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**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**IA (IBC) NO.28/GB/2022
in CP (IB) No.08/GB/2020**

Coram:
Hon'ble Shri Deep Chandra Joshi, Member (J): Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 12.08.2022**

In the matter of:
Sandeep Khaitian, RP
IN
(Punab National Bank
Versus
M/s. Megha Granules Pvt. Ltd.)

Section: Under Section 30(6) read with Section 31(1) and 60(5) of IBC, 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MR. S. GOLE	Advocate	Applicant	Present in Video Conference

ORDER
Date of Order: 12 .08.2022

The Parties are represented through respective Learned Counsel(s).
The case is fixed for pronouncement of order.
The Order is pronounced in the open court, through Video Conferencing vide separate sheet.

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical) &
Adjudicating Authority

Sd/-
(Deep Chandra Joshi)
Member (Judicial) &
Adjudicating Authority



IA (IBC) NO. 28/GB/2022
in CP (IB) No. 08/GB/2020

Persons) Regulations, 2016 for approval of Resolution Plan for Megha Granules Private Limited dated 16.03.2022 followed by an addendum as requested by the CoC members on 24.03.2022 submitted by North East Granulators ("Respondent No. 3 or "Successful Resolution Applicant" or "SRA") and approved by the Committee of Creditors ("CoC") of the Corporate Debtor with a voting share of 100% pursuant in the 12th meeting of the CoC held on 09.03.2022, followed by e-voting conducted from 17.03.2020 2:30 p.m., to 11.04.2022 1:00 p.m., seeking the following reliefs:

- i. Allow the present application and approve the resolution plan submitted by the Respondent 2 and approved by the CoC at its 12th CoC meeting on 09.03.2022, in exercise of its power under Section 31(1) of IBC;
- ii. Direct that the Successful Resolution Plan approved by this Hon'ble Adjudicating Authority shall be binding on the Corporate Debtor, its employees, members, shareholders, creditors, guarantors and other stakeholders involved in the Successful Resolution Plan; and
- iii. Issue appropriate orders/ directions for implementation of the Resolution Plan as may be required from time to time;
- iv. Pending hearing and final disposal of this Application and till the Resolution Plan is approved or rejected by this Hon'ble Adjudicating Authority and for such further time as this Hon'ble Adjudicating Authority may specify, this Hon'ble Adjudicating Authority be pleased to pass appropriate orders/ directions:
 - a. Thereby allowing the Applicant to manage the affairs of the CD
 - b. Thereby allowing the CoC of the CD to function with the same rights and obligations as were available to the CoC during the CIRP period under the Code and other applicable laws
 - c. That restriction imposed upon the suspended board of directors of the CD shall remain in force.



v. Pass such other or further orders and directions as this Hon'ble Tribunal may deem fit and proper in the interests of justice and fair adjudications of the matter.

2. The **CD- M/s Megha Granules Pvt. Ltd.** is a private limited company incorporated on 05.05.2005 under the provisions of the Companies Act, 1956 and is engaged in manufacturing woven (sack) bags, AD Protex Bags and Tarpaulins made of PP/HDPE granules.

3. The Successful Resolution Applicant is **North East Granulators**, which is a Partnership Firm incorporated on 26.02.2017 and duly registered under the provisions of the Partnership Act, 1932, having its office at Industrial Growth Centre, AIIDC, Chaygaon, Chatabari, Kamrup, Assam- 781123, and is engaged in the business of manufacturing polypropylene granules, and filler (recycled) and related activities.

4. Briefly stated by the Applicant that:

4.1 Vide order dated 05.05.2021, this Hon'ble Adjudicating Authority ordered the commencement of the Corporate Insolvency Resolution Process (**CIRP**) of the CD under the provisions of the Code and the underlying regulations. Further, vide the same order, this Hon'ble Adjudicating Authority appointed the Applicant as the Interim Resolution Professional (**IRP**).

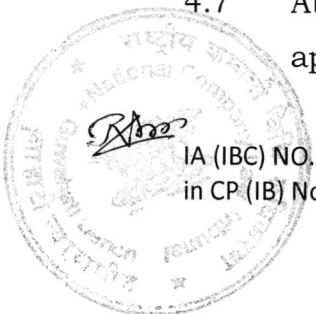
4.2 The Applicant then made a **Public Announcement** in Form A on 13.05.2021 under Section 13 of the Code read with Regulation 6 of the CIRP Regulations and in accordance with the Section 15 of the Code, inviting submission of the proof of claims from the creditors of the CD on or before 25.05.2021. The same was published on the website of the Insolvency and Bankruptcy Board of India (**IBBI**) and in 2 widely circulated newspapers in Assam, one in English (Assam Rising) and the other in Vernacular Language (Dainandin Barta) of the region where the Registered office of the CD is located.



