law Tribunal, Indore Bench at Ahmedabad.
6. The RP, through the present application, has sought for approval of Resolution Plan as submitted by the Resolution Applicant, **M/s. Om Shri Shubh Labh Agritech Private Limited**. The relief/direction, as being sought from this Adjudicating Authority, are stated as under:-
- a) *Pass an order approving the Resolution Plan submitted by Resolution Applicant M/s. Om Shri Shubh Labh Agritech Private Limited in respect of Corporate Debtor under Section 31(1) of the IBC 2016 and declare that the same be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholder involved in the Resolution Plan;*
 - b) *Pass an order directing that, pending the disposal of the present application by Adjudicating Authority, the Resolution Professional shall continue to conduct its role as the Resolution Professional of the Corporate Debtor and during such period shall have all powers, duties and protections are available to him as a Resolution Professional under the IBC 2016 and Regulations thereunder;*
 - c) *Pass an order directing that the moratorium declared under Section 14 of the Code shall continue until such date that the Resolution Applicant acquire control of the Corporate Debtor;*
 - d) *Pass an order directing the Resolution Applicant to implement the Resolution Plan in the manner set out under the Resolution Plan;*
 - e) *Pass an order approving the appointment of the Monitoring Committee ("MC") from the date of the approval of the Resolution Plan by Adjudicating Authority until the date of Final Payment to Financial Creditors and during such period extend protection to the Monitoring Committee ("MC") (including extension of the protection of moratorium against any suit, legal proceedings, investigations or have any liability with respect to anything which is done or intended to be done or omitted in good faith and in compliance with the Code, CIRP Regulations or any other applicable law) to enable it to monitor the Corporate Debtor as going concern;*
 - f) *Pass an appropriate order in relation to the grant of concessions, reliefs and dispensations sought in terms of the Section 6.2 of the Resolution Plan and the same has been reproduced in Annexure-VI of this Petition;*

- g) Pass an order directing all stakeholders to cooperate with the Resolution Applicant and the MC to implement the Resolution Plan in the manner as approved by the Adjudicating Authority;**
- h) Pass an order directing that the powers of the suspended Board of Directors of the Corporate Debtor shall remain suspended till the Resolution Applicant acquire the control of the Corporate Debtor in the manner set out in the Resolution Plan ;**
- i) Pass an order for removal of existing Statutory Auditors of the Corporate Debtor and to appoint new statutory auditors by the Resolution Applicant, as per the provisions of the Companies Act, 2013; and/or**
- j) Pass such other order/orders as it may deem fit and proper in the facts and circumstances of the case.**

7. The facts in brief which arise and are necessary for disposal of the present application seeking for approval / otherwise of the resolution plan have been well described in the present application.

The same reads as under:-

- a) That the Application under section 9 of the Insolvency & Bankruptcy Code, 2016 (in brevity IBC 2016) filed by M/s. Mansarovar Agro Sacks Private Limited, one of the Operational Creditor of Corporate Debtor, with this Hon'ble National Company Law Tribunal was duly admitted vide order in Company Petition (IB) No. CP (IB) No. 209/9/NCLT/AHM/2017 dated 08th August 2018 and vide order dated 23rd August 2018, Mr. Sunil Kumar Kedia being IBBI Reg. No. IBBI/IPA-001/IP-P00028/2016-17/10064 was appointed as the Interim Resolution Professional Process of the Corporate Debtor on the recommendation received from the Insolvency and Bankruptcy Board of India.
- b) That the IRP Mr. Sunil Kumar Kedia on receipt of appointment made public announcement on 27th August 2018 and called for the submission of claims from creditors. Consequent upon public announcement, claims from different creditors, employees, workmen etc. were received and on verification, the admitted claim of the Corporate Debtor stood at Rs. 190.56 Crores, as on the date of filing of this application.
- c) That the Interim Resolution Professional was appointed as Resolution Professional for the CIRP in the first CoC Meeting held on 20th September 2018. The Minutes of the meeting confirming appointment of Resolution Professional has been duly filed with this Tribunal on 20th September, 2018 and the same is attached as Annexure-III.
- d) That there were two claims in Form C were received from (1) from M/s. Creditor Suisse Funds AG (USD 526,009.53) and M/s. ResponsAbility Micro and SME Finance Fund for USD (33,468.77). It was 1st rejected by the RP because of the invalid Corporate Guarantee documents. The claimant moved an application before AA for direction and also submitted fresh guarantee Documents to the RP but by that time 270 days had been over. The AA directed the RP to examine the fresh documents and convey its

view. The RP after considering the fresh Guarantee documents submitted that the claim may be accepted. The AA by disposing the IA 427 of 2019 directed the RP to admit the claim as Financial Creditors on 23rd August 2019.

e) That the Committee of Creditors comprises of:

Name of Creditor	Voting Rights%	Amount Admitted
IDBI Bank Limited	29.50	47,02,44,204
State Bank of India	25.47	40,60,71,694
UV Asset Reconstruction Company Limited	24.57	39,16,62,305
Kotak Mahindra Bank Limited	16.39	26,12,81,878
ICICI Bank Limited	0.37	58,83,768
Credit Suisse Funds AG	2.26	36108713
responsAbility management Company SA	1.44	22974732
Total	100	159,42,27,294

f) That the details of claims updated till the final revision of Information Memorandum is as under:

S. N.	Category of Creditors	Amount Claimed (INR)	Amount Admitted (INR)	Amount Not Admitted (INR)	Amount under Dispute (INR)
1	Financial creditors	1,60,89,53,594	159,42,27,249	1,47,26,300	0
2	Operational creditors other than workmen and employees	66,57,99,585	37,01,61,224	11,66,71,893	17,89,66,468
3	Operational creditors - only workmen and employees	13,93,286	3,89,308	10,03,978	
	PF & ESI (Workmen and Employees)	0	258661	0	0
4	Creditors other than Financial creditors and operational creditors	0	0	0	0
5	Statutory dues	0	1,667,391	0	0
	G. Total	227,61,46,465	196,67,03,833	13,24,02,171	17,89,66,468

g) That the Resolution Professional issued the invitation for Expression of Interest (First EOI) in Form G on 5th November 2018 by making advertisement in the newspaper and upon the designated website of the IBBI and also made available eligibility criteria and EOI Process Memorandum to the interested applicants through Email. In response of the same two Resolution Applicants expressed their interest and out of that two applicant only one Resolution applicant M/s. Om Shri Shubh Labh Agritech Private Limited submitted the Resolution Plan but for lack of substantial supporting / evidences the Resolution Professional rejected the same considering not in order.

- h) That the CoC resolved for extension of CIRP period by another 90 days in terms of the provisions of the Section 12(2) of the IBC, 2016 and the Resolution Professional, Mr. Sunil Kumar Kedia moved an Application (IA 65/2019) before the Adjudicating Authority in this regard and Adjudicating Authority allowed the extension vide order dated 4th February 2019. Further, since the CIRP was commenced on 08th August 2018 and appointment of Resolution Professional was communicated on 24th August, 2018, the Adjudicating Authority allowed 17 days to be excluded for reckoning 180 days from 8th August 2019 vide order dated 14th February 2019. The closing date of CIRP stand at 21st May 2019 subject to the prayer for continuation of the same till the approval of the Resolution Plan by Adjudicating Authority.
- i) That the Resolution Professional issued fresh invitation for Expression of Interest (Second EOI) in Form G on 21st February 2019 by making advertisement in the newspaper and upon the designated website of the IBBI and also made available eligibility criteria and EOI Process Memorandum to the interested applicants through Email. In response to the same four Resolution Applicants expressed their interest and thereafter Request For Resolution Plan (RFRP) was issued to all the prospective applicants along with Information Memorandum and Evaluation Matrix. RFRP specifies the Performance Security in the form of Bank Guarantee in terms of amended Regulation 36B (4A) of Rs.5.00 Crores.
- j) That, two of the four prospective Resolution Applicants **a) M/s. Om Shri Shubh Labh Agritech Private Limited and (b) M/s. Genera Agri Corp Ltd. submitted the Resolution Plan.** Both the plans were examined and scrutinized by Resolution Professional and it was found that the Resolution Plan received from M/s. Genera Agri Corp. Ltd. was not complete in all respects as the necessary proof of Source of Funds was not submitted by the said Resolution Applicant and accordingly the same was not put for approval before CoC under Section 30(3) read with Regulation 39(3). However, the incomplete plan was placed before the CoC to take the final decision on the same and the Committee took a view that since the Resolution Plan is incomplete it needs to be rejected and not to pursue.
- k) That the Resolution Professional in discharge of this duty casted under Regulation 39(2) of the CIRP Regulation, enquire into the transaction in the nature of (i) Preferential transactions under Section 43, (ii) undervalued transactions under Section 45, (iii) Extortionate credit transactions under Section 50 and (iv) fraudulent transaction under section 66. In this connection observations made by Forensic Auditor, M/s Jain Jagawat Kamdar & Co. , details available with the Corporate Debtor and the replies received from the Promoters were verified and examined by Resolution Professional and it was opined that there were certain transactions in the nature of fraudulent transaction covered under Section 66 of the IBC Code entered by the Promoters of the Corporate Debtor (which caused loss to the tune of **Rs. 42.92 Crores**) and accordingly an interlocutory petition was moved with the Honorable NCLT Ahmadabad on **24th April 2019 (IA 300 of 2019)** for necessary direction in this regard.

