

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 169/JPR/2023
& IA (IBC) No. 203/JPR/2023
In CP No. (IB)- 39(PB)/2018

IN THE MATTER OF:

THE ADMINISTRATOR OF SPECIFIED
UNDERTAKING OF UNIT TRUST OF INDIA & ANR.

...Financial Creditor

VERSUS

MODERN SYNTEX (INDIA) LIMITED

...Corporate Debtor

MEMO OF PARTIES

IA (IBC) No. 169/JPR/2023:

MR. ANKIT GOEL

Resolution Professional of Modern Syntex (India) Ltd.

...Applicant

VERSUS

COMMITTEE OF CREDITORS (COC)

Members of Modern Syntex (India) Ltd.

...Respondent

THE ADMINISTRATOR OF SPECIFIED
UNDERTAKING OF UNIT TRUST OF INDIA

UTI Tower, 'Gn' Block, BKC, Bandra- East,
Mumbai- 400051

UTI TRUSTEE COMPANY PVT. LTD.

UTI Tower, 'Gn' Block, BKC, Bandra- East,
Mumbai- 400051

Sdr

Sdr

**INDUSTRIAL INVESTMENT BANK
OF INDIA LIMITED**

19, Netaji Subhas Road, Kolkata- 700001

...Financial Creditors

AND

IA (IBC) No. 203/JPR/2023:

MR. ANKIT GOEL

Resolution Professional of Modern Syntex (India) Ltd.

Filed by:

MR. PARTHA SARATHI SARKAR

Erstwhile Resolution Professional of Modern Syntex (India) Ltd.

...Applicant

VERSUS

SUSPENDED BOARD OF DIRECTORS

M/s Modern Syntex (India) Ltd.

A. SH. NIRAJ RATHORE

Having DIN: 01280510

Residing at : 59, Sardar Patel marg, C-
Scheme, Jaipur, Rajasthan-302001

Mail: modernjaipuroffice@gmail.com

B. SMT. SUNNITA ASHOK SHARMA

Having DIN: 06973828

Residing at : 502, Sukhada Apartments,
C-Wing, S.P.Marg, Worli Sea Face,
Mumbai, Maharashtra- 400025

Mail: modernjaipuroffice@gmail.com

C. MR. KAMAL RANKA

Having DIN: 00934876

Residing at : 8th Floor, Siddharth
Building, 42 G. Thadani Marg, Worli Sea
Face, Mumbai, Maharashtra- 400018

Mail: modernjaipuroffice@gmail.com

Sdr

Sdr

D. **MR. RAJENDRA PRASAD AGARWAL**
 Having DIN: ABQPA3475N
 Residing at : C-102, Makarpura Road,
 Status Enclave, Vadodara, Gujarat- 390009
 Mail: rpa1954agarwal@gmail.com

...Respondents

FOR THE RESOLUTION PROFESSIONAL : Amar Vivek, Adv.
 Ankit Goel, In person

Order Pronounced On: 12.03.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application bearing *IA(IBC) No. 169/JPR/2023* was filed by *Mr. Partha Sarathy Sarkar*, erstwhile Resolution Professional of *Modern Syntex (India) Ltd.* ('Corporate Debtor') under Section 30(6) and 31(1) of Insolvency & Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Regulation 39(4) of Corporate Insolvency Resolution Process Regulations, 2016 ('CIRP Regulations') seeking approval of Resolution Plan.
2. The main application numbered as *CP No. (IB)- 39(PB)/2018* was filed by the Financial Creditor, *The Administrator of Specified Undertaking of Unit Trust of India & Anr.* under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and the same was admitted by this Adjudicating Authority *vide* Order dated 28.03.2022, wherein the Applicant was appointed as Insolvency Resolution Process ('IRP') and later confirmed as Resolution Plan ('RP'). Thereafter,

Sdr

Sdr

vide Order dated 27.09.2023, the RP was replaced and Mr. Ankit Goel was appointed as the new RP in this matter.

