

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, BENCH-V**

**I.A. No. 1897 of 2022
IN
C.P. No. 2267 of 2019**

In the matter of an Application under Section
30(6) and Section 31 of the Insolvency and
Bankruptcy Code, 2016.

**Bijendra Kumar Jha
(Resolution professional of Kings Electronic
Private Limited)**

...Applicant/Resolution Professional

In the matter of
Daikin Airconditioning India Private Limited

... Financial Creditor

V/s.

Kings Electronic Private Limited

... Corporate Debtor

Order Dated : 07.08.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For the Applicant: Adv. Meghna Arvind i/b MDP & Partners

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The above captioned Application was filed under Section 30(6) and Section 31, of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **“Code”**) by the Resolution Professional (hereinafter referred to as **“Applicant”**), seeking approval of the Resolution Plan, submitted by the Resolution Applicant - Hayaansh Optical Pvt Ltd., which was approved unanimously by the members of the Committee of Creditors (hereinafter referred to as **‘COC’**).
2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated vide order dated 04.11.2019, under Section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as **‘the Code’**) and Ms. Poonam Basak was appointed as Interim Resolution Professional who was later confirmed as Resolution Professional. Pursuant to the CIRP commencement order, the IRP published a public announcement dated 11.04.2019 as per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**“CIRP Regulations”**) in Free Press Journal and in Navshakti, inviting claims from the creditors of the Corporate Debtor.
 - b. The claims **received** and **accepted** by Interim Resolution Professional are as under:

Sr. no.	Names of Financial Creditors	Claims submitted (amt in Cr.)	Claims admitted (amt in Cr.)
1	Edelweiss Asset Restructuring Company Ltd	62.76	62.76
2	Union Bank of India	20.73	17.85
3	Bajaj Finance Ltd	20.61	9.69
4	State Bank of India	2.62	2.24
5	Shriram City Union Finance Ltd	2.72	2.44

6	IndusInd Bank	0.54	0.54
7	Indiabulls Consumer Finance Ltd	0.44	0.44
8	Flexi Loan	0.23	0.23
9	Ashwin Kanji Shah (huf)	0.32	0.25
10	Anjana Ashwin Shah	0.32	0.25
11	Yukti Dhiren Shah	0.32	0.25
12	Ashwin Kanji Shah	0.32	0.25

- c. The IRP, constituted the Committee of Creditors with the following list of Creditors in their respective voting share (latest List of COC members):

#	Name of member of CoC	Voting Share (%)
1.	Edelweiss Asset Restructuring Company Ltd	54.48%
2.	Union Bank of India	17.59%
3.	Bajaj Finance Ltd	17.17%
4.	State Bank of India	2.27%
5.	Shriram City Union Finance Ltd	3.30%
6.	IndusInd Bank	0.47%
7.	Indiabulls Consumer Finance Ltd	0.36%
8.	Flexi Loan	0.20%
9.	Tata Capital Financial Services Ltd	0.66%
10.	Axis Bank	0.39%
11.	Incred Financial Services Ltd	0.20%
12.	IDFC First bank Ltd	0.47%
13.	Kotak Mahindra Bank Limited	0.43%
14.	India Infoline Finance Ltd	0.42%
15.	Capfloat Financial Services Pvt Ltd	1.59%
	Total	100.00

- d. In the **third meeting of CoC held on 11.02.2020**, the erstwhile RP appointed **two Registered Valuers** namely (1) Mr. Nishant Vakaria and

Mrs. Aashima Narula for valuation of Land & Building and (2) Mr. Vishnu Upadhyay and Mr. Vineet Rathi for valuation of Financial Assets and Securities as per Regulation 27 of the CIRP Regulations to determine Business Valuation and Valuation of Land & Building of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations.