- l) That the Resolution Professional in discharge of his duty casted under Regulation 27 read with Regulation 35 of the CIRP Regulation, appointed two Registered Valuers to determine Fair value and Liquidation Value of the Corporate Debtor. The estimates provided by the two Valuers for some of the assets were significantly different and therefore third Valuer was also appointment for those specific assets. The Fair Value was determined at Rs. 56.64 Crores and Liquidated Value was determined at Rs. 37.74 Crores.
- m) That the Resolution Plan received from Om Shri Shubh Labh Agritech Private Limited was put for approval of Members of CoC in the **Meeting** held on **16th May 2019** through electronic means (e-voting) which was kept open from 17th May 2019 and ended on 18th May 2019. **The said Resolution Plan was approved by voting share of 69.37%.**
- n) That, Since the Resolution Plan submitted by M/s Om Shri Shubh Labh Agritech Private Limited was approved by CoC with a voting of 69.37%, the RP filed an IA 299 of 2019 under Section 30(6) of IBC 2016 before AA for approval of Resolution Plan. While the IA 299 of 2019 was pending for consideration before AA, Honorable NCLT by its order dated 23rd August 2019 in IA 427 of 2018 in the matter of Credit Suisse Funds AG & Anr. vs Sh. Sunil Kumar Kedia RP of B. P. Food Products Private Limited & Anr. directed as under:
- The Resolution Professional is directed to do the needful exercise for updating the claim of the applicants, collation of claims and preparation of Information Memorandum and to update other documents of the CIRP and to reconstitute the CoC, in terms of the provisions of the I & B Code and act accordingly.*
- o) That the RP further made an application for clarification vide IA 547 of 2019 before the AA and on 11th September 2019, the AA advised the RP to call for CoC and follow the principles laid down by Honorable Supreme Court in the matter of **Vijay Kumar Jain vs Standard Chartered Bank & Ors (Civil Appeal No. 8430 of 2018)**.
- p) That. the RP called for 11th CoC Meeting dated 19th September 2019 in which the CoC deliberated the Resolution Plan afresh and also submitted that due to subsequent developments in the case, he wants to **withdraw IA 299 of 2019 which relates to approval of Resolution Plan approved in 10th CoC meeting, pending before the Adjudicating Authority.**
- q) That, in the meantime, the Resolution Applicant **M/s. Om Shri Shubh Labh Agritech Private Limited** submitted the Resolution Plan **duly amended considering the admission of fresh claims as Financial Creditors on 12th September 2019.**
- r) That the Resolution Plan of M/s. Om Shri Shubh Labh Agritech Private Limited (duly amended till 12th September 2019) **was found to be complete in all respects and the Resolution Professional issued a certificate under Section 30(1), 30(2) and Regulation 38 of code to the members of the CoC via email dated 13th September 2019.**
- s) That the said Resolution Plan of **M/s Om Shri Shubh Labh Agritech Private Limited** (duly amended till 12th September 2019) was approved by **70.50% voting in assent in the 11th CoC dated 19th September 2019 and IA 607 under Section 30(6) was moved by RP before Honorable NCLT.**
- t) That, in the hearing dated 22nd November 2019 Honorable AA directed as under:

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- u) *This case is fixed for hearing on approval or otherwise of the Resolution Plan under Section 30 of Insolvency & Bankruptcy Code, 2016. However, in the view of subsequent developments and in view of latest decision of Hon'ble Supreme Court in matter of Committee of Creditors of M/s Essar Steel vs. Union of India and its other relevant decisions, the CoC may re-look the Resolution Plan in conformity with directions issued in decision of the Hon'ble Supreme Court and take appropriate decision and to apprise of this court for the same, so that this Adjudicating Authority can proceed further to implement the decisions of Hon'ble NCLAT.*

List the matter on 19.12.2019.

- v) That in the light of above direction by the Honorable AA, various ruling / directions of the Honorable Supreme Court Judgment in the matter of M/s Essar Steel vs. Union of India and other relevant decisions, **it was found that broadly the Resolution Plan approved is in consensus with the verdict in the said judgments, however there was lesser clarity on what exactly has been kept in view by the CoC Members while assenting / dissenting the said Resolution Plan.**
- w) That affirm the compliance with the said verdict of the Honorable Supreme Court, as well as the directions given by the honorable AA, it has proposed to re-consider the Resolution Plan by the Committee of Creditors once again.
- x) That, the 12th CoC meeting was called on 3rd December 2019, for reconsideration of the Resolution Plan in the light of aforesaid ruling of Honorable supreme court and in the said meeting among the others the Resolution Plan of **M/s Om Shri Shubh Labh Agritech Private Limited** was once again discussed and decided to record the views and decisions on the said Resolution Plan through voting through e-voting.
- y) That, after the Minutes of 12th CoC Meeting was circulated, members M/s Kotak Mahindra Bank Limited and M/s UV Asset Reconstruction Company requested the Resolution Professional to incorporate certain points in the Minutes of the 12th CoC Meeting and accordingly an Addendum to the Minutes of the said meeting was circulated after incorporating their concerns.
- z) That the said Resolution Plan of M/s. Om Shri Shubh Labh Agritech Private Limited (duly amended till 12th September 2019) was approved by 70.50% voting in assent in the 12th CoC dated 3rd December 2019 and IA 10 under Section 30 (6) was moved by RP before Honourable NCLT.
- aa) That, in the hearing dated 10th January 2020 Honourable AA directed as under:
During the course of hearing it has been pointed out that subsequent to order/direction of this court dated 22.11.2019, certain amendment took place in the IBBI Rules & Regulations. It is contended that the Resolution Plan was considered in the light of the observation made by this Court on 22.11.2019, the CoC did not examine or re-look it from the aspect of the amended in the provision of the Regulation. Hence, we are of the view that, the Committee of Creditors (CoC) needs to re-look the Resolution Plan and re-submit the same.
- bb) That in the light of above direction by the Honourable AA to comply with the amendments in Regulation 38 of CIRP Regulation 2016, Resolution Applicant, M/s. Om Shri Shubh Labh Agritech Private Limited submitted an addendum to the Resolution Plan dated 11th January 2020.
- cc) That, the 13th CoC meeting was called on 18th January 2019, for consideration of the Resolution Plan in the light of the amendments in CIRP Regulations 2016

mainly the amendments in Regulation 38 relating to priority to be given to dissenting financial creditors and in the said meeting among the others the Resolution Plan of M/s Om Shri Shubh Labh Agritech Private Limited was once again discussed and decided to record the views and decisions on the said Resolution Plan through voting through e-voting.

- dd) That e-voting was commenced from 06:00 PM on 18th January 2020 and was open till 05.00 PM on 21st January 2020. Following Resolution as agreed by the members in the 13th CoC was placed for e-voting for approval of the members of the CoC.

RESOLVED THAT in accordance with Section 30(4) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(3) of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations". Resolution Plan submitted by M/s Om Shri Shubh Labh Agritech Private Limited amended till 12th September 2019 along with amendments via addendum dated 11th January 2020 is hereby approved, keeping in view, among the others, the three broad parameters i.e. (a) the Resolution Plan proposes to keep the Corporate Debtor as a going concern (b) the Resolution Plan maximises the value of assets of the Corporate Debtor (c) the Resolution Plan has taken care the interest of all stakeholders including the Operational Creditors."

"RESOLVED FURTHER THAT Resolution Professional be and is hereby authorized to submit the Resolution Plan as approved by the CoC before the Adjudicating Authority".

The result of e-voting was declared on 21st January 2020 which is as under:

Name of Creditor	Voting Rights %	Voted in favour	Voted against
IDBI Bank Limited	29.50	-	DISSENT
State Bank of India	25.47	ASSENT	-
UV Asset Reconstruction Company Limited	24.57	ASSENT	-
Kotak Mahindra Bank Ltd	16.39	ASSENT	-
ICICI Bank Limited	0.37	ASSENT	-
Credit Suisse Funds AG	2.26	ASSENT	-
responsAbility management Company SA	1.44	ASSENT	-
Total	100		

The proposed Resolution Plan was voted in favour by 70.50% voting share, which is more than the requisite 66% voting share required for approval and accordingly the Resolution taken on record as passed / approved as per the provisions of Section 30(4) of the IBC 2016.

- ee) That the Resolution Plan received further envisaged to form a Monitoring Committee which will look after the implementation of the Resolution Plan (Section 4.5 of the Resolution Plan). The Resolution Plan further proposed that the Monitoring Committee will consist of the persons nominated by Financial Creditor; each of the Financial Creditor may nominate one person as the member of the Monitoring committee and Resolution Professional (RP) Sunil Kumar Kedia. Following Resolution was moved by the Resolution Professional for voting:

"RESOLVED THAT if the Resolution Plan of M/s Om Shri Shubh Labh Agritech Private Limited gets approved by the CoC and Adjudicating Authority, a Monitoring Committee will be formed, which will consist of Resolution

Professional Sunil Kumar Kedia and the persons nominated by Financial Creditors, each of the Financial Creditor may nominate one person as the member of the Monitoring committee and the said committee will be dissolved once the plan has been implemented in full i.e. entire proceeds proposed in the Resolution Plan is received by Financial Creditors."

