

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



**I.A. 2117/2024**

**IN**

**C.P. NO. 2092(IB)/MB/2018**

Under Section 30(6) of the Insolvency and  
Bankruptcy Code, 2016

**Mr. Ritesh Adatiya**

Resolution Professional of Calchem  
Industries (India) Limited

B-401, the First, Behind ITC Hotel,  
Besides Keshav Baugh Party Plot,  
Vastrapur, Ahmedabad – 380 015.

**.... Applicant/ Resolution Professional**

**In the matter of:**

Gokul Fuelchem Private Limited

**.... Petitioner/ Operational Creditor**

Versus

Calchem Industries (India) Limited

**.... Corporate Debtor/ Respondent**

**Order Pronounced on: 29.10.2024**

**Coram:**

Hon'ble Smt. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Charanjeet Singh Gulati (Technical)

**Appearances:**

For Applicant/RP in 2117/2020: Adv. Shyam Kapadia a/w Adv. Tanmay

Kelkar i/b Adv. Aniruth Purusothaman

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**PER: SHRI CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)**

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**ORDER**

**1. I.A. NO. 2117/2020**

This I.A. is filed by, **Mr. Ritesh Adatiya, the Resolution Professional of Calchem Industries (India) Limited ('the Applicant')** under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**), seeking following reliefs:

- a) To approve the Resolution Plan dated 18.08.2010 read with Part-B of the plan, submitted by the Resolution Applicant "Sadhana Netrochem Limited", which has been approved by the Committee of Creditors (CoC), as per the provisions of the Code;
- b) For such further and other reliefs as this Tribunal may deem fit and proper in the nature, facts and circumstances of the present case.

**Brief Facts:**

2. The Corporate Insolvency Resolution Process (**'CIRP'**) of Calchem Industries (India) Limited (**'said corporate debtor'**) was initiated by this Tribunal vide order dated 25.09.2019 under Section 9 of the Code (**'said order'**). The said order was passed in Company Petition (IB) 2092(MB) of 2018 filed by one operational creditor, Gokul Fuelchem Private Limited on 11.06.2018. Pursuant to the said order, Mr. Ritesh Adatiya was appointed as an Interim Resolution Professional (**'IRP'**).
3. Subsequent to admission of the petition for CIRP, a Public Announcement inviting claims from creditors was made by the IRP on 01.10.2019. The Public Announcement was made in one Marathi Language and one English Language Newspaper in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process

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of Corporate Persons) Regulations, 2016 (said '**IBBI (CIRP) Regulations, 2016**').

4. Following the Public Announcement, the IRP received claim and collated them from the stakeholders/creditors is given as follows:

<b>Sr. No.</b>	<b>Category of Creditors</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>	<b>% Share in Total Amount of Claims Admitted</b>
1.	Secured Financial Creditors -Bank of Baroda	423,325,369.00	423,325,369.00	94.8
2.	Operational Creditors (other than Workman and Employees)	1,80,73,788.00	1,40,20,396.00	2.06
3.	Workmen Claims	0	0	0
4.	Employee Claims	0	0	0
5.	Government Dues -CGST Department (Raigadh Commissionerate)	6,99,54,487.00	92,21,611.00	3.14
<b>Total</b>		<b>511,353,644.00</b>	<b>446,567,376.00</b>	<b>100.00</b>

5. Subsequent to collation of claims, the CoC was constituted in accordance with Section 21 of the Code. The CoC consists of the sole Financial Creditor as per the details given below:

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<b>Particulars</b>	<b>Amount Claimed (In Rupees)</b>	<b>Amount of Claim Admitted (In Rupees)</b>	<b>Percentage of Voting (%)</b>
Bank of Baroda	423,325,369.00	423,325,369.00	100

6. In the 3<sup>rd</sup> CoC meeting convened on 06.02.2020, the IRP was appointed as a Resolution Professional (“RP”) and furthermore, the following appointments were also approved in the meeting:

<b>Sr. No.</b>	<b>Category</b>	<b>Details of Professional</b>
1.	Company Secretary (For RoC Search and Company Law Compliances)	Kaushal Dalal and Associates
2.	Chartered Accountant (For conducting Audit of Books of Accounts)	Mr. Virendra Gandhi
3.	Transaction Auditors (Appointed for in compliance with the provisions of the Code)	New Haribhakti Business Services LLP