- e. Erstwhile RP published the Public announcement inviting EOI in Form G on 17.02.2020. The last date of submission of Resolution Plan was 26.06.2021.
- f. In the Fourth Meeting of the CoC held on 05.08.2020, the erstwhile RP informed the CoC that four EOIs were received out of which three did not revert with the requisite information, as sought, and one party was found ineligible due to invalid MSME Certificate.
- g. The COC in its Sixth meeting held on 30.10.2020 proposed to replace Resolution Professional with 88.91% votes. Subsequently, this Tribunal vide order dated 23.11.2021, appointed Bijendra Kumar Jha (**the present Applicant**) as the Resolution Professional (**RP**).
- h. In the Eight CoC meeting held on 14.01.2022, it was resolved to issue a fresh Form- G for inviting EOIs from Prospective Resolution Applicants (“PRAs”). Pursuant to this, the Applicant published a fresh Public Announcement inviting EOI from PRAs on 15.01.2022, in Free Press Journal (English) and in Mumbai Lakshdeep (Marathi). The last date for submission of EOI was 30.01.2022 and The last date of submission of Resolution Plans was 16.03.2022.
- i. In the Ninth meeting of CoC held on 14.02.2022, the Applicant informed the COC that he has received Expression of Interest (“**EOI**”) from five prospective Resolution Applicants (“**PRA**”). Further, RFRP and

Information Memorandum was approved by the CoC and issued the same to the following PRAs:

1. Kundan Care Products Limited (Kundan Group)
2. Pyramid Tie-Up LLP
3. Infinitee Infracon
4. Hayaansh Optical Private Limited
5. Ms. Sonali Khatri

- j. In the Tenth Meeting of the CoC held on 14.03.2022, it was resolved to appoint additional two Registered Valuers(“RV”) for Plant & Machinery and one registered valuer for land & building. Valuation Details of the reports submitted by them is as under:

Sr. No.	Class of Assets	Name of Valuer	Fair Value (Rs.)	Liquidation Value (Rs.)
1	Land & Building	Aashima Narula	48,67,00,000/-	34,09,00,000/-
		Vineet Rathi		
2	Plant & Machinery	Mahadev Ramchandra Kalburgi	3,94,081/-	2,75,857/-
3	Securities & Financial assets	Ashish Kalamkar	5,04,551	4,04,551
		Vishnu Upadhyay	3,00,86,000/-	32,91,000/-

- k. On 26.03.2022, the Applicant received two resolution plans from **M/s Infinitee Infracon LLP** and **Hayaansh Optical Private Limited**. The Applicant circulated the plans to the members of the CoC. However, at the thirteenth Meeting CoC held on 09.06.2022, the CoC noted the change in the voting rights of the CoC members due to admission of additional claim amount. Therefore, the members of the CoC discussed and negotiated the Commercial aspect of the Resolution Plans with the Resolution Applicants. The Representatives of RA, Hayaansh Optical Pvt Ltd and

Infinitee Infracon LLP presented the commercial aspects of the Resolution Plan submitted by them to which the members of the CoC expressed certain concerns inter alia that the upfront payment was too less and the timeline for repayment was too long. In response, the representatives of both the RAs took note of the suggestions and stated that they would revert with modified Resolution Plans. Subsequently, modified plans were submitted by both the Resolution Applicants on 20.06.2022 which were immediately circulated to the members of the CoC.

1. In the Fourteenth CoC Meeting was held on 24.06.2022, wherein presentation was given by the representatives of the PRAs to the members of the CoC. The e-voting window opened on the next day i.e. 25.06.2022 and was initially scheduled to close on 05.07.2022. However, the e-voting window was extended till 08.07.2022. The outcome of the voting was in favour of the Resolution Plan submitted by Hayaansh Optical Pvt Ltd with an approval voting majority of 92.54% as depicted below:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Edelweiss Asset Reconstruction Company Limited	54.48%	Voted for
2	Union Bank of India	17.59%	Voted for
3	Bajaj Finance Limited	17.17%	Voted for
4	State Bank of India	2.27%	Absent (Did not vote)
5	Shriram City Union Finance Ltd	3.30%	Voted for
6	Tata Capital Financial Services Limited	0.66%	Absent (Did not vote)
7	Axis Bank Limited	0.39%	Absent (Did not vote)
8	IDFC First Bank Limited	0.47%	Abstained
9	India Infoline Finance Limited	0.42%	Absent (Did not vote)
10	Capfloat Financial Services Pvt Ltd	1.59%	Dissented
11	IndusInd Bank	0.47%	Absent (Did not vote)
12	Flexi Loan	0.20%	Absent (Did not vote)
13	Incred Financial Services	0.20%	Absent (Did not vote)

14	Kotak Bank	0.43%	Absent (Did not vote)
15	Dhani Loans and Services Limited (erstwhile Indiabulls Consumer Finance Limited)	0.36%	Dissented

m. The Applicant thereafter issued Letter of Intent (LoI) to Hayaansh Optical Pvt. Ltd. on 09.07.2022 and requested to transfer a sum of Rupees One Crore as Performance Guarantee. Consequently, the performance guarantee amounts of INR 1,00,00,000/- (Rupees One Crore Only) was received in the bank account of the Corporate Debtor on July 11, 2022.