"RESOLVED FURTHER THAT monthly remuneration of Rs. 50,000 will be paid to Resolution Professional which shall be borne by Resolution Applicant."

The proposed Resolution was voted in favour by 70.50% voting share and accordingly the Resolution taken on record as passed / approved by majority.

ff) Distribution of the proceeds of the Resolution Plan shall be as under:

S. No.	Stakeholder	Claim Admitted	Gross Amount offered under the Plan	Upfront i.e. payable within 3 month	Deferred payable in 57 equal monthly instalments
1	CIRP Cost*	-	19200000	19200000	-
2	Workmen & Employees	648569	648569	648569	-
3	Statutory Liabilities	1667391	1667391	1667391	-
4	Operational Creditors	370161224	4124333	4124333	-
5	Dissenting Financial Creditors				
i	IDBI Bank Limited**	470244204	150605415	150605415	-
6	Assenting Financial Creditors				
i	State Bank Of India	406071694	198216361	44256406	153959955
ii	UV Asset Reconstruction Company Limited	391662305	80810550	18042832	62767718
iii	Kotak Mahindra Bank Limited	261281878	31680361	7073376	24606984
iv	ICICI Bank Limited	5883768	5883768	2782782	3100986
v	Credit Suisse Funds AG	36108713	4378172	977529	3400643
vi	ResponsAbility Micro and SME Finance Fund, Luxemburg	22974732	2785681	621968	2163713
	Total (FC's)	1594227249	474360307	224360307	250000000
	Grand Total	1966704478	500000000	250000000	250000000

*CIRP Cost has been taken for the period upto October 2019 and any increase in the same shall be deducted from the amount payable to the FC's as provided in the Resolution Plan.

**IDBI Bank Limited being dissenting Financial Creditors is paid equal to the amount of its share in the Liquidation Value as provided in the Resolution Plan.

2. IMPORTANT DETAILS OF RESOLUTION APPLICANT AND RESOLUTION PLAN APPROVED BY THE COC:

- a) Resolution Applicant M/s. Om Shri Shubh Labh Agritech Private Limited is a private limited company engaged in trading / manufacturing of atta, maida and RPC plant situated in Madhya Pradesh. The net-worth is Rs. 5.15 Crores and the turnover in the previous year was around 1500.00 Crores. Mr. Girraj Bansal, Mr. Ketan Bansal, Miss. Pragya Acharya and Mr. Deepak Pandey are the directors in the applicant company.
- b) The Resolution Applicant proposes to take over the Corporate Debtor by way of acquiring the entire ownership and management of the Corporate Debtor on an "as and where basis" and subject to other conditions as mentioned in the Plan.
- c) The total offer price as envisaged in the Resolution Plan is Rs. 50.00 Crores out of which 25.00 Crores is upfront (i.e. within 3 months from the effective date and balance 25.00 Crores is in 57 equal monthly installment beginning from 4th Month from effective date. The distribution of the total amount is as under.

Rs. in Crores

Stakeholders	Amount Admitted Rs. In Crores	As a % of Total Liability	Amount Offered Rs. In Crores	As a % of outstanding	Duration
CIRP Cost	-	-	1.92		1st Month
Financial Creditors	159.42	81.06%	47.44	31.26%	Upfront Rs. 22.44 Crores (Rs. 2.44 Crores in 1st Month, Rs. 10.00 Crores in 2 nd Month, Rs. 10.00 Crores in 3 rd Month) And Remaining 25.00 Crores in 57 equal monthly installment beginning from 4 th Months till the 60 th month from the date of approval of Plan by Honorable NCLT
Operational Creditors	37.01	18.82%	0.41	1.11%	1st Month
Workmen & Employees	0.04	0.02%	0.04	100%	1st Month
Workmen & Employees (ESI & PF)	0.02	0.01%	0.02	100%	1st Month
Statutory Liabilities	0.17	0.09%	0.17	100%	1st Month
Total	196.66	100%	50		

• Distribution / Utilization funds

Order of Priority	Particulars	1st month	2 nd and 3 rd month	4 - 60 months	Total
A	Acquisition of B.P. Food Products Private Limited				
1	CIRP Cost	1,92,00,000	-	-	1,92,00,000
2	Worker and employee dues	3,89,308	-	-	3,89,308
3	Worker and employee dues (PF & ESI)	2,58,661	-	-	2,58,661
4	Statutory Dues	16,67,391	-	-	16,67,391
5	Operational Creditors	41,24,333	-	-	41,24,333
6	Financial Creditors	2,43,60,307	20,00,000	25,00,00,000	47,43,60,307
	Sub total	5,00,00,000	20,00,00,000	25,00,00,000	50,00,00,000
B	Revival of B.P Food Products Private Limited				
7	Repairs and maintenance for revival			5,00,00,000	5,00,00,000
8	Working Capital			5,00,00,000	5,00,00,000
	Sub Total			10,00,00,000	10,00,00,000
C	Total (A+B)	5,00,00,000	20,00,00,000	35,00,00,000	60,00,00,000

- In the category of Financial Creditors ICICI Bank has exclusive charge on the Vehicles of the Corporate Debtor and the present value is more than the Amount of the Claim admitted of the said Financial Creditor. Accordingly, it is proposed to make full payment of Rs.58,83,768 to ICICI Bank Limited.
- The other constituents (except Credit Suisse and responsAbility Micro) of the Admitted Claim are Lenders under a consortium and there is a inter — creditor agreement / subordinate agreement which provides 1st Charge on the Plants of the Corporate Debtor on the term lending facilities and 1st Charge on Current assets on the working capital facilities. However, the value of Current Assets of the Corporate is negligible as on the day.
- The offer price has been arrived considering the value of the plants exist as on the date of offer and therefore there should be separate treatment to derive the amount to be given against (a) the Financial debts having security that exists as on the date of offer and (b) Financial debts having no / negligible security.
- Since the working capital lender are having no security or negligible security that exist on the date of offer, the claims of working capital lender / creditor and Unsecured Financials Creditor should be given equal status in the distribution of offer price.
- Considering the above fact, the distribution of the proceeds in the ratio of 75 : 25 between the above two categories of the Financial Debts (i.e. Debts having security value and debts having no / negligible security value) is equitable and reasonable and accordingly Resolution Applicant proposed the following distribution ratio.
- The total amount offered to Financial Creditors is as below:

S.No.	Name of Financial Creditor	Amount Offered
1	IDBI Bank Limited	185,360,479
2	State Bank of India	176,543,985
3	UV Asset Reconstruction Company Limited	71,974,970
4	Kotak Mahindra Bank Limited	28,216,526
5	ICICI Bank Limited	5,883,768

	Credit Suisse Funds AG	3,899,476
	ResponsAbility Micro and SME Finance Fund, Luxemburg	2,481,103
	Total	474,360,307

- Payment to Dissenting Financial Creditors (Addendum to Resolution Plan dated 11th January 2020)

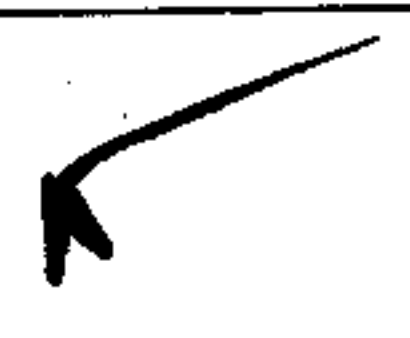
Regulation 38 of CIRP Regulation 2016 has been amended on 28th November 2019 and the amended regulation requires that the amount payable under a resolution plan to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan. [Regulation 38(1)(b)].

Further, section 30(2) (b) of IBC Code 2016 amended on 16th August 2019 provides that each Resolution Plan should provide for the payment of debts of financial Creditors, who do not vote in favour of the Resolution Plan, in such a manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub section (1) of Section 53 in the event of a Liquidation of the Corporate Debtor. [Section 30(2)(b) clause (ii)]

Accordingly, Para 4.2 [Page No.22] of the Resolution Plan relating to mandatory contents of Resolution Plan do hereby amended by inserting clause H (after the clause G) as under.