7. For the purpose of determining Fair Value and Liquidation Value of Assets of the corporate debtor, registered valuers in the 3<sup>rd</sup> CoC meeting were appointed as per Regulation 27 of the Said IBBI (CIRP) Regulations, 2016 as follows:

<b>Sr. No.</b>	<b>Category</b>	<b>Details of Professional</b>
1.	Registered Valuer (Land and Building)	<b>Mr. Krishnakant A. Pandat-Arjun</b> and <b>Mr. Sunil Aniruddha Apte</b> (IBBI/RV/02/2019/10871)

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		(Earlier: Ashish Hemant Pandit and Mr. Nitin Lele)
2.	Registered Valuer (Plant and Machinery)	<b>Kakode Associates Consulting</b> (IBBI/RV/07/2019/10735) and <b>Mr. Mangesh Shinde</b> (IBBI/RV/07/2019/11026)
3.	Registered Valuer (Securities and Financial Assets)	<b>Shri Vinod Ambawat</b> (IBBI/RV/06/2018/10241) and <b>Shri Krunal Manojbhai Sheth</b> (IBBI/RV/06/2019/11598)

8. Further, the above-mentioned valuers have submitted their Valuation Reports to the Applicant/RP. The Valuation Reports comprise an estimate of fair value and liquidation value of the assets of said corporate debtor, which is as follows:

i. Land/Site and Building

(A) Fair Value

	<b>Estimate of Fair Value</b>	<b>Amount (INR)</b>	
a.	Mr. Krishnakant A. Pandat (Report as on 19.08.2020)	For Land	5,32,28,000
		For Building	1,54,26,569
Total Fair Value of Land and Building		6,86,55,000/-	
b.	Mr. Sunil Apte (Report as on 23.08.2020)	For Land	5,70,00,000
		For Building	1,59,00,000
Total Fair Value of Land and Building		7,29,00,000/-	

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<b>Average Fair Value of Land and Building</b>	<b>7,07,77,500/-</b>
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*\*As the two estimates are not significantly different, the average of the two values are considered as 'Fair Value'.*

**(B) Liquidation Value**

	<b>Estimate of Liquidation Value</b>	<b>Amount (INR)</b>	
a.	Mr. Krishnakant A. Pandat (Report as on 19.08.2020)	For Land	3,99,21,000
		For Building	1,00,27,270
Total Liquidation Value of Land and Building		4,99,48,270/-	
b.	Mr. Sunil Apte (Report as on 23.08.2020)	For Land	4,28,00,000
		For Building	1,03,00,000
Total Liquidation Value of Land and Building		5,31,00,000/-	
<b>Average Liquidation Value of Land and Building</b>		<b>5,15,24,135/-</b>	

*\*As the two estimates are not significantly different, the average of the two values are considered as 'Fair Value'.*

ii. Securities and Financial Assets ('SFA')**(A) Fair Value**

	<b>Estimate of Fair Value</b>	<b>Amount (INR)</b>	
a.	Mr. Krunal Manojbhai Sheth	Bank Balance	5,49,677

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	(Report as on 25.08.2020)	Estimated amount of Tax Savings due to accumulated tax losses	3,14,39,149
Total Fair Value of the Said corporate debtor			3,19,88,826/-
	Mr. Vinodkumar Pukhraj Ambavat (Report as on 26.08.2020)	Non-Current Investments	14,423
		Current Assets	5,49,677
		Carry forward loss as per I.T. Return	2,93,82,383
Total Fair Value of the Said corporate debtor			2,99,46,483/-
<b>Average Fair Value of Land and Building</b>			<b>3,09,67,654.50/-</b>

*\*As the two estimates are not significantly different, the average of the two values are considered as 'Fair Value'.*

(B) Liquidation Value

	<b>Estimate Liquidation Value</b>	<b>of</b>	<b>Amount (INR)</b>
a.	Mr. Krunal Manojbhai Sheth (Report as on 25.08.2020)	Bank Balance	5,49,677
		Estimated amount of Tax Savings due to accumulated tax losses	Nil

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Total Liquidation Value of Said corporate debtor		5,49,677/-	
b.	Mr. Vinodkumar Pukhraj Ambavat (Report as on 26.08.2020)	Non-Current Investments	14,423
		Current Assets	5,49,677
Total Liquidation Value of Said corporate debtor		5,64,100/-	
<b>Average Fair Value of Land and Building</b>		<b>5,56,888.50/-</b>	