3. Pursuant to appointment of Resolution Professional, Form A was published in accordance with Section 15 read with Regulation 6 of CIRP Regulations inviting claims from all creditors on or before 11.04.2022. The said public announcement was published in two newspapers i.e., The Indian Express (Jaipur Edition) and Seema Sandesh (Jaipur Edition) on 31.03.2022. Copy of the public announcement has been annexed at Annexure- A3 of the Application. Thereafter, the Applicant constituted the Committee of Creditors ('CoC') after duly collating all the claims received therein and filed a report in accordance with Regulation 17 of CIRP Regulations numbered as *IA No. 188/JPR/2022* which was taken on record vide Order dated 10.05.2022. Hence, the RP in accordance with Section 21(1) of the Code constituted the CoC consisting of two Financial Creditors i.e., *The Administrator of Specified Undertaking of Unit Trust of India* and *UTI Trustee Company Pvt. Ltd.*
4. The 1st CoC Meeting dated 25.04.2022 specified the details of the members of CoC wherein *The Administrator of Specified Undertaking of Unit Trust of India* and *UTI Trustee Company Pvt. Ltd.* had 84.18% and 15.82% voting share respectively. Further, the IRP was confirmed as Resolution Professional. The 2nd CoC meeting was held on 04.05.2022, pursuant to

Sd/-

Sd/-

which the appointment of IBBI Registered Valuers took place in accordance with Regulation 27 of CIRP Regulations on 09.05.2022.

5. The 3rd CoC meeting was held on 28.05.2022, the Resolution Professional placed the draft request for Resolution Plan (RFRP) along with the evaluation matrix before the CoC. Further the CoC approved publication of Form G in accordance with Regulation 36A of CIRP Regulations. Accordingly, Form G was published with the detailed invitation for Expression of Interest ('EoI') in multiple newspapers on 07.06.2022 stating the last date for submission of EoI as 28.06.2022. Thereafter, Form G (1st Extension) along with the detailed invitation for EoI was published on 05.07.2022 in various newspapers. Copy of Form G and Form G (1st Extension) duly published in various newspapers is annexed at Annexure A8 and A11 respectively.
6. Meanwhile, the CoC was re-constituted on 25.07.2022 and the claim of *Industrial Investment Bank of India* was accepted. The Application for reconstitution under Regulation 13(2) and 17 of CIRP Regulations was filed numbered as *IA No. 352/JPR/2022* and taken on record vide Order dated 10.08.2022. Hence, the voting share of *The Administrator of Specified Undertaking of Unit Trust of India*, *UTI Trustee Company Pvt. Ltd.* and *Industrial Investment Bank of India* now stood at 74.64%, 14.03% and 11.33% respectively.

Sdr

Sdr

7. Thereafter, the RP issued RFRP on 05.08.2022 and the final list for eligible Prospective Resolution Applicants ('PRA') pursuant to publication of Form G (1st Extension) was emailed on 14.08.2022. Consequently, as many as 7 EoI were received from PRAs for submission of Resolution Plan. On 29.09.2022, the Resolution Professional submitted the fair value and liquidation value to every member of the Committee in electronic form in accordance with Regulation 35(2) of CIRP Regulations. The Liquidation Value has been mentioned in Form- H submitted along with the Application.
8. It has been mentioned that the Applicant had received certain Resolution Plans before the last date submission. The said plans were put before the CoC in the 7th meeting on 10.10.2022. A reference has been made to the order passed by the Hon'ble NCLAT in Comp. App. (AT) (Ins.) No. 596 of 2022 wherein the CoC members were restrained to take any final decision with regard to Resolution Plan. On 31.10.2022, the Applicant received email from one of the members of the CoC i.e., *SUUTI* having voting share of 74.64%, that it had decided to initiate publication of Fresh Form G for Round 2 in the Resolution Plan of the Corporate Debtor.
9. The Form G (Round 2) dated 08.11.2022 was published in various newspapers inviting EoI from various PRAs in accordance with Regulation 36A of CIRP Regulations. The last date for submission of EoI was

Sdr

Sdr

28.11.2022. Copy of Form G (Round 2) has been annexed at Annexure A22. The Applicant issued the final list of eligible PRAs pursuant to Form G (Round 2) on 17.12.2022 and the last date for submission of Resolution Plan was 12.01.2023. In the minutes of the 14th meeting of CoC held on 02.02.2023, the Resolution Applicants which were shortlisted, were provided opportunity to improve the financial outlay under the Resolution Plan. Finally on 08.03.2023, the Applicant submitted the Resolution Plans along with addendums to the members of the CoC.