3. **The Salient Features of the Resolution Plan are as under:**

A. Brief Background of the Corporate Debtor

Kings Electronics Private Limited

The Corporate Debtor, inter alia, is in the business of retailing of household electronic goods. The Corporate Debtor was established in 1999 and is located at Eden Garden, Office No 301-304, 3rd Floor, Near Sai Baba Mandir, Takka Panvel Raigarh, Maharashtra 410 206.

B. Background of Resolution Applicant

Hayaansh Optical Private Limited:

The Company was incorporated in year 2018, with a vision to enter Distribution and Retail market of Opticals, Consumer Electronics, Mobile Phones, Cameras, etc. in Mumbai & Navi Mumbai.

The Company aspires to be amongst top five Smart Eye Wear and Consumer Electronics brands known for best quality and excellent service in Mumbai and Navi Mumbai. The Company intends to expand reach, by (i) providing widest range, (ii) being a customer-centric organization, (iii) implementing technology and standard operating

processes, so that people see clearly, perform better, look great, feel confident and achieve various life goals successfully.

The said Prospective Resolution Applicant is eligible to act as a Resolution Applicant of the Corporate Debtor and is not ineligible on any count under section 29A of Insolvency and Bankruptcy Code and also satisfies the eligibility criterion as mentioned in clause (h) of sub-section (2) of section 25 of the Code.

4. **Summary of Financial Proposal**

Particulars	Rs./Crores
IRPC Cost	0.30
Financial Creditors	39.43
Employee & Workmen Dues	0.27
Operational Creditors	0.01
Statutory Liabilities	0.04
Capex infusion in CD	1.00
Total	41.05

- a) Out of the total plan outlay of INR 41.05 crs, the Cash Payment of INR 9 Crores shall be paid upfront within 30 days from the date of approval by the Adjudicating Authority and the same shall be utilised for payment of creditors and liabilities as mentioned in the following manner: -

Particulars	Upfront (Rs in Crs)
IRPC Cost	0.30
Financial Creditors	8.38
Employees & Workmen dues	0.27
Operational Creditors	0.01
Statutory Liabilities	0.04
Total	9.00

- b) The Resolution Plan proposes to pay out towards various claims within 90 days from the date of the approval of the Resolution Plan by the Adjudicating Authority.
- c) Additional Security by way of Corporate Guarantee of Hayaansh Optical Pvt Ltd and the Personal Guarantees of Mr. Haresh Sukheja and Mr. Ricky Sukheja is offered by the Successful RA.
- d) Performance Guarantee of INR 1 Crore (Rupees One Crore Only) which will serve as additional collateral to the Secured Financial Creditors and later will be adjusted against the last tranche of payment to the said Secured Financial Creditors.

5. **Sources of funds**

Sr. No.	Funding for Resolution plan	Rs. in Crs.
1	RA Contribution	41.05

- a) The sourcing of the funds shall be by way of contribution from the RA by way of Debt or Equity or Quasi Equity or through sale of identified Assets as provided in Annexure – III of the Resolution Plan.

6. **Proposed payments of Resolution**

A. Corporate Insolvency Resolution Process Cost

The Applicant submits that the Resolution Plan provides for payment of total CIRP Costs of INR 0.30 Crores. Any excess amount over and above the INR 0.30 Crores shall be additionally borne by the Successful RA. In case of surplus for the proposed IRP Costs, such surplus shall be retained by the Corporate Debtor / RA for the business purpose.

B. Financial Creditors

As per Paragraph 7 (c) of the Resolution Plan, an amount of INR 39.43 Crores is proposed to be paid to the Financial Creditors as follows:

Name of the Financial Creditor	Amount of Claims Admitted (Rs./ Crores)	Proposed Payment (Rs./Crores)	Present %
Secured Financial creditors (SFC)			
Edelweiss ARC Ltd.	62.76	25.00	39.83
Union bank of India	20.26	5.00	24.68
Bajaj Financial Ltd.	19.78	8.00	40.44
State Bank of India	2.62	0.75	28.63
Total SFC	105.42	38.75	36.76
Unsecured financial creditors (USFC)			
IndusInd Bank	0.54	0.04	7.00
India Bulls consumer finance limited	0.42	0.03	7.00
Flexi Loan	0.23	0.02	7.00
Tata Capital Financial Services ltd.	0.76	0.05	7.00
Axis Bank	0.45	0.03	7.00
Incred Financial services limited	0.23	0.02	7.00
IDFC First Bank Ltd.	0.54	0.04	7.00
Kotak Mahindra Bank (Debt assigned by RBL Bank Ltd.)	0.49	0.03	7.00

India Infoline finance limited	0.48	0.03	7.00
Capfloat Financial services limited	1.83	0.13	7.00
Shriram City Union Finance Limited	3.80	0.27	7.00
Total USFC	9.77	0.68	7.00
Total (SFC + USFC)	115.19	39.43	34.23

The aforementioned distribution is envisaged by the Successful Resolution Applicant and approved by the CoC to be paid as per the following time lines:

Financial Creditors	Upfront 30days	60 days	90 days	Total Proposed payment
Edelweiss ARC Ltd.	4.96	7.00	13.04	25.00
Union bank of India	0.99	1.40	2.61	5.00
Bajaj Financial Ltd.	1.00	2.00	5.00	8.00
State Bank of India	0.75	-	-	0.75
IndusInd Bank	0.04	-	-	0.04
India Bulls consumer finance limited	0.03	-	-	0.03
Flexi Loan	0.02	-	-	0.02
Tata Capital Financial Services Ltd.	0.05	-	-	0.05
Axis Bank	0.03	-	-	0.03
Incred Financial services limited	0.02	-	-	0.02

IDFC First Bank Ltd.	0.04	-	-	0.04
Kotak Mahindra Bank (Debt assigned by RBL Bank Ltd.)	0.03	-	-	0.03
India Infoline finance limited	0.03	-	-	0.03
Capfloat Financial services limited	0.13	-	-	0.13
Shriram City Union Finance Limited	0.27	-	-	0.27
TOTAL	8.38	10.40	20.65	39.43

C. Operational Creditor

The claims of Operational Creditors as mentioned in the IM dated 14 February 2022 are as given below:

Particulars (Rs. In Crs)	Amount Claimed	Claims Admitted	Proposed Payment	Payment %
Operational Creditors	14.34	14.34	0.01	0.10

The cash flows in the Resolution Plan are not sufficient to service all the Financial Creditors, Employee & Workmen Dues in full, which rank higher in the payment waterfall prescribed under section 53 of the Code and provisions made thereunder. Accordingly, the Operational Creditors may be eligible to receive NIL payments towards their claims under the liquidation scenario.

The Resolution Plan proposes to pay an amount of Rs 0.01 Crs towards the Operational Creditors as depicted below. This amount shall be payable on pro-rata basis against the total claims admitted.

The Operational Creditors, whose claims have been verified and admitted, shall be paid within 30 days from the Approval Date of Adjudicating Authority / Appellate Authority. Such Operational creditors shall be paid in priority to the Financial Creditors under the Resolution Plan.

Despite NIL recovery potential for such creditors under the liquidation scenario, considering the importance of the Operational Creditors for the business and in an effort to maintain the Corporate Debtor as a Going Concern, the Resolution Plan has made full attempt in making partial payment of such liabilities, as specified above.

D. Employee Dues, Employee State Insurance and Gratuity Dues

As per Paragraph 7(d) of Resolution Plan, the admitted dues of employee and workmen dues as per the information memorandum ("IM") dated 14.02.2022 were 2.69 crores. The Successful Resolution Applicant (SRA) proposed to make a payment of only Rs. 0.27 crores (10%) as full and final settlement towards the admitted claim which shall not carry any interest, penal charges.

Any existing agreements or contracts with any labour unions, representatives, etc. shall also stand cancelled forthwith.