*\*As the two estimates are not significantly different, the average of the two values are considered as 'Fair Value'.*

b. Plant and Machinery

## (A) Fair Value

	<b>Estimate of Fair Value</b>	<b>Amount (INR)</b>
a.	Mr. Mangesh Shinde (Report as on 22.08.2020)	1,07,00,000
b.	Mr. Anil Bhaskar Pai Kakode (Kakode and Associates) (Report as on 22.08.2020)	1,12,00,000
<b>Average Fair Value of Plant and Machinery</b>		<b>1,09,50,000/-</b>

*\*As the two estimates are not significantly different, the average of the two values are considered as 'Fair Value'.*

## (B) Liquidation Value

	<b>Estimate of Liquidation Value</b>	<b>Amount (INR)</b>
a.	Mr. Mangesh Shinde (Report as on 22.08.2020)	75,00,000

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b.	Mr. Anil Bhaskar Pai Kakode (Kakode and Associates) (Report as on 22.08.2020)	72,00,000
<b>Average Liquidation Value of Plant and Machinery</b>		<b>73,50,000/-</b>

*\*As the two estimates are not significantly different, the average of the two values are considered as 'Fair Value'.*

9. Further, the Applicant submits that the CIRP commenced vide said order dated 25.09.2019. However, the completion of CIRP was to exceed beyond 180 days as per the provisions of the code on account of the Covid-19 Lockdown beginning 21.03.2020. Hence, in the fourth CoC meeting convened on 12.03.2020, the members approved to file an application for extension of CIRP period. On the direction of CoC, the applicant filed I.A. (IBC) No. 1260/MB/2020 (Filing No.: 2709138016672020) on 25.06.2020 and later I.A. (IBC) No. 409/MB/2022 was filed on 25.01.2022 for both extension of CIRP Period for a further period of 90 days under Section 12(2) of the Code and exclusion of 566 days during the Covid-19 period (15.03.2020 to 02.10.2021 in accordance with the Hon'ble Supreme Court's order in Miscellaneous Application No. 665 of 2021 in Suo-Motu Writ Petition (C) No. 3 of 2020 ('said **application for extension of CIRP**'), which was allowed on 27.01.2023.
10. The publication for Invitation of Expression of Interest in Form -G from Prospective Resolution Applicants ('**PRA**') was made in The Free Press Journal newspaper by the applicant as per Section 25(2)(h) of the Code on 22.06.2020, wherein the last date of submission of EoI was 07.07.2020 and the last date for submission of Resolution Plan was 21.08.2020.

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11. The Applicant submits that the CoC after thorough deliberation approved Financial Eligibility Criteria and Evaluation Matrix for PRA, and Information Memorandum in the fifth CoC meeting convened on 10.07.2020.
12. Following the publication of EoI in Form-G on 22.06.2020, the applicant received a 'Resolution Plan' from one PRA, that is, M/s Sadhana Nitrochem Limited (said '**Resolution Applicant**') on 18.08.2020. The Resolution Plan underlines that the Resolution Applicant is a publicly listed entity, operating in the business of manufacturing specialty chemical intermediates, primarily for overseas markets since half a decade. Further, it is disclosed that the Resolution Applicant is a government recognized 2-Star Golden Export House, with a capacity of manufacturing 13 type of various chemicals. Whereas, the said corporate debtor is engaged in the manufacture and production of chemicals as calcium carbonate which is primarily used in plastic, paints, rubber, paper, printing ink and so on.
13. The Applicant submits that the said Resolution Applicant in its Resolution Plan makes available the CoC two proposals for total funds proposed to be infused as per the Financial Bid given as under (**'said proposals'**):

**"Plan A:-**

1. Total Payment of Rs. 11.00 Crores will be done in this Plan
2. First Payment will be of Rs. 5 Crore which will be paid within 45 days from the date of Approval from NCLT and completion of all documentation;
3. Second Payment will be of Rs. 3 Crores which will be paid after 18 Months of the 1st Payment
4. Remaining Rs. 3 Crores will be paid after 36 Months from the First Payment.