- 4.3 Pursuant to Section 21 of the Code, the Applicant **constituted the CoC on 04.06 2021** and filed a report certifying the same to this Hon'ble Adjudicating Authority pursuant to Regulation 17(1) of the CIRP Regulations. Accordingly, the first meeting of the CoC was convened by the Applicant on 11.06.2021.
- 4.4 Upon entering upon his duties as the RP of the CD, the Applicant collated the claims of all the financial creditors, operational creditors, workmen and employees and other creditors of the CD and prepared a **list of creditors** which was updated by the Applicant from time to time. A copy of the last list of the creditors (as on 21.02.2022) has been annexed with the petition.
- 4.5 The Applicant duly carried out site visits with his aides to the CD's factory from the time to time, in order to take possession of its assets as per the provision of the Code and to assess the current statute of the projects. The Applicant and his team have taken all necessary steps to ensure that the CD continues as a going concern.
- 4.6 The summary of the claims filed, and the amount admitted by the Applicant is as under:

Creditors	Claims filed (INR)	Claims admitted (INR)
Secured financial creditors (other than financial creditor belonging to any class of creditors)	333,74,87,983.70	198,11,51,330.78
Operational Creditors (Govt. Dues)	69,88,725	50,29,413
Operational Creditors (Other than workmen and Employees and Govt. Dues)	2,39,998	2,39,998
Total	334,47,16,707	198,64,20,742

- 4.7 At the 2nd CoC meeting held on 22.07.2021, the Applicant sought approval from the CoC **for exclusion of 55 days** from the CIRP period



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to cover the loss of period suffered due to interim orders of the Hon'ble High Court and the Covid-19 lockdowns. Accordingly, the CoC approved seeking the exclusion of 55 days from the CIRP period. Subsequent to the same an application was filed under Section 12 of the code for exclusion of time period of 55 days from CIRP time period. The said matter was listed for hearing on 03.09.2021 by this Hon'ble Adjudicating Authority an order approving the same was passed on the very same day.

- 4.8 The Applicant in his capacity as the IRP invited Expression of Interests from Prospective Resolution Applicants, in terms of Regulation 36A of the Insolvency & Bankruptcy Board of India, for the invitation of **Expression of Interest (EoI)** to be published in Form G. The Form G was published on 08.10.2021 in two widely circulated newspapers in Assam, one in English (North East Times) and the other in a vernacular language (Dainandin Barta). As per amended Section 25(2) of the Code the Criteria for inviting EoI from PRAs were approved by the CoC members having regard to the complexities and scale of operation. Pursuant to the publication of Form G, the Applicant received EoIs from various PRAs. All the PRAs were found to meet the eligibility conditions as per the EoI terms. A copy of Form G published on 08.10.2021 has been annexed with the petition.
- 4.9 Among the PRAs, Respondent No. 3 was also found to be compliant of the eligibility conditions as per the EoI. However, it is pertinent to state the Mrs. Indu Agarwal and Mrs. Dipali Agrawal are wives of erstwhile directors of the CD. In that sense, Respondent No. 3 should be disqualified as resolution applicant under Section 29A of the Code. But it is stated that as per clause (iii) of Explanation (1) makes the ineligibility inapplicable as Respondent No. 3 are covered under the definition of "connected persons" who are exempted from disqualification under Section 29A(e) and are hence entitled to submit a resolution plan.

- 4.10 Subsequently, the final list of the eligible PRAs was issued to the CoC and the same was shared with all the PRAs on 15.12.2021. The delay in publication of the provisional and final list of applicants was due to the 5th CoC meeting held on 01.11.2021 where the members of the CoC voted to defer the issuance of the Evaluation Matrix (EM) and Request for resolution plan (RFRP). The same was done because the bankers constituting a part of the CoC claimed that they were in the final stages of the One Time Settlement (OTS) with the CD.
- 4.11 Thereafter, in the 6th CoC meeting held on 23.11.2021, the IRP again put forth the agenda to issue the IM, EM and RFRP to the PRAs as no visible progress could be perceived on the finalization of OTS with the CD. The CoC approved the said agenda after which the Applicant went ahead with the required issuances on 30.11.2021.
- 4.12 The Applicant prepared the information memorandum (IM) in terms with Section 29 of the Code read with Regulation 36 of the CIRP Regulations and circulated the same to the members of the CoC for their perusal and records on 23.11.2021. Furthermore, some parts of the IM were updated and the subsequent revised IM was shared with the CoC members on 29.11.2021. The IM was also shared with the PRAs on 05.12.2021 as the same was to form the basis for preparation of the resolution plan.
- 4.13 The Applicant had filed for extensions of the CIRP in the following manner:
- a. Extension of the CIRP by another 90 days, which was granted by this Hon'ble Adjudicating Authority on 07.01.2022.
 - b. Extension of the CIRP by another 15 days, which was granted by this Hon'ble Adjudicating Authority on 01.04.2022.
- 4.14 The last date for receipt of Resolution Plan was set for the 05.01.2022. The applicant accordingly received Resolution Plan **from only one PRA i.e., Respondent No. 3 (North East Granulators). The plan was opened during 8th CoC meeting held on 06.01.2022 as per the**



process note circulated and approved by the members of CoC in the 7th CoC meeting held on 27.12.2021. Post opening of the Resolution Plan, The Applicant circulated the plan on 06.01.2022 after obtaining a confidentiality agreement from all the members. After the circulation of the Resolution Plan several CoC meetings were held for discussions and deliberations on the Resolution Plan.