4.2 Dealt with Interest of all stakeholders – Regulation 38(1A) of CIRP Process

Sr.No.	Stakeholder	Interest dealt in Resolution Plan
H	Payment to Dissenting Financial Creditors and priority in payments	<p>Payment to Dissenting Financial Creditors shall be equal to the amount to be paid to such creditors in accordance with sub section (1) of Section 53 in the event of a Liquidation of the Corporate Debtor and shall be paid in priority over financial creditors who voted in favour of the plan.</p> <p>The dissenting financial creditor after receipt of payment of the amount as aforesaid will issue 'No Due Certificate' and release its charges on the assets of the CD accordingly. The amount to be paid to each of the Creditors in accordance with sub-section (1) of Section 53 in the event of a Liquidation of the Corporate Debtor will be provided by the CoC through RP to the Resolution Applicant (RA) before the date of payment of offered amount. The said amount will be deemed to be Undisputed Amount.</p> <p>The amount offered to the Financial Creditors who voted in favour of the Resolution Plan will be determined in the following manner:</p> <p>(i) The Amount of difference between the amount offered to the dissenting Financial Creditors and the liquidation value as above will be determined.</p>



		<p>(ii) The aforesaid differential amount will be adjusted with the amount offered to the FCs voted in favour of the plan (except ICICI Bank Limited, where the amount offered is fixed) in the proportion to their offered amount.</p> <p>(iii) The final amount payable to the Assenting Financial Creditors as determined above will be paid after the payment to dissenting financial creditors.</p> <p>(iv) The upfront amount and deferred amount to be paid to each of the financial creditors who voted in favour of the Resolution Plan will be worked in the proportion to their share in upfront / deferred amount available to the said FCs.</p>
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- It is also pertinent to mention here that the assets of the Corporate Debtor are insufficient to discharge the dues of secured financial creditors. So the liquidation value to operational creditor is considered as nil. However, Resolution Applicant proposes to pay dues of Operational Creditor other than Workmen and Employees to whom the Corporate Debtor owes up to Rs.3,00,000 as on the Insolvency Commencement date, which dues aggregates to Rs.41,24,333.

d) The Resolution Applicant provided a Performance Security in the form of Bank Guarantee of Rs. 5.00 Crores as specified in the RFRP, mentioned in the Section 4.8 of the Resolution Plan. The said Performance Security was submitted after approval of Resolution Plan in the 10th CoC Meeting dated 16th May 2019. The proof of Performance Security is attached with this application as per Regulation 39(4) of CIRP Regulation 2016 as **Annexure VIII**.

e) Treatment of Existing Securities and Guarantees

- The Company has created a charge on its immovable assets, moveable fixed assets and its current assets in favour of the Financial Creditors.
- All Encumbrance on all Company Securities shall stand released as under:

Securities created on Fixed Assets of the Corporate Debtor	Stand Released on the Final payment to the Financial Creditor which includes upfront as well as deferred payment as proposed herein above in the Resolution Plan
Securities created on Current Assets of the Corporate Debtor	Stand Released on payment of upfront amount only of Rs. 25.00 as proposed under the plan herein above and thereafter during the remaining period of deferred payment no charge on Current Assets of the Corporate debtor shall continue

- Within 2 (two) weeks of, the later of, payment of the upfront amount to the Financial Creditors as stipulated in the Resolution Plan, the Financial Creditors and Resolution Applicant shall jointly make appropriate filings with the Ministry of Corporate Affairs/ Registrar of Companies for releasing the charges or satisfaction of charge (in terms of payments agreed to be made herein) on Company Current Assets and also provide a "Letter of Confirmation" to the Company confirming that no charge continues on the Current Assets of the Corporate Debtor.

- Within 2 (two) weeks of, the later of, payment of the Total amount including upfront amount and deferred amount to the Financial Creditors as stipulated in the Resolution

Plan, the Financial Creditors and Resolution Applicant shall jointly make appropriate filings with the Ministry of Corporate Affairs/ Registrar of Companies for releasing the charges or satisfaction of all the charge (in terms of payments agreed to be made herein) on Company Securities and also provide a "Letter of Confirmation" to the Company confirming that no dues are pending and outstanding from the Company towards Financial Creditors (including but not limited to in respect of payment of principal, interest, delayed interest, default interest, damages and any other charges) and all such dues have extinguished.

- Further the "Letter of Confirmation" to state that notwithstanding anything to the contrary stated in the Indian Contract Act, 1872 or in this Resolution Plan, the securities and guarantees/contractual comforts provided by erstwhile Shareholders/ erstwhile promoters in respect of the debt of the Company (except any Encumbrance on the Equity Shares) has not been extinguished. It is hereby clarified that the said Letter of Confirmation shall have no impact on the securities and guarantees/contractual comforts provided by erstwhile Shareholders/ erstwhile promoters in respect of the debt of the Company (except any Encumbrance on the Equity Shares).
 - Additionally, all the original documents pertaining to immovable assets currently in the custody of the Financial Creditors shall be duly handed over to the Company on the full payment proposed to the Financial Creditors.
 - Notwithstanding anything to the contrary stated in the Indian Contract Act, 1872, the securities and guarantees/contractual comforts provided by existing Shareholders/ erstwhile promoters in respect of the debt of the Company (except any Encumbrance on the Equity Shares, if any) SHALL NOT BE EXTINGUISHED by virtue of this Resolution Plan. Lenders/ Financial creditors will retain their rights and claims on the guarantors i.e. personal/ corporate guarantors of the Corporate Debtor and any claim/notice/ suit filed against guarantors will continue. It is clarified that no right of subrogation shall be available to Shareholders/ erstwhile promoters, in case of invocation of/ payment by Shareholders/ promoters under their existing securities or guarantees/contractual comforts and all such rights shall stand waived/ extinguished as on the NCLT Approval Date, pursuant to NCLT Approval Order.
 - It is further stated that upon approval of this Resolution Plan by the NCLT, notwithstanding the provisions of the Indian Contract Act, 1872, the obligations of the existing Shareholders/ promoters in respect of such contractual comforts/ guarantees/ security shall continue and the existing Shareholders/ promoters will remain liable to pay the Financial Creditors under such contractual comforts/ guarantees/ security. Further, the Financial Creditors shall be free to initiate or continue proceedings against existing Shareholders/ promoters in respect of invocation/ enforcement of such contractual comforts/ guarantees/ security given by the Shareholders/ erstwhile promoters of the Company.
- f) Waivers claimed by the Resolution Applicant as envisaged in the Resolution Plan are attached in **Annexure VI**.
- g) The Resolution Applicant shall **obtain necessary approvals for the above mentioned relief and concessions from the Central Government, State Government, and/or Other Authorities. Further the terms of the Resolution Plan shall be implemented from the Effective Date only. and any payment obligations as envisaged under this Resolution Plan will not have any dependence/bearings on the approvals for concessions from the Central Government, State Government, and/or Other Authorities Further none of the rights of any of the stake holders as per this Resolution Plan shall be affected irrespective of the outcome of the above applications of the reliefs and concessions.**
- h) As regards the substantial acquisition of shares of the corporate debtor, the plan provides that the entire equity shareholding will be acquired by them and the existing suspended Board of Directors will not have any equity shareholding. The Memorandum of Association and the Articles of Association shall be amended appropriately if required.

- i) In case of any reversal of preferential transaction u/s 43 of IBC, 2016, and/or any undervalue transaction u/s 45 of IBC, 2016, and/or any transaction defrauding the creditors u/s 49 of IBC, 2016, and/or any extortionate credit transaction u/s 50 of IBC, 2016, and/or any fraudulent and wrongful trading u/s 66 of IBC, 2016 in respect of transactions carried out by Corporate Debtor, effectuated by NCLT Order in future, only the Secured Financial Creditors shall have right to the benefits of such reversal transactions or Order even if the same is made after Effective Date without any recourse to Corporate Debtor or Resolution Applicant.

8. In support of the present application, for approval of the Resolution Plan, the RP has further annexed a copy of Form H - Compliance Certificate for perusal of this Adjudicating Authority, which is described as under:-

**FORM H
COMPLIANCE CERTIFICATE**

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

I, **SUNIL KUMAR KEDIA**, an insolvency professional enrolled with **Indian Institute of Insolvency Professional of ICAI** vide enrolment number **IP/P-00028** and registered with the Board with registration number **IBBI/IPA-001/IP-P00028/2016-17/10064**, am the resolution professional for the corporate insolvency resolution process (CIRP) of **B. P. FOOD PRODUCTS PRIVATE LIMITED** under **C.P.(I.B.) No. 209/9/NCLT/AHM/2017**.