10. In the 16th CoC meeting dated 18.03.2023, the CoC unanimously approved the Resolution Plan (modified version) submitted by the Resolution Applicant namely *Mr. Sanjaybhai Patel* and *Satishbhai V. Patel*. The same informed to the Successful Resolution Applicant ('SRA') vide email dated 13.03.2023. The SRA acknowledged the acceptance of terms/ contents of the Letter of Intent issued by the Resolution Professional vide email dated 14.03.2023.
11. We have carefully considered the submissions of the Learned Counsel for the Applicant and perused the averments made in the Application along with the documents annexed therewith.
12. It is seen that the Corporate Debtor was incorporated on 12.11.1976 and the CIRP was initiated under Section 7 of the Code against the Corporate Debtor vide order dated 28.03.2022. The present Application is filed under the




provisions of Section 30(6) and Section 31(1) of the Code seeking approval of the Resolution Plan submitted by *Mr. Sanjaybhai Patel* and *Mr. Satishbhai V. Patel*. It has been submitted that a *Special Purpose Vehicle* ('SPV') will be formed by consortium of *Mr. Sanjaybhai Patel* and *Mr. Satishbhai V. Patel* being the SRA. During the pendency of this application, the CoC sought to change the RP and *Mr. Ankit Goel* was appointed as the RP in the present matter and confirmed by the Adjudicating Authority.

13. The Applicant has annexed a list of eligible PRAs in Round 1, as per which there were 7 PRAs and similarly in the 2nd Round, the list of eligible PRAs had 7 members. From the above 14 names, as many as 8 eligible Resolution Applicants had submitted Resolution Plans and out of these 5 Resolution Plans were placed before the CoC for consideration and approval. In the 16th CoC meeting dated 18.03.2023, the CoC unanimously approved the Resolution Plan (modified version) submitted by the Resolution Applicant namely *Mr. Sanjaybhai Patel* and *Satishbhai V. Patel*.
14. After receipt, verification and collation of claims from the creditors of the Corporate Debtor, the RP constituted and reconstituted the CoC as per the provisions of Section 21 of the Code. The details of the Financial Creditors, the distribution of voting share among them and the position of voting for the Resolution Plan is as under (Para-No. 5 of Form H) –

Sdr

Sdr

<i>Sl. No.</i>	<i>Name of Creditor</i>	<i>Voting Share (%)</i>	<i>Voting for Resolution Plan (Voted for / Dissented/Abstained)</i>
1.	<i>Administrator of Specified Undertaking of Unit Trust of India</i>	74.64	Voted For
2.	<i>UTI Trustee Company Pvt. Ltd.</i>	14.03	Voted For
3.	<i>Industrial Investment Bank of India Ltd.</i>	11.33	Voted For
	Total	100.00	Voted For

15. The Applicant has submitted that the Process Participation Fee and Earnest Money Deposit as submitted by all the Unsuccessful Resolution Applicants, while submitting the Resolution Plan, will be refunded/ stands refunded. Further, the SRA was issued a letter of intent dated 13.03.2023 to submit a performance security of INR 25 crores in terms of Regulation 36 B(4A) of CIRP Regulations read with Clause 1.8.3 of RFRP. On 14.03.2023, the SRA furnished the counter signed copy of the letter of intent and on 20.03.2023, the SRA furnished performance bank guarantee/ security of INR 25 crores.
16. The Applicant has annexed the Resolution Plan at Annexure A2 of the Application. The Resolution Plan states that a SPV will be formed by Consortium of *Mr. Sanjaybhai Patel* and *Satishbhai V. Patel* wherein *Mr. Sanjaybhai Patel* will have 80% contribution in equity and *Mr. Satishbhai V. Patel* will have 20% contribution in equity. The Resolution Plan has

Sdr

Sdr

proposed a total plan size of INR 175 crores. The source of funds as mentioned in the Resolution Plan is tabulated as below:

<i>S. N.</i>	<i>Particulars</i>	<i>Amount (In crores)</i>	<i>Timelines of infusion</i>
1.	Equity infusion of RA into the company	3.00	30 days to 360 days as per payment schedule
2.	Debt Inter-corporate deposits from group companies of RA/ unsecured loans from RA	172.00	30 days to 360 days as per payment schedule
	TOTAL FUNDS FOR PAYMENT TO STAKEHOLDERS IN RESOLUTION PLAN	175.00	

17. Further, the Resolution Plan also provides that the Successful Resolution Applicant shall infuse Rs. 73 Crores for further working capital and operations and revival of the Corporate Debtor. The Resolution Plan provides that the Corporate Debtor shall be delisted by the Bombay Stock Exchange ('BSE'). With respect to the paid up equity capital of INR 113.22 crores, the equity shareholding of the promoters/ related parties/ promoter group shall stand fully extinguished and cancelled. The remaining paid up equity capital held by the public shall be paid INR 1 Crore and after payment, the share capital of the public shall stand extinguished and cancelled. The amount of INR 1 Crore will be transferred to designated account as pointed out by the Monitoring Committee for transfer to the Public.