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***Plan B:-***

*1. Total Payment of Rs. 9.50 Crores will be paid with in 90 days from the date of Approval from NCLT and completion of all Documentation;”*

14. The Applicant submits that in the sixth CoC meeting convened on 20.08.2020, the Resolution Applicant was advised to furnish a performance bank guarantee of 10% of final resolution plan consideration, on approval of the said Resolution Plan.
15. The Applicant submits that it has complied with requirements of Regulation 36A (1) of the said IBBI (CIRP) Regulations, 2016 and EoI in Form-G, to publish the final list of PRAs. The same was required to be published by 21.08.2020.
16. Accordingly, in the seventh CoC meeting convened on 04.09.2020, it was recorded that the Resolution Plan is submitted in compliance with Regulation 39 of the said IBBI (CIRP) Regulations, 2016. In the said meeting, the CoC approved the need of professional legal assistance and appointed advocate for the review of said application for extension of CIRP, and engagement of new auditor to conduct audit of the records of said corporate debtor for the Financial Years 2018-2019 and 2019-2020.
17. The Applicant submits that the Resolution Applicant in the eighth CoC meeting convened on 21.09.2020 was required to clarify the concerns of the CoC as regards the Composition of Monetary Committee and for brevity has provided that SRA will not object or will not have any say towards judicial proceedings initiated by the lenders against whatever action the Bank may initiate against the Personal Guarantees given by erstwhile directors and promoters.

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18. The Suspended Directors of the Corporate Debtor Amir Dodhia, Zulekha Dodhia and Hamida Dodhia had challenged the said order admitting the corporate debtor to CIRP before this Tribunal in I.A. (I.B.C.) No. 1617/MB/2024, on the ground that CoC considers two financial offers (Resolution Plans) by one Aurative Tech Solutions Pvt. Ltd. and Faith Leathers LLP dated 28.11.2023 and 22.11.2023 of Rs. 12.75 Crores and Rs. 12 Crores, respectively; and also a One-Time Settlement ('OTS') proposal dated 12.12.2023 of Rs. 13.20 Crores. Further, this Tribunal after considering the reply presented by the respondents in this context and submissions made by the applicant has allowed the withdrawal of I.A. (I.B.C.) No. 1617/MB/2024 with costs vide its order dated 25.09.2024.
19. The Applicant submits that the Resolution Plan was approved in the ninth meeting of CoC held on 13.10.2020 with 100% voting. Further, we note that in pursuance to this Tribunal's order dated 20.10.2023, the RP convened the twelfth meeting of CoC on 29.11.2023 on which date the members of CoC approved the resolution plan submitted by the PRA (said **'date of approval of Resolution Plan by CoC'**), that is, M/s Sadhana Nitrochem Limited (said **'Successful Resolution Applicant (SRA)'**). Further, it was decided to select "Plan-B" out of the said proposals, being upfront payment of Rs. 9.50 Crores payable within ninety (90) days from the date of approval from this Tribunal and after completion of all documentation in accordance with the applicable rules and regulations.

**CIRP Cost:**

20. The SRA in its Resolution Plan provides that the outstanding CIRP cost is payable in priority to any other creditor of the corporate debtor as per Section 30(2)(a) of the Code. Therefore, any unpaid or outstanding CIRP cost is to be paid in addition to the money infused in regards the said proposals by the SRA to revive the business of corporate debtor.

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21. In compliance with this Tribunal’s direction, the applicant submits by way of an additional affidavit filed on 26.06.2024, a detailed ‘CIRP Cost Sheet’ as on date, in regards the present application being filed on 12.11.2020.
22. Further, we have perused the CIRP Cost Sheet for the period from 25.09.2019 to 24.06.2024 and we note that the outstanding CIRP Cost payable is 23,22,175/- (**‘said outstanding CIRP Cost payable’**).

**Government Dues:**

23. This Tribunal disposed Interlocutory Application Nos. 283 of 2022 and 426 of 2022 and directed the applicant vide order dated 06.10.2023, to reflect on the treatment of government dues in the CIRP of corporate debtor (**‘said order dated 06.10.2023’**).
24. The Applicant filed a compliance affidavit on 21.12.2023 in regards the said order dated 06.10.2023. An extract of Information Memorandum submitted in the compliance affidavit indicates the applicant to have considered the aggregate of VAT/CST liability of Rs. 10,02,850/- for the year 2012-2013. Further, it stated in reliance with an extract of Resolution Plan at page no. 70 of the petition that the resolution applicant has considered NIL payment in relation to statutory dues, which is read as hereunder:

**“5.5. Treatment of Statutory Authorities**

.....