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	B. P. Food Products Private Limited
2	Date of Initiation of CIRP	8th August 2018
3	Date of Appointment of IRP	23 rd August 2018
4	Date of Publication of Public Announcement	27 th August 2018
5	Date of Constitution of CoC	14th September 2018
6	Date of First Meeting of CoC	20 th September 2018
7	Date of Appointment of RP	20 th September 2018
8	Date of Appointment of Registered Valuers	1) 1 st Valuer - Crest Capital Group Pvt. Ltd. - 25th September 2018 2) 2 nd Valuer - Adroid Technical Services Pvt. Ltd. - 05th October 2018 3) 3 rd Valuer- • Sanjeev Agarwal - 3rd January 2019 SK Sonthalia - 3rd January 2019
9	Date of Issue of Invitation for EoI	<u>1st EoI</u> 5 th November 2018 <u>2nd EoI</u> 21 st February 2019
10	Date of Final List of Eligible Prospective Resolution Applicants	<u>1st EoI</u> 18 th January 2019 <u>2nd EoI</u> 9 th March 2019
11	Date of Invitation of Resolution Plan	<u>1st EoI</u> 20 th December 2018

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		<u>2nd EoI</u> 9 th March 2019
12	Last Date of Submission of Resolution Plan	<u>1st EoI</u> 11 th February 2019 <u>2nd EoI</u> 13 th April 2019
13	Date of Approval of Resolution Plan by CoC	First on 16 th May 2019, in 10 th CoC Meeting and later on reconstitution of CoC on the direction of AA approved in 11 th CoC dated 19 th September 2019 and later on direction of AA and in compliance with order of Supreme Court in Essar Steel, plan approved in 12 th CoC dated on 03 rd December 2019 and later on direction of AA in compliance with amendments in CIRP Regulations 2016 approved in 13 th CoC filed dated 18 th January 2020
14	Date of Filing of Resolution Plan with Adjudicating Authority	22 nd January 2020
15	Date of Expiry of 180 days of CIRP	20 th February 2019
16	Date of Order extending the period of CIRP	4 th February 2019
17	Date of Expiry of Extended Period of CIRP	21 st May 2019
18	Fair Value	Rs.56,63,87,016/-
19	Liquidation value	Rs.37,73,96,536 /-
20	Number of Meetings of CoC held	13 (Thirteen)

3. I have examined the Resolution Plan received from Resolution Applicant (M/s Om Shri Shubh Labh Agritech Private Limited') and approved by Committee of Creditors (CoC) of [Name of the corporate debtor].

4. I hereby certify that-

- (i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
- (ii) the Resolution Applicant (M/s Om Shri Shubh Labh Agritech Private Limited) has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.
- (iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 70.50% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
- (iv) I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.

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5. The list of financial creditors of the CD [M/s B. P. Food Products Private Limited] being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	IDBI Bank Limited	29.50	Dissented
2	State Bank of India	25.47	Voted for
3	UV Asset Reconstruction Company Limited	24.57	Voted for
4	Kotak Mahindra Bank Limited	16.39	Voted for
5	ICICI Bank Limited	0.37	Voted for
6	Credit Suisse Funds AG	2.26	Voted for
7	responsAbility management Company SA	1.44	Voted for

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

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

(Amount in Rs. 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	Secured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	0	0	0	0
		(b) Other than (a) above:	4838.76	4702.44	1506.05	31.12%
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan	10649.00	10649.00	3165.91	29.73%
		Total[(a) + (b)]	15487.76	15351.44	4671.96	30.17%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	0	0	0	0
		(b) Other than (a) above:	0	0	0	0

		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan	601.78	590.83	71.64	11.90%
		Total[(a) + (b)]	601.78	590.83	71.64	11.90%
3	Operational Creditors	(a) Related Party of Corporate Debtor	0	0	0	0
		(b) Other than (a) above:	NIL	NIL	16.67	NA
		(i) Government				
		(ii) Workmen & Employees	13.93	3.89	3.89	100.00%
		(iii) Workmen & Employees (ESI & PF)	NIL	NIL	2.59	NA
		(iv) Operational Creditors	6658.00	3701.61	41.24	0.62%
		Total[(a) + (b)]	6671.93	3705.5	64.39	1.74%
4	Other Debts and Dues		0	0	0	0
Total			22761.47	19647.77	4808.00	

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

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	570,582	0	100.00%	0.00%
2	Preference	0	0	0	0

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

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	<p>Eligibility criteria as per EO1 :</p> <p>Minimum Tangible Net Worth ("TNW") / Net Owned Funds ("NOF") of Indian National Rupee ("INR") 5 Crore (Rupees Five Crore Only) at the Group Level in the immediately preceding completed financial year.</p> <p>Applicant Net worth : 5.14 Crores</p> <p>Hence, meeting the criteria.</p>	Yes

Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Resolution Applicant is eligible	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	The Resolution Applicant has confirmed that the applicant is eligible under section 29A. For the same the Resolution Applicant has submitted an Affidavit of his eligibility which is attached with the Resolution Plan.	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs?	Section 4.2 of the Resolution Plan, Resolution Applicant proposes to pay CIRP cost of Rs. 1.92 Crores in priority over payments to all other creditors of Corporate Debtor and any differential amount will be adjusted with amount payable to Financial Creditors. Amount payable to Financial Creditors will be reduced to that extent.	Yes
	(b) provides for the payment to the operational creditors?	The assets of the Corporate Debtor are insufficient to discharge the dues of secured financial creditors. So the liquidation value to operational creditor is considered as Nil. However, as per Section 4.2 of the Resolution Plan, Resolution Applicant proposes to pay dues of Operational Creditor other than Workmen and Employees to whom the Corporate Debtor owes up to Rs. 3,00,000 as on the Insolvency Commencement date, which dues aggregates to Rs. 41,24,333.	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	No specific provisions since the Resolution Plan submitted before the effective date of the relevant regulation, however amount offered to each of the FC is higher than their share in the Liquidation Value and as such CoC founds the same to be complied with.	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Section 4.4 of the Resolution Plan provides that after the approval of Resolution Plan by Honorable NCLT, the Corporate Debtor shall be managed by the newly formed Board of Directors appointed by Resolution Applicant.	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Section 4.5 of the Resolution Plan, the Resolution Applicant proposes to form a Monitoring Agency which shall supervise the implementation of Resolution Plan.	Yes
	(f) contravenes any of the provisions of the law for the time being in force?"	No, the plan does not contravene any of the provisions of the law for the time being in force.	Yes

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[Handwritten signature]

Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC?	Yes, as the amount offered to all the members is more than the amount they are likely to get in the event of Liquidation	Yes
	(b) has been approved by the CoC with 66% voting share?	The Resolution Plan has been approved by CoC with 70.50% voting share.	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Pursuant to Regulation 38(2)(c) of the CIRP Regulation and Section 4.5 of the Resolution Plan, the Committee of Creditors has formed a Monitoring Committee ("MC") for supervision and implementation of Resolution Plan. The Monitoring Committee ("MC") will consist of the persons nominated by Financial Creditor, each of the Financial Creditor may nominate one person as the member of the Monitoring committee and Resolution Professional (RP) Sunil Kumar Kedia, the committee will be headed by the person representing the State Bank of India and the said committee will be dissolved once the plan has been implemented in full i.e. entire proceeds proposed in the Resolution Plan is received by Financial Creditors. Further, monthly remuneration of Rs. 50,000 will be paid to Resolution Professional which shall be borne by Resolution Applicant."	Yes
Regulation 35A	Where the resolution profesional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	Resolution Professional after going through the Forensic audit Report and the reply of the erstwhile promoter of the Corporate debtor made a determination that some transaction of fraudulent nature are entered by the Promoters of the Corporate Debtors. Further, Resolution Professional filed an IA under Section 66 of IBC before the Honourable NCLT on 24 th April 2019.	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Section 5 Page no. 31 of Resolution Plan provides repayment schedule.	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Section 4.2 of the Resolution Plan provides, how the interest of all stakeholders has been dealt The interest of all stakeholders is being dealt as follows: • Financial Creditors – Amount proposed is 29.75% of total amount admitted which is more than the amount they are likely	

		<p>to make in case of liquidation.</p> <ul style="list-style-type: none"> Operational Creditors other than Workmen and Employees – Amount proposed is 1.11% of total amount admitted which is more than the amount they are likely to make in case of liquidation. Further, the amount so proposed to Operational Creditor is to those whom the Corporate Debtor owes up to Rs. 300,000 as on the Insolvency Commencement date. Workmen and Employees – Amount proposed is 100% of total amount admitted. <p>Corporate Debtor will be going concern and will generate employment in local region.</p>	
Regulation 38(1B)	<p>(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.</p> <p>(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?</p>	Resolution Applicant has not contributed to the failure of implementation of any resolution plan approved under the Code	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule?	Section 4.3 of the Resolution Plan provides Term and Implementation of the Resolution plan which shall be 5 years commencing from the date of approval of Resolution Plan by Honorable NCLT.	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Section 4.4 of the Resolution Plan provides for management and control of the business of the Corporate Debtor during its term. The same will be done by newly formed Board of Directors by Resolution Applicant	Yes
	(c) adequate means for supervising its implementation?	Section 4.5 of the Resolution Plan provides of the Resolution Plan provides for appointment of a Monitoring Agency for supervision and implementation of Resolution Plan.	Yes
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default?	<p>Section 4.6 of the Resolution Plan provides Resolution Plan provides that the company went into stress owing to the following reasons</p> <ul style="list-style-type: none"> Working Capital 	Yes

		<p>Mismanagement</p> <ul style="list-style-type: none"> • Under-utilization of production capacity by the erstwhile management. • Conflict within the management. • Huge losses incurred under the supply of contract with Army. <p>The financial leverage is high vis – a – vis capacity.</p>	
	(b) it is feasible and viable?	Yes, the plan is feasible and viable.	Yes
	(c) it has provisions for its effective implementation?	Yes, it has provisions for its effective implementation.	Yes
	(d) it has provisions for approvals required and the timeline for the same?	No such approvals required.	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	Section 3.7 of the Resolution Plan states that Resolution Applicant has an experienced team who has the capability to implement the said resolution plan.	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	IA under Section 66 of IBC has been filed by the RP before the Honourable NCLT dated 24 th April 2019.	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Section 4.8 of the Resolution Plan states within 3 days of approval of Resolution Plan by the CoC Performance Security shall be provided. The copy of Performance Guarantee has been attached with the petition.	Yes