Sdr

Sdr

18. The amounts provided for the stakeholders under the Resolution Plan are
given in Para 7 of Form H: (Amount In Cr.)

S. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	8,562.99	6,531.02	167.60	2.56%
		Total [(a) + (b)]	8,562.99	6,531.02	167.60	2.56%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	10,862.23	0.00	0.00	0%
		Total[(a) + (b)]	10,862.23	0.00	0.00	0%
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above: (i) Government (ii) Workmen (iii) Employees (iv) other than workmen and employees and Government dues	118.47 3.80 41.63	118.47 0.94 41.53	3.03 0.02 1.06	2.55% 2.12% 2.55%
		Total[(a) + (b)]	163.90	160.94	4.11	2.55%

Sdr

Sdr

S. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount provided to the Amount Claimed (%)
4	Other debts and dues	(i) Other than financial creditors and operational creditors	12.97	12.97	0.33	2.55%
		(ii) CIRP Costs	-	-	1.50	-
		(iii) PF dues	-	-	0.01	-
		(iv) Stakeholders (Non-promoter)	-	-	1.00	-
		(v) Regulatory Fee @ 0.25% payable to IBBI	-	-	0.44	-
		Total [(i)+(ii)+(iii)]	12.97	12.97	3.28	-
Grand Total			19,602.09	6,704.93	175.00	2.61%

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

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

19. 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	11,34,98,333	NIL	0%	0%
2.	Preference	35,00,000	NIL	0%	0%

20. The compliance aspect of the Resolution Plan has been given in Para No. 9 of Form H, which is as follows:

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	The resolution professional has invited prospective resolution applicants, who fulfil such criteria as may be	Yes

Sdr

Sdr

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
	scale of operations of business of the CD?	laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans Qualification Certificate dt. 25.11.2022 as per Annexure-D issued by Resolution Plan along with EoI documents.	
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?	Declaration U/s 29 A as per Annexure-G issued by Resolution Applicant along with EoI documents.	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Resolution applicant submitted affidavit for eligibility U/s 29A (at page No. 121)	Yes
Section 30(2)	Whether the Resolution Plan- (a) Provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor?	(Section 6(ii)(a) at Page No. 64) (Section 6(ii)(h) at Page No. 68) (Section 6(ii)(d) at Page No. 66) (Section 8(B)(a) at Page No. 78)	Yes

Sd-

Sd-

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
	(e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?	(Section 8 at Page No. 76-80) (Section 11(14) at page No. 98)	
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Yes (with 100% voting share)	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC	Yes	Yes
Regulation 38 (1)	Whether the amount due to the operational creditor under the Resolution Plan has been given priority in payment over financial creditors?	(Section 6(ii)(h) at page No. 68)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	(Section 6(iv) at page No. 72)	Yes
Regulation 38(1B)	i. Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. ii. If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Section 10(c) at page number 93 of the Resolution Plan contains the relevant undertaking made by the Resolution Applicant	Yes

Sdr

Sdr

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	(Section 8A at page No. 77) (Section 8B(a) at page No. 78) (Section 8(c) at page No. 79)	Yes
Regulation 38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	(Section 2 at page No. 28) (Section 8B(a) at page No. 78) (Section 8(B), (C), (D) at page No. 78 & 79) (Section 6 at page No. 61) (Point No. 7 at page No. 11)	Yes
Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Section 5(O) at page No. 58)	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	(Point No. 6 on pg. No. 16) Performance Bank Guarantee of INR 25 crores submitted by Successful Resolution Applicant on 20.03.2023	Yes

21. The approval of the Resolution Plan has been sought under Section 31(1) of the Code, which reads as follows:

Sd/-

Sd/-

“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 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.”