.....*The resolution applicant proposes to pay NIL to Statutory Authorities including admitted Statutory Creditors, as a part of the Resolution Plan. As on NCLT Approval Date, the claim (whether crystallized on the NCLT Approval Date or not) shall stand permanently extinguished, and the Resolution Applicant and/or Corporate Debtor shall not be liable to make any payments, whether admitted or not in relation to these claims.*”

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**Provident Fund/Gratuity Dues**

25. The claims for Provident Fund/ Gratuity Dues in regards to the judgment delivered by Hon'ble National Company Law Appellate Tribunal in *Jet Aircraft Maintenance Engineers Welfare Association versus RP of Jet Airways Ltd. (Co. Appeal (AT) (Ins.) No. 752 of 2021)* on 21.10.2022, it was submitted that the given decision is not applicable as there are no claims received for payment of provident fund/ gratuity dues.

**Sources of Fund:**

26.1 The Upfront Cash and any subsequent working capital infusion shall be brought in by the Resolution Applicant / Nominees and is clarified to be made out of internal accruals towards CIRP.

26.2 It is submitted by the Resolution Applicant in an addendum to the Resolution Plan at Exhibit – “K” from page nos. 87 to 105 of the petition, a C.A. Certificate authenticating the capability of the resolution applicant to make payment towards ‘Plan-B’ of the said proposals out of internal accruals.

**Upfront Cash**

27. The Resolution Plan contemplates a total resolution Plan amount of Rs.9,50,00,000/- (Rupees Nine Crores Fifty Lakhs Only) (“**Upfront Cash**”) which shall be paid by the Resolution Applicant on the “**Transfer Date**” the transfer date as defined in the Resolution Plan shall mean the date on which payments/settlements are made towards the claims of the operational creditors, the claims of the employees and workmen and collateralization/settlement of the financial creditors as provided under the Resolution Plan, whichever is earlier.. The Upfront cash will be distributed in following order:

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<b>Sr. No</b>	<b>Use of Upfront Cash</b>	<b>Amount (in Rs.)</b>
1.	Payment of Outstanding CIRP Cost	At Actuals The Outstanding CIRP Cost shall be paid in addition to the upfront cash payable.
2.	Payment to the Workmen towards discharge of the Workmen dues in full and final settlement thereof. This amount shall be distributed among the Workmen in proportion to their Claims	NIL
3.	Payment to the Employees towards discharge of the Employees dues in full and final settlement thereof. This amount shall be distributed among the Employees in proportion to their Claims	NIL
4.	Payment to the Other Operational Creditors towards discharge of the Operational debt in full and final settlement thereof. This amount shall be distributed among the Operational Creditors in proportion to their Claims	NIL
5.	Payments towards discharge of the Statutory Dues to the Statutory Dues Creditors in full and final settlement thereof.	NIL
6.	Payment towards Unsecured Financial Creditors	NIL
7.	Payment towards Related Party Creditors in full and Final Settlement thereof	NIL
8.	Payment to the Secured Financial Creditors in full and final settlement thereof.	Total sum of Upfront Payment is payable, that is, Rs. 9,50,00,000. This amount is considered as a sustainable debt to the financial creditor and the

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		balance of claims is determined as non-sustainable, hence deemed to be novated by SRA. Further, such novated debt is to be credited to capital reserve as Capital Contribution.
	<b>Total</b>	<b>Rs. 9,50,00,000/- (Rupees Nine Crores Fifty Lakhs Only/-)</b>

28. In accordance with Regulation 38(1-A) of the IBBI Rules, 2016, the statement showing the treatment given to the stakeholders is given below:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount Admitted (in Rs.)</b>	<b>Settlement Value Offered (in Rs.)</b>	<b>Terms of Payment</b>	<b>Settlement %</b>
1	<b>CIRP Costs</b>	At Actuals	At Actuals  [As per additional affidavit of 23,22,175 filed on 26.06.2024]	The outstanding CIRP cost is payable in priority to any other creditor and any unpaid or outstanding CIRP cost is to be paid in addition to the money infused in by the SRA to revive the business of corporate debtor.	100%
2	<b>Secured Financial Creditors</b>	423,325,369.00	9,50,00,000	Total sum of Upfront Payment is payable, that is, Rs.	22.44