4.15 During the 12th CoC meeting held on 09.03.2022 the members of the CoC approved the appointment of the IRP as the Resolution Professional (RP) for the Corporate Debtor. The required intimation of the same was made to this Hon'ble Adjudicating Authority as per Section 22(3) (a) through Second Progress Report filed on 22.03.2022.

4.16 In the 12th CoC meeting held on 09.03.2022, the members deliberated on the details of the Resolution Plan wherein the financial viability and feasibility proposed by the PRA annexed in Annexure II of the Resolution Plan, was discussed at length. The projections for future revenue estimates and cost to be incurred as presented by Respondent No. 3 to run the plant was discussed. Respondent No. 3's experience in the area and the line of activity was elaborated and the members took note of the same. Subsequently, a final Resolution Plan was received by the Applicant on 16.03.2022 and was duly shared with the CoC members on the very same date. **On the basis of the Resolution Plan received, the Applicant issued his Code Compliance Certificate and Eligibility Certificate on 16.03.2022.**

4.17 The e-voting was held from 17.03.2022 till 11.04.2022 and the results of the e-voting are as follows:

S. NO.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan
1.	State Bank of India	58.70	Voted for
2.	Punjab National Bank	18.20	Voted for
3.	UV Asset Reconstruction Company	23.10	Voted for

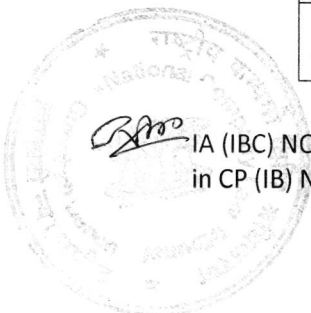


4.18 Due and complete opportunity has been provided to Respondent No. 3 to submit their best and compliant Resolution Plan. The Applicant and his team constantly engaged with Respondent No. 3 and the CoC members to ensure that the compliant Resolution Plan was considered by the CoC in terms of Section 30(4) of the Code.

5. The Applicant submits that:

5.1 Respondent No. 3's Resolution Plan, which has been approved pursuant to the 12th CoC meeting and the e-voting, **proposes payment to the creditors as follows:**

Cost of the Resolution Plan						
Particulars		Amount (Rs.Cr.)	Upfront Payment i.e., within 90 days	Payment within 91 to 180 days	Payment within 181 to 270 days	Payment within 271 to 365 Days
CIRP Cost	To be paid at Actuals					
Payment of settlement amount to Financial Creditors	Secured Financial Creditor#	17.60	9.325	1.50	1.50	5.275
	Unsecured Financial Creditor	Nil	NA	NA	NA	NA
Payment of amount towards settlement of admitted claims of Operational Creditor (Other than workmen and employees)		0.05	0.05	-	-	-
Payment to work Men		0.05	0.05	-	-	-



Proposed Working Capital Infusion & Capital Expenditure Debtor to make the unites Operational		6.00	-	-	-	6.00
Total		23.70	9.425	1.50	1.50	11.275

NOTE: The amount to be paid to Secured Financial Creditors, includes amount of Rs. 50 Lakhs against the admitted claim for loan availed by 'Bihar Raffia Industries Ltd.'

5.2 In **Section XII** of its Resolution Plan, Respondent No. 3 has provided for a synopsis of its financial proposal, which is as tabulated below:

MEANS OF FINANCE					
Particulars	Amount (Rs. Cr.)	Upfront Payment i.e., within 90 Days	Payment within 91 to 180 Days	Payment within 181 to 270 Days	Payment within 271 to 365 Days
RA/ New Promoter's Contribution-Fresh Equity	9.425	9.425	-	-	-
Funding from Jai Jashoda Nirman Pvt. Ltd./Friends/ Relatives/ Body Corporates/Private Lenders/FI	14.275	-	1.50	1.50	11.275
Total	23.70	9.425	1.50	1.50	11.275

5.3 In **Section VII** of the Resolution Plan, Respondent No. 3 has provided that the amount received by the CD during the CIRP and up to the payment of the entire Resolution Amount shall continue to be retained by the CD and Respondent No. 3 shall be free to utilize such cash towards payment of the Insolvency Resolution Process Costs and utilize the remaining amounts (If



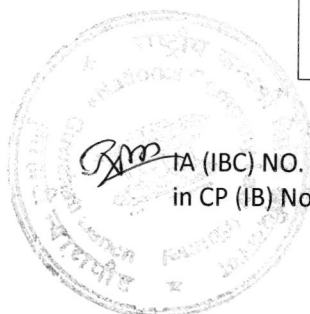
any) towards working capital for the future revival of the business of the CD.