Additional Affidavit of Applicant dated 29.03.2023

During the course of the hearing, this Bench raised certain queries with respect to the payments to EPFO, Gratuity Dues, Employees and Workmen dues as per the judgement of Hon'ble NCLAT in Jet Airways and Government dues with respect to the Rainbow Papers. Pursuant to the above, the Applicant has filed an Additional Affidavit 29.03.2023 wherein the payment to the claim have been revised as follows:

Employees dues Break-up (In Crs.)	Admitted by earlier RP	Revised Calculation by RA	Amount proposed to be paid	Pay-out %
Salary Dues	10,48,146.00	22,92,335.90	1,60,463.51	7%
Bonus 3 Years	31,44,438.00	Nil	Nil	0%
Gratuity & PF	62,12,272.90	41,76,695.77	41,76,695.77	100%
Retrenchment Allowance	1,65,16,872.16	Nil	Nil	0%
Total	2,69,21,729.06	64,69,031.67	43,37,159.28	
Amount Allocated in Resolution Plan			26,90,000.00	
Additional Amt allocated by RA towards Employees Dues			16,47,159.28	

The Successful Resolution Applicant has stated that an additional amount of Rs. 16,47,159/- along with the amount allocated in the Resolution Plan which total aggregates to Rs. 43,37,159/- will be paid out in full and final towards the employees dues which includes Gratuity and PF in full and in compliance of law laid down in Jet Airways judgement.

With respect to the government dues, the Applicant has submitted that in the current scenario since the GST dues are forming part of the Government dues and while the Rainbow Papers speaks of the Gujarat Vat alone, therefore, the Successful Resolution Applicant has not modified the Plan to this effect and it was also stated that the Maharashtra State Tax is only an Operational Creditor and its liquidation value is NIL.

E. Statutory Dues and other current liabilities.

- As per Paragraph 7(f) of the Resolution Plan, the Successful RA has proposed to make a payment of INR 0.04 Crores to the GST Department

of Maharashtra against such admitted Net Claim Amount of INR 35.50 Crores.

- The Statutory Dues and other current liabilities whose claims have been verified and admitted, shall be paid within 30 days from the Approval Date of Adjudicating Authority.

7. **Proceeds of PUFÉ applications**

During the course of the hearing, this Bench had raised the query regarding the treatment of PUFÉ applications in absence of any specific clause in the Plan. In this regard, the Applicant has filed an Additional Affidavit 29.03.2023 and submitted that the Successful Resolution Applicant has confirmed that the proceeds of the PUFÉ Applications shall be allowed to the CoC Members.

8. **Equity Shareholders**

As per paragraph 7(g) of the Resolution Plan, it is proposed that all issued and paid up equity shares outstanding as on the CIRP Admission Date shall be cancelled. The Successful RA shall infuse funds as equity share capital in the Corporate Debtor. Such equity shares shall be issued at the face value of INR 10/- per share resulting in issuance of appropriate number of shares issued, subscribed and paid-up equity shares to the new shareholders

9. **Management and Control of Business of the Corporate Debtor.**

- a) Upon approval of the Proposed Plan by the Adjudicating Authority, the Successful RA shall constitute the board of the Corporate Debtor and appoint key managerial personnel, which may include independent professionals.
- b) The appointment of key managerial personnel shall be reviewed on an annual basis by the Resolution Applicant and such appointment of key managerial personnel shall be ratified by the Resolution Applicant annually.

- c) The New Company Management shall have the authority to appoint the directors on the Board of the Corporate Debtor.
- d) The reconstitution of the Board of Directors of the Corporate Debtor, vesting of management control of the Corporate Debtor in the reconstituted Board of Directors, handing over of physical possession of all tangible and intangible assets of the Corporate Debtor to the Board of Directors shall be carried out on immediate basis from the Approval Date.
- e) Upon Approval, the RP shall hand over the peaceful possession of all tangible assets owned by the Corporate Debtor. However, the premises of the Corporate Debtor have been given on lease before the start of the CIRP period and there is no provision for notice period. On the direction of the CoC, the Resolution Professional had issued three months' notice to the tenants namely Usha Electro Trade Agencies Pvt. Ltd.

10. **Implementation and Monitoring of Resolution Plan**

- a) The Successful RA shall form an "Implementation and Monitoring Committee" comprising of three persons.
 - i. Resolution Professional who shall be appointed as supervisor
 - ii. One representative will be nominated by the Successful RA,
 - iii. One representative will be appointed by the Financial Creditors as the Supervisor,
- b) Any decision relating to change in terms of payment to Financial Creditor as per the said plan or dilution of existing security of Financial Creditor, the final approval shall be taken from Financial Creditor only.
- c) The Supervisor shall be appointed for a period till the payment of all the liabilities mentioned in the Resolution plan. Further, it shall be reviewed on an annual basis for continuance of the Supervisor in the Implementation and Monitoring Committee.