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				9,50,00,000. This amount is considered as a sustainable debt to the financial creditor and the balance of claims is determined as non-sustainable, hence deemed to be novated by SRA. Further, such novated debt is to be credited to capital reserve as Capital Contribution.	
3	<b>Unsecured Financial Creditors</b>	--	--	--	--
4	<b>Operational Creditors</b>				
a	<b>Employees and Workmen</b>	--	--	--	--
b	<b>Government Authority Dues</b>	--	--	--	--
c	<b>Other Operational Creditors</b>	1,40,20,396	Nil	Nil	Nil
5	<b>Government Dues</b>	92,21,611	Nil	Nil	Nil
	<b>Grand Total</b>	<b>446,567,376</b>	<b>9,50,00,000</b> <b>(exclusive of CIRP Cost as on the date of payment)</b>		

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**Earnest Money Deposit (EMD):**

29. At the stage of submission of the Expression of Interest for the Said corporate debtor the Resolution Applicant has submitted an amount of Rs. 50,00,000/- (Rupees Fifty Lakhs Only/-) in favour of “Calchem Industries (India) Limited” as deposit on 19.08.2020 with Demand Draft number - 435316.

**Performance Bank Guarantee:**

30. As per the Resolution Plan, the Resolution Applicant was required to provide the Performance Bank Guarantee of Rs. 50,00,000/- (Rupees Fifty Lakhs Only/-) in favour of said corporate debtor. In accordance with the terms of this Resolution Plan, if the EMD has not been returned to the Resolution Applicant at the time of submission of performance bank guarantee, the amount of performance bank guarantee shall be NIL. Further, it was clarified that in the event when the said resolution plan is approved by the CoC, the Resolution Applicant would if required, to submit a performance bank guarantee would be to the tune of 10% of the final Resolution Plan consideration.

31. The SRA has submitted the performance bank guarantee of Rs. 95,00,000, that is, 10% of the total resolution plan. The SRA, through its authorized representative has affirmed on an affidavit at Exhibit-“O” of the petition on 28.07.2020.

**Supervision of the Resolution Plan from the NCLT Approval date:**

32. A Monitoring Committee would be formed within thirty days of approval of resolution plan by this Tribunal such that to oversee the board for proper and smooth implementation of said resolution plan by the resolution applicant. The composition of this committee would comprise of the Applicant/Resolution Professional, one member of CoC, and one member appointed by the Resolution Applicant, that is, Mr. Abhishek

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Javeri. The tenure of this committee would end when all the financial payments to all the stakeholders is made as per the approved Resolution Plan.

**Change in name of the Said corporate debtor**

33. The Applicant submits that the resolution plan provides that the resolution applicant reserves the right to change the name of the said corporate debtor to another name as may be approved by the Registrar of Companies ('RoC').

**Nature of Company after approval of Resolution Plan**

34. The approval of resolution plan will make the said resolution applicant 100% holding company of the said corporate debtor.

**Treatment of Promoters Shares**

35. Upon approval of Resolution Plan by this Tribunal, the number of promoter's share (issued, subscribed and paid-up) as on that date is to stand fully cancelled and extinguished.

**Issue of New Shares**

36. An issue of new 20,00,000 equity shares of Rs. 10 each amounting to Rs. 2,00,00,000/- shall be made and such new capital would be issued in the name of Resolution Applicant.

**Appointment of New Board of Directors:**

37.1 On the Transfer Date immediately upon payment of the Upfront Cash to the designated account of the said Resolution Applicant, the existing Board of Directors of the Company shall be replaced by new Board of Directors. The new Board of Directors is to be constituted with adequate representation from the Resolution Applicant and Independent Directors in compliance with the applicable law.

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37.2 Immediately after the appointment of new Board of Directors the Said corporate debtor shall be managed by the new Board of Directors.

**Compliance Certificate in Form – H**

38. Pursuant to Regulation 39(4) of Said IBBI (CIRP) Regulations, 2016, the Successful Resolution Applicant has prepared a Compliance Certificate dated 11.11.2020 in Form H which is annexed to the Application.

**a. Compliance of mandatory requirements under the Insolvency & Bankruptcy Code, 2016:**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Compliance</b>
<b>1</b>	<b>Section 25(2)(h):</b> Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the Said corporate debtor?	Yes.
<b>2</b>	<b>Section 29A:</b> Whether Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Yes.
<b>3</b>	<b>Section 30:</b>	
	<b>(1)</b> Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes. The Resolution Applicant has submitted an undertaking as Exhibit – ‘O’ in the petition under Section 29A of IBC, 2016 confirming his eligibility for submission of Resolution Plan.
	<b>(2)(a)</b> Whether the Resolution Plan provides for payment of insolvency resolution process costs?	Clause 5.1 of the Plan. The Resolution Applicant has submitted an additional affidavit dated 26.06.2024.