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

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	<p>a. Commencement - 08th August 2018.</p> <p>b. Appointment of IRP on 23rd August 2018 communicated to the IRP on 24th August 2018.</p> <p>NCLT allowed 17 days exclusion being the difference between Commencement Date and Appointment date of IRP, so the effective commencement is 24th August 2018</p>

Regulation 6(1)	Publication of Public Announcement	T+3	27 th August 2018
Section 15(1)(c) Regulation 12 (1)	Submission of Claims	T+14	7 th September 2018
Regulation 13(1)	Verification of Claims	T+21	14 th September 2018
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	14 th September 2018
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	20 th September 218
Regulation 35A	Determination of fraudulent and other transactions	T+115	24th April 2019
Regulation 27	Appointment of two Registered Valuers	T+47	4) 1 st Valuer - Crest Capital Group Pvt. Ltd. - 25th September 2018 5) 2 nd Valuer - Adroid Technical Services Pvt. Ltd. -05th October 2018 6) 3 rd Valuer- • Sanjeev Agarwal - 3rd January 2019 SK Sonthalia - 3rd January 2019
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54]	1 st November 2019
Regulation 36A	Invitation of EoI	T+75	<u>1st EoI</u> 5 th November 2018 <u>2nd EoI</u> 21 st February 2019
	Publication of Form G	T+75	<u>1st EoI</u> 5 th November 2018 <u>2nd EoI</u> 21 st February 2019
	Provisional List of Resolution Applicants	T+100	<u>1st EoI</u> 18 th December 2018 <u>2nd EoI</u> 9 th March 2019
	Final List of Resolution Applicants	T+115	<u>1st EoI</u> 18 th January 2019 <u>2nd EoI</u> 9 th March 2019
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	<u>1st EoI</u> 20 th December 2018 <u>2nd EoI</u> 9 th March 2019

Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	December 2019
Section 31(1)	Approval of Resolution Plan	T=180	

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

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1				

12. The Resolution Plan is not subject to any contingency.

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

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

14. The Resolution Plan was 1st filed 2 days before the expiry of the period of CIRP provided in section 12 of the Code. However the said application was withdrawn as per the direction of AA and the Resolution Plan was again voted on 19th September 2019 and on 3rd December 2019 and also on 18th January 2020a and the new application is filed before AA by replacing the earlier one.

15. Provide details of section 66 or avoidance application filed / pending.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43			
2	Undervalued transactions under section 45			
3	Extortionate credit transactions under section 50			
4	Fraudulent transactions under section 66	24 th April, 2019	Not yet Announced	NA

9. The RP has also provided a synopsis of events for our consideration.

SYNOPSIS OF DATES AND EVENTS

S. No	Event	Date
1	Admission of CIRP Process under Section 9 of the IBC, 2016 by Ahmadabad, NCLT	08.08.2018 vide CP(IB)/209/2017
2	Appointment of Interim Resolution Professional (IRP) - Mr. Sunil Kumar Kedia	23.08.2018 Sunil Kumar Kedia IBBI/IPA-001/IP-P00028/2016-17/10064
3	Issue of Public Announcement under Regulation 6 for submission of claim	27.08.2018
4	Last date of submission of Claims by the Financial Creditors, Operational Creditors, Workmen and Employees and other Creditors in the Prescribed Formats	07.09.2018
5	Constitution of Committee of Creditors by IRP pursuant to Section 21	15.09.2018
6	Appointment of Resolution Professional (RP) - Mr. Sunil Kumar Kedia	20.09.2018
7	IA filed by two Claimants in the category of Financial Creditor M/s Credit Suisse Funds AG and M/S ResponsAbility Micro and SME Finance Fund, Luxemburg against the rejection of Claim by the RP of amount USD 526009.53 and USD 33468.77 respectively.	IA No. - IA/427/2018 and IA/28/2019
	First EOI	
8	Issue of expression of interest	05.11.2018
9	First Closing date of expression of interest	30.11.2018
10	Extended closing date for expression of interest	15.12.2018
11	Issue of Provisional list of resolution applicants	18.12.2018
12	Issue of RFRP	20.12.2018
13	Issue of Final list of Prospective resolution applicants	18.01.2019
14	Issue of IM & Data room Access and evolution matrix to the resolution applicant	20.01.2019
15	Extended date of submission of Resolution Plan	31.01.2019
16	Extended date of submission of Resolution Plan	11.02.2019
17	Receipt of Resolution Plan	One Resolution Plan received from M/s Om Shri Shubh Labh Agritech Private Limited
18	Rejection of Resolution Plan Received	Resolution Plan was rejected for lack of substantial documents / supporting in the Plan so received

No.	Event	Date
	Extension of CIRP Period	
19	Extension of 17 days being the difference between the date of commencement and date of appointment of IRP	IA No. IA/19/2019
20	Extension of 90 days under Section 12(2)	IA No. IA/65/2019
	Second EOI	
21	Issue of Second expression of interest	21.02.2019
22	Last date of receipt expression of interest	08.03.2019
23	Issue of Provisional list of resolution applicants	09.03.2019
24	Issue of RFRP	09.03.2019
25	Issue of Final list of Prospective resolution applicants	09.03.2019
26	Issue of IM & Data room Access and evolution matrix to the resolution applicant	09.03.2019
27	Last date for submission of Resolution Plan	13.04.2019
28	Submission of Resolution Plan	Two Plans received from (1) M/s Om Shri Shubh Labh Agritech Private Limited and (2) M/s Genera Agri Corp Ltd.
29	Resolution Plan of M/s Genera Agri Corp Ltd.	Resolution Plan of M/s Genera Agri Corp Ltd. was not put for approval of CoC by the RP for non disclosure of Source of Funds and non submission of documents thereof.
30	Approval of Resolution Plan	Resolution Plan of M/s Om Shri Shubh Labh Agritech Private Limited was 1 st approved in 10 th (Tenth) CoC Meeting dated 16.05.2019
31	Admission of fresh claim and reconstitution of CoC as per the direction of AA	05.09.2019
32	Date of 11 th CoC for re consideration of Resolution Plan (Amended) after reconstitution of CoC as per the direction of AA	19.09.2019, e-voting result declared on 25.09.2019
33	Approval of Resolution Plan in 11 th CoC Meeting	Plan was put for reconsideration and was approved by reconstituted CoC with 70.50% of voting in assent.
34	Direction of Honorable AA to re-look the Resolution Plan in Compliance with the order of Honorable Supreme Court in the matter of Essar Steel	22.11.2019
35	Date of 12 th CoC for re-consideration of Resolution Plan (Amended) after order of Honorable AA	03.12.2019, e-voting result declared on 06.12.2019

S.No	Event	Date
36	Direction of Honorable AA to re-look the Resolution Plan in Compliance with amendment in Regulation 38 of CIRP Regulations dated 28.11.2019	10.01.2020
37	Addendum to the Resolution Plan submitted by Resolution Applicant M/s Om Shri Shubh Labh Agritech Private Limited	11.01.2020
38	Date of 13 th CoC for re-consideration of Resolution Plan along with the addendum to Resolution Plan	18.01.2020
39	Total Admitted Claim Financial Creditors - 159,42,27,249 Operational Creditors - 37,01,61,224 Workmen and Others - 3,89,308	196,47,77,826
40	Liquidation Value as per Valuation obtained	37,73,96,536
41	Total amount offered in Resolution Plan	Rs. 50.00 Crores (Rs. 25.00 Crores upfront i.e. within 3 months from the date of Approval of Resolution Plan by Adjudicating Authority and Balance Rs. 25.00 Crores in 57 equal monthly installments beginning from 4 th month of approval.
42	CIRP Closing Date	21.05.2019
43	Submission of Resolution Plan before AA	1 st on 20.05.2019 (IA 299 of 2019) again on 27.09.2019 after reconsideration in view of admission of new FC's and then again in compliance with the direction of Honorable NCLT on 17.12.2019 and then again in compliance with the amendment in Regulation 38 as per the direction of Honorable NCLT on 22.01.2020

10. On the basis of above given facts of the present application, the RP has sought for approval of the Resolution Plan, in the light of the relevant provisions of Section 30(6) and 31(1) of the I & B Code, which reads as under:-

Section 30 of IBC:- Approval of Resolution Plan

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(1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;

[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, **who do not vote in favour of the resolution plan**, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

[(4) The committee of creditors may approve a resolution plan by a vote of not less than [sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, [the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017) where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.]