22. The conditions provided in Section 31(1) of the Code for approval of the Resolution Plan are as follows:

22.1. The Resolution Plan is approved by the CoC under Section 30(4) of the Code;

22.2. The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;

22.3. The Resolution Plan has provisions for its effective implementation.

23. The satisfaction of the conditions is discussed below. It is submitted by the RP that the Resolution Plan has been approved 100% votes of the Financial Creditors in favour and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

24. The provisions of Section 30(2) of the Code are as follows:

“30. Submission of Resolution Plan:

(1)

Sdr

Sdr

(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;

Sd/-

Sd/-

- (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) confirms 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) ”

25. The compliance of Section 30(2) of the Code is given in Para No. 9 of Form H. The same is being further examined as under:

25.1. *Section 30(2)(a):* The Resolution Plan (*Section 6 Part ii (a) of the Resolution Plan*) states that the Insolvency Resolution Process Cost will be paid out in priority over payments to any other creditors within 30 days of Effective Date.

25.2. *Section 30(2)(b):* From the Resolution Plan (*Section 6 Part ii (h) & Section 6 Part ii (d) of the Resolution Plan*), it is seen that Operational creditors have been classified into three categories and the Resolution Applicant proposed to pay the amount to the Operational Creditors in the manner stated below:

25.2.1. Operational Creditors (Other than workmen and employees and government dues), where the admitted claims are INR

Sd-

Sd-

41.53 crores, shall be paid @ 2.56% of their admitted claims, which is computed at INR 1.06 crores, to be distributed amongst the operational creditors in proportion of their debts.

25.2.2. The Resolution Plan provides for complete payment of PF Dues within 30 days from the date of approval of the Resolution Plan. Other than the PF Dues, against the Workmen dues of INR 118.47 Crores, a payment of INR 3.03 Crores shall be made in the same proportion to total dues as is being paid to Secured Financial Creditors and similarly, against the Employees' dues of INR 0.94 Crores, a payment of INR 0.02 Crores shall be made in the same proportion to total dues as is being paid to Secured Financial Creditors. In employee and workmen claims not covered above, the same shall stand waived and extinguished and shall no longer be payable.

25.2.3. As per the list of stakeholders, the statutory dues are NIL. Statutory dues not covered paid, shall stand waived and extinguished and shall not longer be payable.

25.2.4. The total amount payable to Secured Financial Creditor is INR 167.60 crores within 360 days from the transfer date

Sd/-

Sd/-

as summarised in the Resolution Plan. The Resolution Plan further provides that the payment to Secured Financial Creditor is envisaged after provision of liquidation value to dissenting Secured Financial Creditors and liquidation value to the Operational Creditors. The amount payable may change in case of change of dues of any category of payments, in case of change, the payment due to Secured Financial Creditors shall change along with corresponding change in payment due to Operational Creditors which rank *pari passu* with Secured Financial Creditor dues.

- 25.2.5. The Liquidation Value of the company is not known to the Resolution Applicant, however, the Resolution Applicant has undertaken to pay the amount as may be derived by Resolution Professional in arriving at the value that may be payable to them in case of Liquidation under Section 53 of the Code provided, it does not increase the overall cost of the Resolution Plan. In the event, the payments for Operational Creditors or the payments to dissenting Financial Creditors on the basis of Liquidation Value due are higher, then the same shall be adjusted within the same class as per amount proposed in the Resolution Plan and

Sd/-

Sd/-

payments to other stakeholders within the same class shall stand reduced proportionately.

25.3. *Section 30(2)(c)*: From the Resolution Plan (*Section 8(B)(a) of the Resolution Plan*), it is seen that in compliance with Regulation 38(2)(c) of CIRP Regulations the Monitoring Committee shall comprise of the Resolution Professional or his representative, one nominee of the Committee of Creditors and one nominee of the Resolution Applicant. The said committee shall review the operations of the Corporate Debtor on monthly basis and monitor the implementation of the Resolution Plan.

25.4. *Section 30(2)(d)*: From the Resolution Plan (*Section 8 of the Resolution Plan*), it is derived that the implementation shall be done in 365 days (12 months) from the transfer date i.e., date on which Resolution Plan is approved by this Adjudicating Authority. A detailed list has been tabulated in the Resolution Plan stating that CIRP costs, PF dues, payment to Secured Financial Creditors etc. shall be done within 30 days from the transfer date.

25.5. *Section 30(2)(e)*: In the Resolution Plan (*Section 11 point 14 of the Resolution Plan*), the SRA has confirmed that the Resolution Plan does not contravene the provisions of any of the laws in force.