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	<b>(2)(b)</b> Whether the Resolution Plan provides for the payment of the debts of operational creditors?	No. Clause 5.3 of the Plan.
	<b>(2)(b)</b> Whether the Resolution Plan provides for the payment to the financial creditors who did not vote in favor of the resolution plan?	Yes. Clause 5.2 of the Plan Clause 3.8.1
	<b>2(c)</b> Whether the Resolution Plan provides for the management of the affairs of the Said corporate debtor?	Not Applicable. Clause 10.6 of the Plan.
	<b>2(d)</b> Whether the Resolution Plan Provides for implementation and supervision of the resolution plan?	Yes. Clause 8 of the Plan.
	<b>(2)(e)</b> Whether the resolution plan contravenes any of the provisions of the law for the time being in force?	No. Clause 10.6 of the plan.
	<b>(4)(a)</b> Whether the Resolution Plan is feasible and viable, according to the CoC?	Yes. The Resolution plan is feasible and viable according to the CoC.
	<b>(4)(b)</b> Whether the Resolution Plan has been approved by the CoC with 66% voting share?	Yes. The Resolution Plan has been approved with 100% voting.
<b>4</b>	<b>Section 31(1):</b> Whether the Resolution Plan has provisions for its effective implementation Plan, according to CoC	Yes. Clause 6.1 and 6.2 of the Plan.
<b>5</b>	<b>Section 35A:</b> Whether the resolution professional made a determination if the said 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?	Yes, the transaction audit report is submitted on 16.10.2020.

**b. Compliance under mandatory requirements under IBBI (Insolvency Resolution Process of Said corporate debtors) Regulations, 2016**

<b>Regulation 38</b>		
<b>1</b>	Whether the amount due to the operational creditors under the resolution plan has been given	No. The dues to operational creditors is not payable under the Resolution Plan

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	priority in payment over financial creditors?	hence, question of priority payment to operational creditors does not arise.
<b>1A</b>	Whether the resolution plan includes a statement as to how it has dealt with the interest of all stakeholders?	Yes.
<b>1B</b>	<p>i) Whether the Resolution Applicant or any of its related parties has filed to implement or contribute to the failure of implementation of any resolution plan approved under the Code?</p> <p>ii) If so, whether Resolution Applicant has submitted the statement giving details of such non-implementation?</p>	No
<b>2(a)</b>	Whether the Resolution Plan provides the term of the plan and its implementation schedule?	Yes. Clause 6.1 of the Plan.
<b>2(b)</b>	Whether the Resolution Plan provides for the management and control of the business of the said corporate debtor during its term?	Yes. Clause 8 of the Plan.
<b>2(c)</b>	Whether the Resolution Plan provides adequate means for supervising its implementation?	Yes. Clause 6.2.2 of the Plan.
<b>3</b>	Whether the Resolution Plan demonstrates that -	
<b>(a)</b>	It addresses the cause of default?	Yes.
<b>(b)</b>	It is feasible and viable?	Yes.
<b>(c)</b>	It has provisions for its effective implementation?	Yes.
<b>(d)</b>	It has provisions for approvals required and the time for the same?	Yes.
<b>(e)</b>	The Resolution Applicant has the capacity to implement the Resolution Plan?	Yes.
<b>Regulation 39</b>		
<b>2</b>	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes.  The transaction audit report is submitted on 16.10.2020.

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<b>4</b>	Provide details of performance security received as referred to in sub-regulation (4A) of Regulation 36.	Yes.  As per the revised terms of the said resolution plan, requirement of performance security amounts to 10% of total amount of resolution plan which is Rs. 95,00,000/-, out of this the Resolution Applicant submitted EMD in form of Demand Draft No. – 435316 amounting to Rs. 50,00,000/- and for remaining balance of Rs. 45,00,000/- the Resolution Applicant has deposited the Demand Draft.
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**c. The CIRP has been conducted as per the timeline indicated as under:**

<b>Section/ Regulation No.</b>	<b>Description of Activity</b>	<b>Latest Timeline under Regulation 40A</b>	<b>Dates according to Regulation 40A</b>	<b>Actual Date</b>
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	25.09.2019	25.09.2020 (Order received by RP on 27.09.2019)
Regulation 6(1)	Publication of Public Announcement	T+3	28.09.2019	01.10.2019
Section 15(1)(c)/ Regulation 12(1)	Submission of Claims	T+14	09.10.2019	11.10.2019
Regulation 13(1)	Verification of Claims	T+21	16.10.2019	18.10.2019
Section 26(6A)/ Regulation 15A	Application for Appointment of Authorized	T+23	18.10.2019	N/A