[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ord. 6 of 2018) shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that 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.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

Section 31 : Approval of resolution plan

- (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as

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authorities to whom statutory dues are owed] guarantors and other stakeholders involved in the resolution plan:

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

- (2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.
- (3) After the order of approval under sub-section (1), –
 - a. the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and
 - b. the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.
- (4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, (12 of 2003) the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]

11. It is matter of record that, during the pendency of this application, certain IAs were moved by some parties to oppose/or seeking rejection or suitable modification in the present resolution plan, so as to protect their interest in accordance with law, which are described as under:-

IA No. 298 of 2019

IA No. 429 of 2019

IA No. 40 of 2020

12. IA No. 298 of 2019 and IA No.40 of 2020 have been duly considered in and dealt with in accordance with law by passing separate order

and disposed of accordingly by holding that the interest of such applicants would be taken care of, if found reasonable and valid, while considering the approval or otherwise of the present proposed resolution plan. Such IA cannot be purported to stall the process of approval of the resolution plan by the committee of creditors, which has approved it with its requisite majority and if such decision is interfered with by this Adjudicating Authority then it may amount to sit an appeal over the commercial wisdom of the CoC, as this Adjudicating Authority has not been vested no such jurisdiction as per the decision of in the matter of ***K. Sashidhar vs. Indian Overseas Bank and Committee of Creditors of M/s. Essar Steel India Limited vs. Satish Kumar Gupta & Ors. by the Honourable Supreme Court.*** Thus, these IAs cannot be treated as an impediment for approval of the resolution plan, if it is found **law complaint**, viable and reasonable and in conformity with the provisions of the I & B Code.

13. It is matter of record that liquidation value of the corporate debtor company has been valued (by the RP) only to **Rs.33.00 crores** while successful resolution applicant has submitted a resolution plan by offering of **Rs.50.00 crores** and making an upfront payment of **Rs.5 crores**. The rest of the amount to be paid as per the terms of the resolution plan. The Resolution Applicant takes care for appropriating the amount payable under the resolution plan among its creditors, which has been verified and found proper by the CoC. Moreover, the resolution applicant was also found flexible enough in its approach, so as to honour the suggestion given / decision taken by the CoC, for submitting the revised resolution plan or making

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addendum in the plan as per the law of land declared by the Honourable Supreme Court, so that the plan can be found in conformity with the provisions of the I & B Code.

14. Therefore, by taking into consideration of such aspect, the CoC duly considered it and took conscious decision for approval of the resolution plan with its requisite majority, i.e. 70.50% (on 21.01.2020). In view of this, the objection raised by the dissenting Financial Creditor – IDBI Bank, for approval of the resolution plan, is not sustainable because if the resolution plan is not approved by a dissenting financial creditor and they were in minority then their claim shall be dealt with under Waterfall Mechanism of Section 53(1) of the I & B Code and, thus, will get minimum amount at par with their proportion as per liquidation value of the corporate debtor company. The legal position of the Financial Creditor has been dealt with by the Honourable Supreme Court in its decision in the matter of **K. Sashidhar vs. Indian Overseas Bank** wherein their Lordships, in paragraph-39 and 40 of the judgement, have held that minority opinion of the dissenting Financial Creditor would be no avail, if the Resolution Plan is approved by the CoC with requisite majority (66%) of voting. For the sake of convenience, the relevant paragraphs of the aforesaid judgment are reproduced hereinbelow:-

39 *In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors. The fact that substantial or majority percent of financial creditors have accorded approval to the resolution plan would be of no avail, unless the approval is by a vote of not less than 75% (after amendment of 2018 w.e.f. 06.06.2018, 66%) of voting share of the financial creditors. To put it*

differently, the action of liquidation process postulated in Chapter III of the I&B Code, is avoidable, only if approval of the resolution plan is by a vote of not less than 75% (as in October, 2017) of voting share of the financial creditors. Conversely, the legislative intent is to uphold the opinion or hypothesis of the minority dissenting financial creditors. That must prevail, if it is not less than the specified percent (25% in October, 2017; and now after the amendment w.e.f. 06.06.2018, 44%). The inevitable outcome of voting by not less than requisite percent of voting share of financial creditors to disapprove the proposed resolution plan, de jure, entails in its deemed rejection

40 *Notably, the threshold of voting share of the dissenting financial creditors for rejecting the resolution plan is way below the simple majority mark, namely not less than 25% (and even after amendment w.e.f. 06.06.2018, 44%). Thus, the scrutiny of the resolution plan is required to pass through the litmus test of not less than requisite (75% or 66% as may be applicable) of voting share a strict regime. That means the resolution plan must appear, to not less than requisite voting share of the financial creditors, to be an overall credible plan, capable of achieving timelines specified in the Code generally, assuring successful revival of the corporate debtor and disavowing endless speculation.*

15. It is matter of record that the CoC has duly considered such aspect of dissenting Financial Creditor – IDBI Bank so as to ensure distribution of minimum amount payable to it as per the liquidation value of the assets of the corporate debtor company. Hence, it is found that the interest of the dissenting financial creditor is duly taken care of by the CoC while recommending for approval of the resolution plan. The objection against the resolution plan is not legally sustainable, because its interest has to be taken care of as per Section 30 (1) & (2) of the I & B Code.

(1) A resolution applicant may submit a resolution plan
[along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;

[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

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- (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, **who do not vote in favour of the resolution plan**, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;
(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or
(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

- (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
(d) the implementation and supervision of the resolution plan;
(e) does not contravene any of the provisions of the law for the time being in force;
(f) conforms to such other requirements as may be specified by the Board.

[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

16. As the IA of the IDBI Bank has been dealt with by this Adjudicating Authority vide separate order, it can be said in this IA that there can be no impediment for this Adjudicating Authority to consider approval of the resolution plan as per provisions of the Code and in accordance with law.

17. So the position of other objector-applicant, namely, **M/s. Mansarovar Agro Sacks Private Limited**, who preferred an IA No.

429/NCLT/AHM/2019 in CP (IB) No. 209/NCLT/AHM/2017
**[Mansarovar Agro Sacks Private Limited vs. Sunil Kumar Kedia RP for
B.P. Food Products Pvt. Ltd. & Anr.]** which has sought direction from
this Adjudicating Authority for appropriate modification in the
resolution plan so that the interest of all stakeholders of the
corporate debtor company can adequately be protected and there
should no discrimination among any class of creditors of the
corporate debtor company in the proposed resolution plan. If the
resolution applicant is found unwilling to carry out such
modification as indicated above in its resolution plan, then the
resolution plan ought to be rejected by this Adjudicating Authority.

18. In support of its contention, the objector-applicant has relied upon
the decision of Honourable NCLAT in the matter of ***M/s. Binani
Industries Limited vs. Bank of Baroda*** and it has made grievance
that it happened to be the **Operational Creditor in the main IB
Petition** but he is being offered a **payment of only 1.11% of its total
debts, i.e. Rs.41 Lakh** while its total claim at the time of filing the
main IB Petition was more than Rs.2 crore. Hence, there is no equal
treatment among the Financial Creditor and Operational Creditor
while the CoC approved the proposed resolution plan.
19. We duly examined the relevant aspect of this application filed by the
(objector) in the light of latest legal position has been settled by the
Honourable Supreme Court in the matter of ***Committee of Creditors
of M/s. Essar Steel vs. Union of India*** wherein their Lordships have
pleased to held and ruled by reversing/modifying the decision of the

Honourable NCLAT as well as of this Bench of NCLT to the extent of apportionment / distribution of the amount to be made as per resolution plan. The Honourable Supreme Court has held that under the provisions of I & B Code, the debts of Financial Creditors are to be given priority over the debts of other stakeholders even over the Government dues. Further to determine the norms and ratios of the distribution of amount among the creditors / stakeholders of the corporate debtor company pertain to the commercial wisdom of the members of the CoC and if they take a conscious decision for making payment of amount payable under the resolution plan in a particular manner and in particular ratio such decision being commercial wisdom of the CoC cannot be called for interference by the Adjudicating Authority, because the jurisdiction of this Adjudicating Authority is not an Appellate but supervisory in nature as per the provisions of I & B Code and as per the law declared by the Honourable Supreme Court (**CoC of M/s. Essar Steels India Limited vs. Mr. Satish Kumar Gupta, RP & Ors.**). Hence, IA No. 429 of 2019 is not legally sustainable, hence, it is rejected.

20. Thus, we considered the prayer of the Resolution Professional for the approval of the Resolution Plan of the Corporate Debtor Company, namely, **M/s. B. P. Food Products Private Limited**, in the light of above stated judicial precedents and facts of the present IAs. It is now well settled legal position, under the provisions of the Insolvency and Bankruptcy Code, that the Adjudicating Authority is required to satisfy with the Resolution Plan as approved by the Committee of Creditors under Section 30(4) of the I & B Code, which meets the

requirement as referred to in sub-section 30(4). Hence, once such requirements are fulfilled in the process of resolution plan, then it is obligatory on the part of the Adjudicating Authority to approve such resolution plan, which shall be binding upon the **corporate debtor, its employees, members, creditors, guarantors and other stakeholders including on Government dues**, etc. involved in the resolution plan.