- 5.4 Respondent No. 3 has proposed that with regard to payment of Operational Creditors which are unrelated parties to and/ or not connected persons of the CD and its existing promoters, other than the Workmen and Employee dues and the Statutory Dues, shall be settled by way of payment of an amount of Rs. 5 Lakhs (from the Upfront Amount) on pro-rata basis in proportion to their respective admitted claims. Amount available for Operational Creditors out of the liquidation value as estimated by Respondent No. 3 is NIL. The same has been specified in **Section VII** of the Plan.
- 5.5 Respondent No. 3 has proposed, that any amount to be paid to the dissenting Financial Creditors, such amount shall not be less than the Liquidation Value. Further such amount payable to the dissenting Financial Creditors shall be deducted from the total amount proposed for the Financial Creditors.
- 5.6 The Plan complies with Section 30 of the Code and Regulation 38 of the CIRP Regulations, containing all mandatory contents. In this regard, a table is provided below pointing to the relevant sections of the Plan which do the same:

SL. No.	RELEVANT PROVISION	PROVISION IN THE RESOLUTION PLAN
1.	Section 30(2) (a) of the Code 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 CD.	The payment of the Insolvency Resolution Process costs shall be paid at actuals in priority to the payment of other debts of the CD. All cash flows and any amount received by the CD during the CIRP and up to the payment of the Upfront Amount (including any amount that may be received by the CD pursuant to Sections 43 and 44 of the Code. Any interest subsidy, TUFF Subsidy, other subsidies) shall continue to be retained with the CD and the RA shall be free to utilize such cash towards payments of the Insolvency



		Resolution process costs and utilize the remaining amounts (if any) towards working capital for the future revival of the business of the Corporate Debtor.
2.	<p>Regulation 38(1):</p> <p>(a) The amounts due to Operational Creditors under the RP shall be given priority in payment over Financial Creditors</p> <p>(b) the amounts due to the Financial Creditors, who have a right to vote under Section 21(20) of IBC and did not vote in favour of the RP, shall be paid in priority over Financial Creditors who voted in favour of the RP</p>	<p>The dues of Operational Creditors as admitted by the RP is Rs. 52.69 Lakhs. The liquidation value to Operational Creditors in the event of Liquidation of the CD has been assessed by the RA as Nil. However, the RA proposes to offer Rs. 5 Lakhs for payment against dues of Operational Creditors admitted by the RP. The said amount will be paid to Operational Creditors within 90 days from the Effect date out of the Upfront Amount in Priority to payments to be made to Financial Creditors.</p> <p>Payment to dissenting Financial Creditors, if any, shall be made in priority to the other financial Creditors who vote in favour of the RP. Further, in any case, amount paid to dissenting Financial Creditors shall not be less than the liquidation value. Such amount payable to the dissenting financial Creditors shall be deducted from the total amount proposed for the Financial Creditors.</p>
	<p>Regulation 38 (1A):</p> <p>The RP shall include a statement as to who it has dealt with the interests of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor;</p>	The RP Adequately deals with the interests of all stakeholders, including Financial Creditors and Operational Creditors, of the Corporate Debtor, and the Workmen as more fully provided above in Section X.
	<p>Regulation 38 (1B):</p> <p>The RP shall include a statement giving details if the RA or any of its related parties has failed to implement or contributed to the failure of implementation of any</p>	It is confirmed that neither the RA nor any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past



	other resolution plan approved by the Adjudicating Authority at any time in the past.	
3.	<p>Regulation 38(2): RP shall provide:</p> <p>(a) the term of the plan and its implementation schedule</p> <p>(b) the management and control of business of Corporate Debtor during its term</p> <p>(C) Adequate means for supervising its implementation</p>	<p>RP provides for term and implementation schedule thereof, which is detailed in Section XII of this RP.</p> <p>RP provides for vesting of management and control of business of corporate debtor during its term in favour for the reconstituted board of directors comprising the RA and/ or its nominees in Section IX of this RP.</p> <p>RP provides for supervision of implementation of RP by the Monitoring Committee, as detailed in Sector IX of this RP.</p>
4.	<p>Regulation 38(3): A resolution plan shall demonstrate that:</p> <p>(a) It addresses the cause of default;</p>	<p>The cause of the default by CD, to the extent reflected in the IM, which prima facie appears to be mounting debt burden as compared to the cash flow generated, shall be adequately addressed by reduced reliance on external debt, infusion of share capital and/ or working capital by the RA and providing for measures of increased operational efficiency. Suitable licensing arrangements for production of high performing products of the RA shall also be provided for.</p>
	(b) It is feasible and viable;	The RP as detailed hereunder, is feasible and viable. Refer Section VII of the RP.
	(c) it has provisions for its effective implementation	The RP as detailed hereunder, has provisions for its effective implementation. (Section IX)
	(d) it has provisions for approvals required and the timeline for the same	The RP as detailed hereunder, has provisions for approvals, if any, required and the timeline for the same.(Section XIII)
	(e) The RA has the capability to implement the resolution plan	The RP provides that the RA has the capability to implement the RP and contains details and particulars about the past experience of the RA in handling similar kind of manufacturing plant and running it successfully since last 4 years.



		Thus, the RA has adequate experience in turning around companies facing financial stress.
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6. The Applicant further states that he has informed Respondent No. 3 of the approval of its Resolution Plan by the CoC, and has issued the Letter of Intent dated 11.04.2022 to Respondent No. 3 A true and correct copy of the Lol has been annexed.