Sd-

Sd-

- 25.6. *Section 30(2)(f)*: In the Resolution Plan (*Section 11 point 15 of the Resolution Plan*), the SRA confirmed that the regulations as specified by IBBI under section 30(2) (f) of the Code have been complied with.
26. The Resolution Plan also certifies that *Mr. Sanjaybhai Patel* and *Satishbhai V. Patel*, the Resolution Applicant submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the Resolution Plan and the contents of the said Affidavit are in order. As per the requirement of Regulation 39(4) of the Regulations for performance security, it is stated in Form H that Resolution Applicant has deposited INR 25,00,00,000/- (Rupees Twenty- Five Crores Only) as Performance Security as approved by the Committee of the Creditor.
27. With regard to compliance under Regulation 35A of CIRP Regulations, it is seen that no statements have been made with regard to the same. The Resolution Plan in Section 5 point No. O mentions that Secured Financial Creditors shall pursue and handle the Application of Avoidance Transactions (PUFE Applications) already filed or to be filed by the Resolution Professional during CIRP. Any recovery shall be made available to the Secured Financial Creditors and expenses related to such Applications shall be incurred by the Secured Financial Creditors only. Therefore, the Applicant shall file an Affidavit regarding the transactions, if any, falling

Sd-

Sd-

under prescribed provisions of the Code and Applications already filed or are yet to be filed, within 15 days from the date of this Order.

28. A perusal of Regulation 38 would clearly show that by virtue of the mandatory contents of the Resolution Plan as discussed in the preceding paragraphs in relation to Section 30 and Section 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Thus, the Resolution Plan fulfils all the requirements of Regulation 38 of the CIRP Regulations.

29. The Resolution Plan *inter-alia* entails the following:

29.1. Out of the existing Paid-up Equity Capital INR 113.22 crores (as per the audited financial statements as on 31.03.2020, provided in Information Memorandum), the Equity Shareholding of the Promoters/Related Parties/Promoter Group shall stand fully extinguished and cancelled. The remaining Paid Up Equity Capital which is held by the public, shall be paid INR 1 Crores and after payment, the share capital of public shall stand extinguished and cancelled. The amount of INR 1 crore shall be transferred to designated account, as designated by the Monitoring Committee, and it shall be considered as compliance of Resolution Plan payment schedule to the shareholders.

29.2. The Resolution Applicant and/or its nominees shall be issued 30,00,000 equity shares of INR 10 each at par, aggregating to INR 3

Sd-

Sd-

Crores as Equity Capital Infusion after remittance of the Resolution Plan Amount to the Corporate Debtor after the approval of the Resolution Plan. Consequently, the aggregate Paid Up Capital of the company post implementation of the Resolution Plan shall be INR 3 Crores constituting of 30,00,000 equity shares of INR 10 each, to be held by the RA.

- 29.3. After the date of this Order, the Corporate Debtor shall be de-listed by Bombay Stock Exchange. As per Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (Delisting Regulations), the Delisting Regulations are not applicable pursuant to Resolution Plan being approved by NCLT. It is clarified that the approval of NCLT pursuant to Section 31 of the IBC shall constitute adequate approval for delisting of shares of the Corporate Debtor as of Effective Date in accordance with all provisions of applicable law requiring no further approval or consent from any other Person/ Government Authority. Therefore, by virtue of this Order approving the Resolution Plan under Section 31 of the Code, the Corporate Debtor shall be delisted from BSE provided the treatment of Shares is done as mentioned in the Plan. An Affidavit to this regard shall be filed by the SRA along with a compliance report of the Monitoring Committee before this Adjudicating Authority.

Sd—

Sd—

- 29.4. The existing (but suspended) board members will stand resigned by virtue of this order approving the Resolution Plan and the SRA shall nominate new directors on the board of Corporate Debtor.
- 29.5. The cost of Resolution Plan towards payments to stakeholders will be INR 175 Crores and the same shall be funded by the SRA in the form of infusion of equity, unsecured deposits/ inter-corporate deposits by the SRA, Directors and their group companies. In addition to this, SRA proposes to invest towards working capital and capex (operations and revival), an amount of INR 6 Crores during the first year of operation and around INR 25 and INR 42 Crores in subsequent two years.
- 29.6. All liabilities (including non-fund based facilities / debt of the Company, whether contingent or crystallized) in relation to corporate guarantees, indemnities and all other forms of credit support provided by the Corporate Debtor prior to NCLT accrual date shall stand extinguished.
- 29.7. The Regulatory Fee payable to IBBI under Regulation 31 A is currently estimated at INR 0.44 crores, which shall be paid as per Regulations in addition to the Resolution Plan Cost in accordance with the prevailing regulations on the date.