21. If the resolution plan is found to be a law complaint plan and is properly considered by the CoC for its approval of the same with its requisite majority (i.e. of more than 66% voting of the CoC) then the Adjudicating Authority has been vested **no jurisdiction to sit an Appeal over the commercial decision and wisdom of the members of the CoC** and such decision of the CoC has to be honoured by the Adjudicating Authority unless it is found contrary to the provisions of the I&B Code.
22. As per the principles laid-down by the Hon'ble Supreme Court in the matter of **ArcellorMittal Vs. Satish Kumar Gupta & Ors and in Sasidharan vs. Dena Bank**, the legal position has been well settled that a Resolution Applicant whether successful or otherwise have no vested interest in the decision making process of the CoC. The Resolution Applicant may attend such meeting(s). Thus, the commercial wisdom of the CoC cannot be interfered with this Adjudicating Authority. Similarly, it is the position of the Suspended Management although it can participate in the process of CIRP to bring viable resolution plan but have no voting right and it can give only its suggestion in the CoC. Thus, the decision of the CoC is conclusive and final and not to be interfered with by this

Adjudicating Authority, because role of the Adjudicating Authority is supervisory in nature and not an Appellate as per the latest decision of the Honourable Supreme Court in the matter of **K. Sashidhar vs. Indian Overseas Bank, Committee of Creditors of Essar Steel India Limited vs. Satishkumar Gupta & Ors.** In case something is left over by the CoC and is not found in conformity with the provisions of the I & B Code or the resolution plan from some angle does not seem to be a Law Complaint Plan then in such situation only the Adjudicating Authority for limited purpose can remand back the matter to the CoC for its reconsideration. Such exercise in the present matter has already been done by this Adjudicating Authority as it earlier directed the RP as well as CoC to relook and revisit the resolution plan in the light of the law of land and the latest decision of the Honourable Supreme Court in the matter of (i) **Vijay Kumar Jain vs. Standard Chartered Bank** (ii) **Committee of Creditors of Essar Steel India Limited vs. Satishkumar Gupta & Ors** (iii) **ArcelorMittal India Private Limited vs. Satish Kumar Gupta & Ors.** including the important decision of the Honourable National Company Law Appellate Tribunal (NCLAT), while approving of the resolution plan. It is reported that such exercise has been completed by the RP and CoC as per the direction of this Adjudicating Authority, a report to this effect has been submitted by confirming this fact that the present resolution applicant is not hit by **Section 29A** for submission of the resolution plan. Moreover, a necessary declaration, through an affidavit, has been submitted by the resolution application. The RP has examined the eligibility of the resolution applicant in the light of Section 29A and has declared on

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oath that the **resolution applicant is not hit by Section 29A of the I & B Code** or is debarred from filing the present resolution plan.

23. Therefore, by considering the facts given by the RP as well as the resolution applicant, we are of the view that the present proposed resolution plan as submitted by the resolution applicant is in conformity with and in accordance with law and is law complaint and can be considered by this Adjudicating Authority for approval of the same with its appropriate observation and modification, if necessary. Therefore, this court proceeds to examine the merits of the Resolution Plan in the light of above given factual and statutory/legal position.
24. Thus, considering the above stated legal position and facts of the case, there remain limited scope to this Adjudicating Authority to consider the legality and validity of the resolution plan in accordance with the provisions of the I & B code and not touch upon the commercial wisdom or decision taken by the CoC, while approving the resolution plan.
25. Thus, we are of the view that all the objection(s) filed by various parties including dissenting Financial Creditor-IDBI Bank by opposing the proposed resolution plan are not legally sustainable, hence, are liable to be rejected, Consequently, the resolution plan as submitted by the successful resolution applicant **M/s. Om Shri Shubh Labh Agritech Private Limited** deserves for approval.



26. Accordingly, IA No.16 of 2020 is hereby allowed. Consequently, this Adjudicating Authority, in exercise of power conferred to it under Section 30 (6) 31 of the I & B Code, hereby approved the Resolution Plan of **M/s.Om Shri Shubh Labh Agritech Private Limited**, in respect of the Corporate Debtor company M/s. B.P. Food Products Private Limited, with following observations and subject to following directions:-

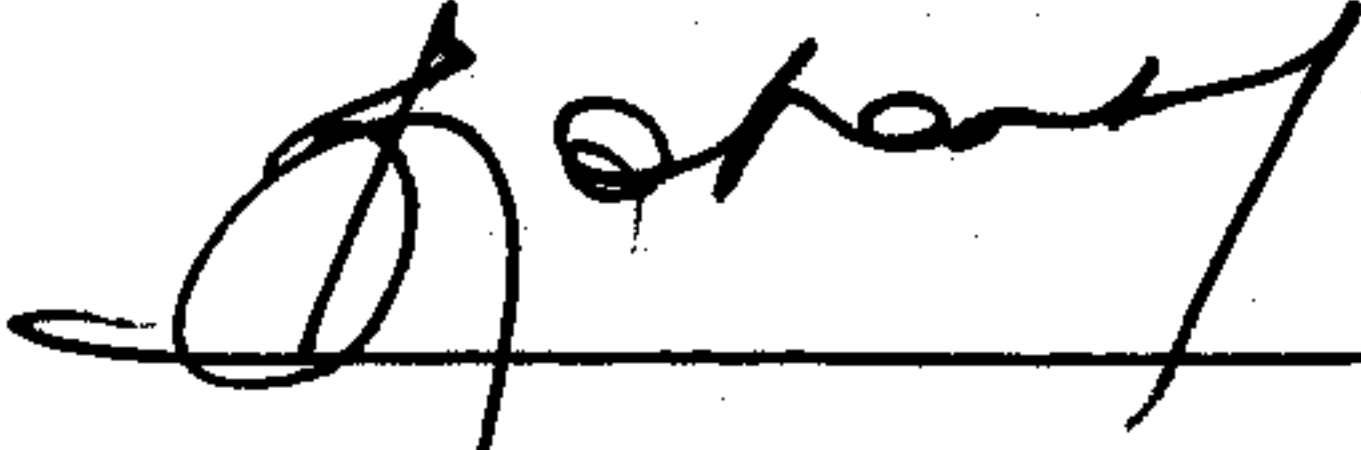
- i) The **Resolution Plan** of **M/s. Om Shri Shubh Labh Agritech Private Limited** (it has been approved by the Committee of Creditors (CoC) with **70.50% voting**) shall be binding upon the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders including Government Authorities / Institutions, involved in the present Resolution Plan.
- ii) The approved Resolution Plan shall come into force with immediate effect.
- iii) The moratorium order passed, under Section 14 of the I & B Code, shall cease to have effect.
- iv) The monitoring shall be constituted as per the resolution of CoC by giving representation to its all financial creditors/members and Resolution Professional, so as to facilitate and monitor the progress in implementation of the Resolution Plan by the Resolution Applicant.
- v) The resolution plan is approved with such observation that the resolution applicant shall follow the provisions of Section 31(4) of the Insolvency and Bankruptcy Code, 2016 to obtain necessary approval required under any law time being in force within the period one year from the date of approval of the

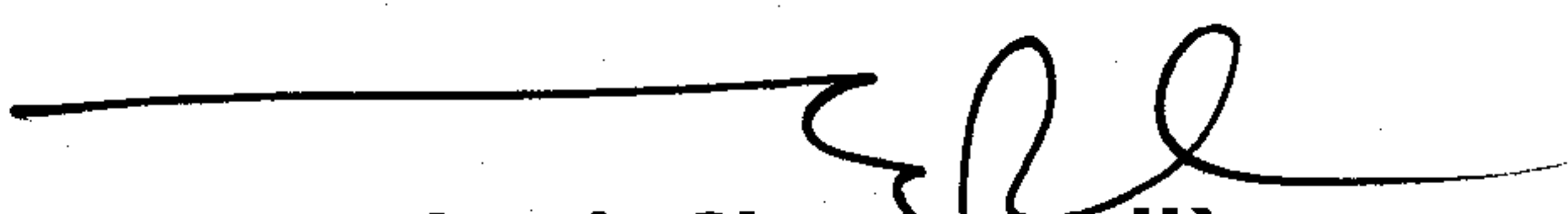


resolution plan by this Adjudicating Authority under sub-section 1 of 31 of the I & B Code.

- vi) Further, our approval of this resolution plan shall not be purported nor can be construed to have given any exemption under law or granted statutory concession, because in our humble view such issue lies within the domain of the appropriate Government Authority and the Resolution Applicant can seek appropriate relief and concession in accordance with law, from the appropriate Government / Competent Authority concerned. This will suffice the purpose of the resolution applicant for seeking necessary exemption from appropriate Government Authority and from other competent authority.
- vii) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency and Bankruptcy Board of India on its database.

27. With the aforesaid directions, IA No. 16 of 2020 in CP (IB) No. 209/9/NCLT/AHM/2017 is allowed and disposed of.
28. IA No. 429 of 2019 in CP (IB) No. 209/9/NCLT/AHM/2017 is rejected and stands disposed of.
29. Accordingly, the main Company Petition, i.e. CP (IB) No. 209/9/NCLT/AHM/2017, is disposed of.


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


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)