7. The Applicant/RP has under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, submitted the **Compliance Certificate Form H** as stated below:

7.1 Sandeep Khaitan, an Insolvency Professional enrolled with Indian Institute of Insolvency Professionals of ICAI and registered with the Board with registration number IBBI/IPA-001/IP-P00532/2017-2018/1097, is the Resolution Professional for the Corporate Insolvency Resolution Process (CIRP) of Megha Granules Private Limited (CD).

7.2 The details of the CIRP are as under:

	Particulars	Description
1.	Name of the CD	Megha Granules Private Limited
2.	Date of Initiation of CIRP	May 05, 2021
3.	Date of Appointment of IRP	May 12, 2021
4.	Date of Publication of Public Announcement	May 13, 2021
5.	Date of Constitution of CoC	June 04, 2021
6.	Date of First Meeting of CoC	June 11, 2021
7.	Date of Appointment of RP	March 09, 2022
8.	Date of Appointment of Registered Valuers	July 30, 2021
9.	Date of Issue of EoI	October 08, 2021



10.	Date of Final List of Eligible Prospective Resolution Applicants	December 15, 2021
11.	Date of invitation of Resolution Plan	December 05, 2021
12.	Last Date of Submission of Resolution Plan	January 05, 2022
13.	Date of Approval of Resolution Plan by CoC	April 11, 2022
14.	Date of Filing of Resolution Plan with Adjudicating Authority	April 12, 2022
15.	Date of Expiry of 180 days of CIRP	November 08, 2021
16.	Date of Order extending the period of CIRP	September 09, 2021 (Exclusion) January 07, 2022 (90 days Extension), and April 01, 2022 (15 day's Extension)
17.	Date of Expiry of Extended Period of CIRP	April 17, 2022
18.	Fair Value	22.09 Crores
19.	Liquidation value	15.70 Crores
20.	Numbers of CoC Meetings held	12

7.3 The RP has examined the Resolution Plan received from Resolution Applicant (North East Granulators) and approved by Committee of Creditors (CoC) of Megha Granules Private Limited.

7.4 The RP has further certified 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 (North East Granulators) has submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to**



submit resolution plan. The contents of the said affidavit are in order.

- iii. The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. **The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.**
- iv. The RP sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the Regulations 26. (E-voting lines were open from March 17, 2022 to April 11, 2022).

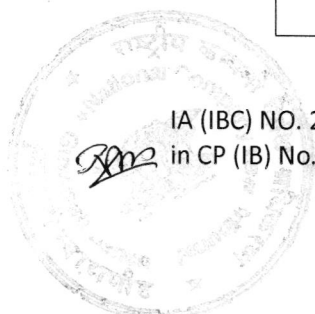
7.5 The list of financial creditors of the CD being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for/Dissented/Abstained)
1	State Bank of India	58.71	Voted for
2	Punjab National Bank	18.20	Voted for
3	UV Asset Reconstruction Company	23.10	Voted for

7.6 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.

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

Sl. No.	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount provided to the Amount (%)
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1	Workmen & Employee Dues			5,00,000	
2	Secured Financial Creditors	3,337,487,984	1,981,151,330	17,60,00,000	8.88%
3	Unsecured Financial Creditors				
4	Operational Creditors (Both Govt. statutory dues and other than workmen & employees dues)	72,28,723	52,69,411	5,00,000	9.49%
5	Public Shareholders				
	Grand Total	3,344,716,707	1,986,420,742	17,70,00,000	

7.8 The interests of existing shareholders have been altered by the Resolution Plan as under:

Sl. No.	Category of Shareholder	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	12,999,949	0.00	100%	0.00%
2	Preference	NA	NA	NA	NA

7.9 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	Profile of Resolution Applicant	Yes



	operations of business of the CD?		
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Annexure VIII as an Affidavit	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Annexure VIII as an Affidavit	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? 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?	At actuals Part XI (table) Part XI, Sl. No. 1 (a) Part XI, Sl. No. 1(b) Part IX, Point 2a Part IX, Point 2a Covering letter dated Jan 05, 2022 (Point 4e)	Yes Yes Yes Yes Yes Yes
Section 30(4)	Whether the Resolution Plan		Yes



	a. Is feasible and viable, according to the CoC? b. Has been approved by the CoC with 66% voting share?	Part VIII of the plan Approved in the 12 th CoC meeting with 100%	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Part IX of the plan	Yes
Regulations 35A	Where the resolution professional 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?	Final Transaction report received on Feb 04, 2022	Yes Determination made beyond 150 days
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Part XI (part 1a)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Part VI Details of settlement plan to various creditors	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	Part XI Point 3	No



	<p>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>		NA
Regulation 38(2)	<p>a. Whether the Resolution plan provides:</p> <p>i. The term of the plan and its implementation schedule?</p> <p>ii. For the management and control of the business of the corporate debtor during its term?</p> <p>iii. Adequate means for supervising its implementation?</p>	<p>Section XII</p> <p>Section IX</p> <p>Section IX</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
38(3)	<p>Whether the resolution plan demonstrates that-</p> <p>a. It addresses the cause of default?</p> <p>b. It is feasible and viable?</p> <p>c. It has provisions for its effective implementation?</p> <p>d. It has provisions for approvals required and the timeline for the same?</p> <p>e. The resolution applicant has the capability to implement the resolution plan?</p>	<p>Part XI Point 5(a)</p> <p>Part VIII</p> <p>Part IX</p> <p>Part XI Point 5(d)</p> <p>Part XI Point 5(e)</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
39(2)	Whether the RP has filed applications in respect of transactions observed,	Application filed on Feb 19, 2022	Yes



	found or determined by him?		
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of Regulation 36B.	PBG received in form of FDR for Rs. 4.4 Crs on April 11, 2022	Yes