Sd -

Sd -

- 29.8. On approval of the Resolution Plan, the treatment of Applications provides that any recovery in future towards avoidance transactions shall be made available to the Secured Financial Creditors. Further, any cash balance in the Corporate Debtor amount remaining therefrom as on transfer date will be offered additionally to the Secured Financial Creditors (other than financial creditors belonging to any class of creditors) and against the Operational Creditors (Workmen) in proportion of their dues.
- 29.9. All liabilities (whether contingent or crystallized) in relation to Corporate Guarantees, Indemnities and all other forms of credit support provided by the Corporate Debtors prior to NCLT accrual date shall stand extinguished.
- 29.10. Upon receipt of full payment specified in the Resolution Plan, the Secured Financial Creditors (other than financial creditors belonging to any class of creditors) shall issue a certificate of "Discharge and no claims" to the Corporate Debtor and shall release the charge on all the securities held by them and also return all the security to the Corporate Debtor. The Secured Financial Creditors (other than financial creditors belonging to any class of creditors) shall also release the Corporate Debtor from all the corporate

Sd/-Sd/-

guarantees given by it towards their debt whether invoked or claimed or not.

- 29.11. The approval of Resolution Plan shall not discharge the parties/ promoters/ erstwhile directors who may have extended their personal guarantees or indemnities for the contracts with the Corporate Debtor as principal debtor. The said guarantors/ indemnifiers shall not be entitled to claim any amount from the Corporate Debtor by way of subrogation and the liability if any of the Corporate Debtor on account of such a claim shall stand fully and irrevocably extinguished upon the approval of the Resolution Plan and neither the Corporate Debtor nor the Resolution Applicant be liable for such claims arising out of such claims.
- 29.12. Upon approval of Resolution Plan, the Resolution Professional or Monitoring Committee/ Secured Financial Creditors (other than financial creditors belonging to any class of creditors) shall handover all the books of accounts, documents, returns, forms, clearances, permissions, approvals, or any other documents, which is in the possession of the company for the period prior to NCLT approval date to the Resolution Applicant.
30. In view of the above discussion, the Resolution Plan submitted by *Mr. Sanjaybhai Patel and Satishbhai V. Patel* as approved by the CoC under

Sd-

Sd-

Section 30(4) of the Code is hereby approved subject to directions laid down above. The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, and 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 authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan.

31. Under the provisions of Section 31(3) of the Code, we also direct as under:
- 31.1. The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 28.03.2022 shall cease to have effect; and
- 31.2. The RP shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Board to be recorded on its database.
32. In view of the foregoing, *IA No. 169/JPR/2023* stands allowed and is disposed off. A compliance report in pursuance of the direction laid down in this Order shall be preferred before this Adjudicating Authority within prescribed time. The Registry is directed to provide a copy of this Order to the parties as well as to IBBI, SEBI, BSE and ROC therein.
33. The erstwhile RP had filed an application numbered as *IA (IBC) No. 203/JPR/2023* under Section 70 of the Code against the Suspended Board of Directors of the Corporate Debtor seeking directions to the Superintendent of Police to allow exclusive possession of the Registered

Sd/-

Sd/-

Office of the Corporate Debtor and granting access control to the URL of Corporate Debtor in enabling to retrieve old mails. It is seen that the said application was filed by the erstwhile RP to exert pressure upon the Suspended Board of the Corporate Debtor. However, after change of the Resolution Professional, the new Resolution Professional has not pressed/pursued this Application any further. Therefore, in view of this order approving the Resolution Plan submitted by *Mr. Sanjaybhai Patel* and *Satishbhai V. Patel*, this application stands disposed of with the direction that if the Suspended Board of Directors has not provided possession of the office of the Corporate Debtor, assistance from the Superintendent of Police shall be taken by the now Resolution Professional to take possession of the Registered Office of the Corporate Debtor. ✓

34. In view of the foregoing, the Application numbered as *IA (IBC) No. 203/JPR/2023* is disposed of accordingly.

**DEEPA CHANDRA JOSHI,
JUDICIAL MEMBER**

**RAJEEV MEHROTRA,
TECHNICAL MEMBER**