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	Representative, if necessary			
Regulation 17(1)	Filing of Report certifying Constitution of CoC	T+23	18.10.2019	22.10.2019
Section 22(1) and Regulation 17(2)	First Meeting of CoC	T+30	25.10.2019	02.11.2019
Regulation 35A	Determination of fraudulent and other transactions	T+115	18.01.2020	In Process
Regulation 27	Appointment of two registered Valuers	T+47	11.11.2019	03.07.2020
Regulation 36(1)	Submission of Information Memorandum to CoC	T+95	18.11.2019	10.08.2019
Regulation 36A	Invitation of EoI	T+75	09.12.2019	22.06.2020
	Publication of Form G	T+75	09.12.2019	22.06.2020
	Provisional list of Resolution Applicants	T+100	03.01.2020	24.07.2020
	Final list of Resolution Applicants	T+115	18.01.2020	01.08.2020
Regulation 36B	Issue of RFRP including Evaluation Matrix, etc	T+105	08.01.2020	22.07.2020
Section 30(6)/ Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165		
Section 31(1)	Approval of Resolution Plan	T=180		

39. On perusal of Form-H, it is seen that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code. The Resolution Plan also meets the requirements of Regulations 37, 38, 38(1A) and 39 (4) of the IBBI

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Regulations, 2016. The SRA has submitted an Affidavit dated 28.07.2020 in Exhibit- 'O' of the application stating that Resolution Applicant nor any other person who is a connected person (as defined under the IBC) are ineligible under Section 29 A of the IBC. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law.

40. The Applicant identifies that there are no avoidance transaction applications pending before this Tribunal.

41. In ***K Sashidhar v. Indian Overseas Bank & Others (2019) 12 SCC 150***, the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

42. In ***Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta & Ors (2020) 8 SCC 531***, the Hon'ble Apex Court clearly laid down that the Adjudicating

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Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom has approved.

43. In view of the law laid down by Hon'ble Supreme Court, the commercial wisdom of the COC is to be given paramount importance for approval / rejection of the resolution plan. As the Resolution Plan meets the requirements of the Code and the IBBI (CIRP) Regulations, 2016 the same needs to be approved. Accordingly, the **Resolution Plan is approved** with the following directions:

- i. The Resolution Plan submitted by M/s Sadhana Nitrochem Limited is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Said corporate debtor, 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 is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii. No person will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which a part of the Resolution Plan is not.
- iii. The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall review operational performance of the Said corporate debtor.
- iv. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution

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Applicant shall have access to all the records premises / documents through Resolution Professional to finalise further line of action required for starting of the operations.

- v. As per the Resolution Plan, extinguishment of existing shares of the said corporate debtor, allotment of shares to the Resolution Applicant and to New Investor and reduction of share capital do not require the consent of shareholders as required under the Companies Act or any other authority for implementation of the Resolution Plan.

**Reliefs and Concessions:**

- a. Approval of the Resolution Plan shall not be a ground for termination of any existing consents, approvals, licenses, concessions, authorizations, permits or the like that has been granted to the Said corporate debtor or for which the Said corporate debtor has made an application for renewal, grant permissions, sanctions, consents, approvals, allowances, exemptions etc.
- b. Any exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted but the Resolution Applicant is at liberty to approach Competent Authorities for the exemptions if permitted under the law.
- c. For past non-compliances of the Said corporate debtor under applicable laws the Resolution Applicant shall not be liable for any liabilities and offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016.

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- d. It is hereby clarified that in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim which is not a part of the Resolution Plan.
- e. With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- f. Any amount out of the action taken against other persons for Preferential/ Fraudulent Transactions u/s. 43 and 66 of the IBC, 2016 as found in the Audit Report and also Unauthorized Transaction post CIRP order, shall be appropriated towards the unsatisfied claims of Secured Financial Creditors.
- g. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

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- h. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- i. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- j. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

44. Accordingly, the Resolution Plan in I.A. No. 2117 of 2020 is hereby allowed and **approved**.

Sd/-

**Charanjeet Singh Gulati**

**Member (Technical)**

Sd/-

**Lakshmi Gurung**

**Member (Judicial)**

Akshita, L.R.A.