7.10 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	May 05, 2021 (Received by IRP on May 12, 2021)
Regulation 6(1)	Publication of Public announcement	T+3	May 13, 2021
Section 15(1)(c)/ Regulation 12(1)	Submissions of Claims	T+14	May 26, 2021
Regulation 13(1)	Verifications of Claims	T+21	June 02, 2021 Feb 21, 2022 (Final List of creditors circulated)
Section 26(6A)	Application for Appointment of Authorized	T+23	NA

8. In accordance with the order dated 12.05.2022 and 19.05.2022, the **RP/Applicant vide supplementary affidavit dated 04.06.2022 submitted the following clarifications:**

8.1 Clarifications regarding eligibility of the SRA under Sec. 29A of IBC.

- i. The partners of SRA, viz. Mrs. Indu Agarwal and Mrs. Dipali Agarwal are eligible under S. 29A(a) to (i) of IBC as on the date of submission of the resolution plan and on the date of the approval of the



resolution plan by the committee of creditors and on the date of submission of IA 28/2022 with this Hon'ble Adjudicating Authority.

- ii. The eligibility of S. 29A(j) is also required to be satisfied by the SRA which require that a 'connected person' of the SRA shall not be ineligible under S. 29A(a) to (i) of IBC. In this regard, the RP states that the partners of SRA, viz. Mrs. Indu Agarwal and Mrs. Dipali Agarwal are also spouses of erstwhile directors of the Corporate Debtor. As per available information, the erstwhile directors of the Corporate Debtor are disqualified to act as directors under S. 29A(e) of IBC. Consequently, the ineligibility of the connected persons of the SRA under S. 29A(c) and (e) also get attracted for the SRA **However, since the Corporate Debtor is a 'Medium enterprise within the meaning of Micro, Small and Medium Enterprises Development Act, 2006 as more particularly stated hereinafter, the ineligibility under sec. 29A of IBC is not attracted as per sec. 240A of IBC**
- iii. Further, the Corporate Debtor is a 'Medium enterprise' within the meaning of Micro, Small and Medium Enterprises Development Act, 2006. Hence, in terms of S. 240A of IBC, the SRA shall not attract the ineligibility of S. 29A(c) and (h) of IBC being a resolution applicant for an MSME. Hence, though the ineligibility of the 'connected person' of the SRA under S. 29A(c) get attracted to the SRA, by virtue of operation of S. 240A of IBC, the same shall not get applied in the present case. A copy of the MSME certificate of the Corporate Debtor has been annexed.
- iv. The ineligibility of Sec. 29A(e) of IBC which gets attracted to the SRA by virtue of the erstwhile directors of the Corporate Debtor being 'connected person' to the SRA also does not apply because of the Explanation provided to S. 29A(e) of IBC which provide that this sub-section shall not apply to the 'connected person' referred to in



clause (ii) to Explanation I. Hence, the SRA shall not be ineligible to be a resolution applicant under Sec. 29A(e) of IBC.

8.2 Clarifications regarding S. 43 & S. 45 of IBC read with Regulation 35 A of CIRP Regulation.

- i. As per Section 43 of IBC, if the resolution professional is of the opinion that the corporate debtor has at a relevant time given a preference in any transactions and in such manner as laid down in Section 43 (2) of IBC to any persons as referred to in Section 43 (4) of IBC, he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.
- ii. Regulation 35A of CIRP Regulation (Preferential and other transactions) states that:

"(1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date.

(3) Where the resolution professional makes a determination under sub regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date."

- iii. The Applicant in compliance with Section 43 and Section 44 read with Regulation 35A formed an opinion relating to the preferential transaction and thereafter made a determination relating to the preferential treatment made by the CD as under:

Sl. No.	Activity	Completion from CIRP date
1	Determination of preferential transaction	Feb 04, 2022 (report received on Feb 05, 2022)



2	Formation of opinion	Subsequent to the receipt of draft and final transaction audit report
3	Filing of application with the Hon'ble Adjudicating Authority (IA 12/2022)	Feb 19, 2022

- iv. There was a delay in formation and making determination regarding the preferential transaction. However, the delay was attributable for the delays caused in receipt of the information. The Applicant, for the purpose of co-operation from the suspended board had also preferred an application u/S. 19(2) of IBC which was disposed of in September, 2021 post which the Applicant could start the process of determination of the preferential transaction.
- v. Regulation 35 A of CIRP Regulation is directory and hence any action taken by the Resolution Professional beyond the time prescribed under Regulation 35 A of the CIRP Regulations cannot be held to be non-est or void only on the ground that it is beyond the period prescribed under Regulation 35A of the CIRP Regulations.
- 8.3 The resolution plan submitted and approved by the committee of creditors are compliant with Regulation 38 of CIRP Regulations.
- 8.4 The resolution plan submitted and approved by the committee of creditors are compliant with Regulation 39 of CIRP Regulations.