11. **The compliance of the Resolution Plan is as under:**

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?		Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		Yes
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Page 14	Yes
	(b) provides for the payment to the operational creditors?	Page 21	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Page 16	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Clause 8	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Clause 9	Yes

	(f) contravenes any of the provisions of the law for the time being in force?	Page 31	Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?		Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes
Regulation 35A	Where the resolution profesional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?		Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 7	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	clause 7(k)	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?		No
Regulation 38(2)	Whether the Resolution Plan provides:	clauses 7,8 and 9	Yes

	(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?		
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?	clause 5	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		Rs. 1 cr transferred to CD account through RTGS.

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

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under	Actual Date Poonam Basak	Actual Date Bijendra Jha

		regulation 40A		
Section 16(1)	Commencement of CIRP and Appointment of IRP/RP	T	11/11/2019*	31/12/2021*
Regulation 6(1)	Publication of Public Announcement	T+3 (14/11/2019)	13/11/2019	-
Section 15(1)(c) /Regulation 12 (1)	Submission of Claims	T+14 (25/11/2019)	29/09/2020	-
Regulation 13(1)	Verification of Claims	T+21 (02/12/2019)	15/10/2020	-
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23 (04/12/2019)	-	-
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23 (04/12/2019)	4/12/2019	24/05/2022
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30 (11/12/2019)	11/12/2019	-
Regulation 35A	Determination of fraudulent and other transactions	T+115 (05/03/2019)	14/07/2021	-
Regulation 27	Appointment of two Registered Valuers	T+47 (28/12/2019)	02/01/2020	14/03/2022
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54 (04/01/2020)	11/02/2020	14/02/2022
Regulation 36A	Invitation of EoI	T+75 (25/01/2020)	17/02/2020 15/09/2020	15/01/2022
	Publication of Form G	T+75 (25/01/2020)	17/02/2020 15/09/2020	15/01/2022

	Provisional List of Resolution Applicants	T+100 (19/02/2020)	NA NA	09/02/2022
	Final List of Resolution Applicants	T+115 (05/03/2020)	NA NA	22/2/2022
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105 (24/02/2020)	NA NA	14/02/2022
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165 (24/04/2020)	-	14/07/2022
Section 31(1)	Approval of Resolution Plan	T=180 (09/05/2020)	-	-

13. **Observations and Findings:**

Having perused the record, we find that the Resolution Plan broadly meets the requirement of the Code which are as under:

- i. As per IBC Code 30(2)(a) – A Resolution Plan 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.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor. The Respondent has proposed to pay liquidation value to unsecured financial creditors who dissent from the plan.

- iv. The plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- v. The plan provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d) & Regulation 38(2)(c).
- vi. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - Resolution Plan provides for the implementation and supervision of the resolution plan as per Section 30(2) (e)
- vii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- viii. As per IBBI Guidelines 38(1)(b) - the amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- ix. The resolution applicant or any of its related parties has not 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.
- x. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).

- d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
 - f. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
 - g. The plan provides for the management and control of the business of the Corporate Debtor during its term.
 - h. All the above factors demonstrate that the plan addresses the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
 - i. That the Resolution Applicant or any of its related parties has never 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. This is in compliance of Regulation 38(1)(b) of the Regulations.
14. The Resolution Plan has been approved in the 14th COC meeting held on 24.06.2022 with 92.54% votes through E-voting in accordance with the provisions of the Code.
15. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (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 Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble 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.

16. In ***India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)*** the Hon'ble Apex Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.
17. The Hon'ble Apex Court at para 42 in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online***, has

clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

*“Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

18. In view of the above cited case law, it is clear that the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent of scrutiny provided under section 31 of Code and the direction of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code.
19. In view of the discussions, this Bench is of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- a) The Interlocutory Application No. 1897 of 2022 is **allowed**. The Resolution Plan submitted by **Hayaansh Optical Pvt Ltd**, is hereby approved. **It shall become effective from this date and shall form part of this order.** It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- b) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned 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.
- c) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- d) The Applicant shall supervise the implementation of the Resolution Plan and shall file status of its implementation before this Authority from time to time, preferably every quarter.
- e) 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.
- f) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

- g) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- h) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- i) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- j) The Interlocutory Application **No. 1897 of 2022** is accordingly **allowed**.

SD/-

Anuradha Sanjay Bhatia
Member (Technical)

SD/-

Kuldip Kumar Kareer
Member (Judicial)