8.5 Source of fund:

- i. SRA under the Resolution Plan (Clause XII of the Resolution Plan) has indicated that the **Resolution Plan amount of Rs. 23.70 Crore** will be funded as under:

Sl. No.	Source of Fund	Amount (Rs. In Cr.)
1.	RA/New Promoter's Contribution- Fresh Equity	9.425

2.	Funding from Jai Jashoda Nirman Pvt. Ltd./ Friends/ Relatives/ Body Corporate/ Private Lender/ FI	14.270
Total		23.70

8.6 Payment under the Resolution Plan

- i. The Resolution Plan presented before the COC was voted upon by 100% of the COC. A summary of the admitted claim and amount proposed are provided in Form H which is detailed herein below:

Sl.No.	Name of the Financial Creditor	Admitted Claim	Amount Proposed under the Resolution Plan	% Proposed to be received against admitted claim
1	State Bank of India (Secured Loans)	41,73,58,979	5,77,71,475	13.84%
2	Punjab National Bank (Secured Loans)	36,05,02,150	49,901,265	13.84%
3	UV Asset Reconstruction Company (Secured Loans)	45,74,95,679	63,327,259	13.84%
4	State Bank of India (Unsecured Loans)	74,57,21,172	50,00,000	0.67%

- ii. **The COC in their commercial wisdom and in their own volition has accepted the proposed payment stated above under the Resolution Plan and has agreed to accept the payments without any protest and demur and there is no challenge to the resolution plan in question which is unanimously approved by all the stakeholders.**

ORDER



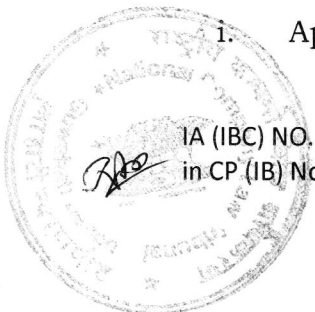
9. The Insolvency and Bankruptcy Code, 2016, defines Resolution Plan as a plan for Insolvency Resolution of the Corporate Debtor as a going concern. The Resolution Plan must resolve insolvency (rescue a failing, but viable business); maximization the value of assets of the 'Corporate Debtor', promotion of entrepreneurship ,availability of credit and balancing the interests of all the stakeholders.

10. In the backdrop of the object of the IBC, it is amply clear that the **Resolution is Rule and the Liquidation is an Exception**. Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. **IBC therefore, does not allow liquidation of a corporate debtor' directly**. It allows liquidation only on failure of corporate insolvency resolution process. It rather facilitates and encourages resolution in several ways.

11. Keeping in view such object behind the enactment of the Code, intention of the Legislature is that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors .In the interest of justice and in order to achieve the objectives of the Code , liquidation of a company can be only as a last resort, wherein, all efforts for bringing Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per the apex court's decision in the matter of **K. Saahidhar Vs. Indian Overseas Bank & Ors.**

12. On perusal of the Resolution Plan and during the hearing of this IA 28 of 2022 on 17.03.2022, this Bench had sought clarifications from the CoC, RP and Resolution Applicant specifically on the following points:

- i. Application of Sec. 29 A(g) for the Resolution Applicant



- ii. Source of Funds, MSME Status, Percentage of Haircut.
- iii. As per the Balance sheet of the CD, Banks like CBI, SBI, UBI and PNB are holding 22.01%, 14.60%, 10.13% and 4.25% of shares in the CD respectively. Whether these shares are the conversion of the loans given to the CD; if so what was the loan amount, how this aspect has been addressed in the Plan while arriving at the percentage of settlement /haircut in the plan
- iv. The reason for the non-admission of the original claims of the FCs of Rs 333.75 crores but admitted only Rs. 198.12 crores.

13. During the last hearing of the matter on 28.07.2022, the learned Senior Counsel appearing for the RP has submitted the details of the Resolution Plan and confirmed that the RA is eligible for submission of the Resolution plan and necessary affidavit has been filed. He has also clarified the matter with regard to the MSME criteria of the CD i.e. the investment in plant and machinery of the CD is Rs 48.01 crores which is below Rs 50.00 crores with effect from 01/07/2020 vide MSME Dept. notification dated 01.06.2020. The sources of funds of the RA have also been clarified. It has been further clarified by him in the presence of the counsel for the CoC that the original claim amount lodged for Rs 333.75 crores by the FCs was not correct as they inadvertently claimed some other claim here. Hence, the admitted claim for the FCs is Rs 198.11 crores. The Ld. Senior Counsel further submitted that the shares were allotted to the Banks but subscription was not made and at this stage the matter was stuck up. The learned Counsel appearing for the CoC submitted that the CoC has agreed to accept such big 91.12% haircut as it is a commercial decision considering its feasibility and viability and in the interest of all stakeholders. He further submitted that the amount of Rs 17.60 crores provided for FC in the plan is more than the Liquidation value and hence, CoC has accepted such haircut consciously as the CoC is for resolution not for Liquidation. Learned Counsel appearing for the Resolution Applicant has clarified and confirmed to fulfill the terms & conditions mentioned in the



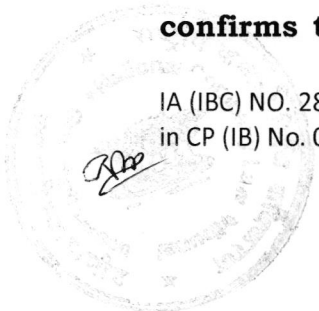
Resolution Plan. **The Applicant has submitted that it is a commercial decision of the CoC and in view of the provisions of the IBC and the judgement of the Hon'ble Supreme Court of India the Resolution Plan submitted needs to be approved by this Hon'ble Tribunal.**

14. IA 12 OF 2022 was filed by the RP under Under Section 25(j) read with Section 43, 44 and 53 of IBC 2016, in relation to preferential transactions involving the Corporate Debtor. During the hearing of this matter on 28.07.2022, the Learned Sr. Counsel appearing for the RP has stated that the Applicant has received Rs. 1.03 Crores (Rupees One Crore Three Lacs Only) in the form of Demand Draft from the Respondents and this amount is in addition to the amount offered in the Resolution Plan Hence he had prayed for allowing him to withdraw this IA 22 of 2022. His prayer for withdrawal of the application was allowed with the direction to the RP to distribute the said amount as per the section 53 of IBC to the Creditors of the CD only. Hence, IA 28 OF 2022 was dismissed as withdrawn on 28.07.2022. There is no other IA pending with regard to the IA filed for approval of the Resolution Plan.

15. On receipt of the above additional amount of Rs 1.03 crores, the amount to be received by the FCs in the process has increased from 17.60 crores to 18.63 crores. Hence, the percentage of haircut has come down from 91.12% to 90.61 %.

16. During the last leg of hearing, the Counsels of the CoC and the RP have submitted that COC in their commercial wisdom has accepted 91.12 % of haircut in the interest of all the stakeholders as Liquidation is avoided and the CD will start operation as per the Resolution Plan submitted. They have submitted that in view of the decision the CoC, provisions of the IBC and the judgments of the Hon'ble Supreme Court of India, the Resolution Plan submitted is required to be approved.

17. On perusal of the records, **it is found that the Resolution Plan confirms to the criteria as provided under clauses (a) to (f) in section**



30(2) of the Code and the CoC approved the Resolution Plan by 100 % voting. The Resolution Plan also confirms to such other requirements as may be specified by the Board. **The Resolution Professional has certified that the Final Resolution Plan is in conformity with the provisions of the IBC.**

18. On perusal of the Resolution Plan, we are of the considered view that the Resolution Plan meets the requirement of Section 31 r/w Section 30(2) of the Code. Therefore, the present application IA 28 of 2022 is allowed and the Resolution Plan is approved with the certain observations and compliances of the following Conditions:

18.1 Approval of the Resolution Plan does not mean any automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/ Corporate Debtor as those are the subject matters of the concerned Competent Authorities having their proper/ own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicant on approval of the Plan may approach those Competent Authorities/ Courts /Legal Forums/ Offices — Govt. or Semi Govt. / State or Central Govt. for appropriate relief(s) sought for in the plan. This is not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant has liberty to approach Competent Authorities for any concession, relief or dispensation as the case may be.

18.2 The Resolution Professional is hereby appointed as the Chairman of the monitoring Committee for supervision of the implementation of the Resolution Plan. **The monitoring Committee needs to be wound up at an early date on implementation of the Resolution Plan.** Fees of the RP as the Chairman of the Monitoring Committee is fixed at Rs 50,000.00 p.m.



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19. It is further directed that:

- 19.1 **The approved Resolution Plan shall come into force with immediate effect.**
- 19.2 The Resolution Plan shall be subject to the various existing laws in force and shall also conform to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.
- 19.3 The Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws 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 section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.
- 19.4 All relevant parties in relation to the Final Resolution Plan are to be bound by the terms and conditions mentioned therein in accordance with Section 31(1) of the IBC 2016.
- 19.5 All relevant parties are directed to extend full cooperation to carry out the terms and conditions of the Final Resolution Plan. If there is any deviation in implementing the Final Resolution Plan, the concerned parties/entity will be liable for punishment as per Chapter 7 (Offences and penalties) of the IBC, 2016.
- 19.6 The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.

20. We, the Adjudicating Authority, are of the considered opinion and also being satisfied that the Resolution Plan along with final clarifications as approved by the Committee of Creditors (CoC) and



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submitted/confirmed by the RP, meets the requirements as referred to under section 30(2) of the Code.

21. Accordingly, IA 28 of 2022 is allowed and the Resolution Plan is approved with the above Observations and Directions.

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority

Sd/-
(Deep Chandra Joshi)
Member (Judicial)
& Adjudicating Authority

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Jagannath Mazumdar
Dy REGISTRAR/ASST. REGISTRAR 17/8/22
NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
DY NO. 280/NCLT/GB
DATE 17/8/22



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