

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

I.A. No. 1736 of 2022

IN

C.P. No. 1352 of 2020

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

In the matter of

Union Bank of India

... Financial Creditor

V/s.

**Dolphin Marine Foods and Processors
(India) Private Limited**

... Corporate Debtor

I.A. No. 1736/2022

Mr. Mahesh Chand Gupta

...Applicant/Resolution Professional

Order Reserved on: 12.12.2022

Order Pronounced on: 19.01.2023

Coram:

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

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

Appearance (through video conferencing):

For the Applicant: Mr. Amey Hadwale, Advocate

Per: Smt. Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This is an Application filed under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant, Mrs Lalita Santosh Powle, in consortium with Suyog Agro & Poultry Products Private Limited, which was approved by 100% voting share of 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 by this Bench, by an order dated 03.08.2021 under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as ‘**the Code**’) (**Admission Order**) and Mr. Mahesh Chand Gupta, was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors. The COC in its 1st meeting held on 08.09.2021 appointed (**the present Applicant**) as the Resolution Professional (**RP**). The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
 - b. The Applicant published a Public Announcement in Form A in accordance with Section 15 of the Code, on 13.08.2021, in English Newspaper Financial Express and one in Marathi Newspaper Navakal, inviting claims from the creditors of the Corporate Debtor.
 - c. The Applicant submits the claims received and admitted by Interim Resolution Professional are as under:

Summary of Claims (Amount in Rs.)			
Sr. No.	Class of Creditor	Amount Claimed (Rs.)	Amount Admitted (Rs.)
1	Financial Creditors		
A	Union Bank of India	13,54,92,360.47/-	13,54,92,360.47/-
	Total	13,54,92,360.47/-	13,54,92,360.47/-

3. The Applicant states that in the 2nd COC meeting, dated 25.10.2021, the COC approved with minimum eligibility criteria, Request for Resolution Plan (**RFRP**) and Form G for inviting Expression of Interest (**EOI**) from Prospective Resolution Applicants as per section 25(2)(h) of the Code. Accordingly, Public announcement for inviting EOI was issued. Form G inviting EOI was published on 28.10.2021. The last date for submission of Expression of Interest from Prospective Resolution Applicants was 12.11.2021 and last date of submission of Resolution Plan was 23.12.2021.
4. The CoC decided to appoint Valuers. The Resolution Professional accordingly appointed 2 set of registered valuers for Plant & Machinery, Land & Building and Securities or Financial Assets, to determine the fair value and liquidation value of the Plant & Machinery, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These valuers had submitted their reports. The Liquidation and fair value are as follows:

Name of Registered Valuer	Assets	Fair Value (Amount in Rupees)	Liquidation Value (Amount in Rupees)
1 st Set of Valuers			
Mr. Kedar Arvind Chikodi	Plant & Machinery	5,41,10,000/-	3,49,00,000/-
Mr. Keshav Arvind Chikodi	Land & Building	17,31,91,000/-	12,98,93,000/-

Mr. Akhilesh Bakliwal	Securities or Financial Assets	3,073,369/-	2,851,320/-
2 nd Set of valuers			
Mr. Praful Satsia	Plant & Machinery	4,94,73,000/-	3,21,57,450/-
Mr. Sadashiv Nargundkar	Land & Building	18,33,43,000/-	12,97,25,000/-
Mr. Saket Jain	Securities or Financial Assets	3,073,369/-	2,766,680/-

5. The Applicant further states that in furtherance of the Form-G issued by Applicant, he received EOI from five Prospective Resolution Applicants (PRAs) within the stipulated time period. Below is the names of the prospective resolution applicant:
- a. **Forstar Frozen Foods Pvt Ltd**
 - b. **Mrs. Lalita S Powle in consortium with Suyog Agro & Poultry Products Pvt Ltd**
 - c. **Rizwan Ice & Cold Storage**
 - d. **Mr. Neeraj Gupta**
 - e. **Rakesh Fisheries**
6. The Applicant submits that, during the 12th Meeting of COC held on 12.04.2022, one prospective Resolution Applicant namely Lalita S Powle in consortium with Suyog Agro & Poultry Products Pvt Ltd participated in third challenge mechanism and submitted its final Resolution Plan.
7. **The COC, in its 13th meeting held on 22.04.2022, Union Bank of India, the sole COC member approved the Resolution Plan vide email dated 17.05.2022, submitted by Lalita S Powle in consortium with Suyog Agro & Poultry Products Pvt Ltd with a**

voting share of 100%. Thereafter, the Applicant issued compliance certificate in Form “H” was issued by the Resolution professional.

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

A. Background of the Resolution Applicant

- i. The Resolution Applicant being Suyog Agro & Poultry Products Pvt. Ltd, consortium member, incorporated in the year 1994, is a leading manufacturing and trading private limited company having its business diversified in Aquaculture Shrimp Farming, Trading of Water Aeration and Water Treatment equipments used for aquaculture, Trading of Medicines and Probiotics for Shrimp and Fish health Care, Trading of water cooling equipments for thermal power station, Betel Nuts Production, contract processing and trading of groundnuts and raw and roasted peanuts.
- ii. Mrs. Lalita Powle, Resolution Applicant, is proprietor of Sanlita Exports and also one of the directors in Suyog Agro & Poultry Products Pvt. Ltd. and having specialization in the area of overall management supervision and corporate social responsibilities. She is also involved in day to day activities in the office. She handles the local trading activities of Groundnuts, Coriander Seeds, Sesame Seeds, Shrimps and Fishes. She is also experienced in imports and exports of garments and dry fruits. Overall, she has 17 years of experience in Aquaculture Industry in production and trading of marine products.

B. Financial Aspects of Resolution Plan

Stakeholders	Amount Proposed Under This Plan	Timelines	Amount Proposed to the Amount Admitted %	Summary of Proposal
<i>i. CIRP Costs</i>	35,00,000 /-	Within T + 30 days	100%	Subject to Actuals. Payment in priority to claim of any other creditor (Ref. Para 1.0 Part B)
<i>ii.OCs (excluding Workmen & Employees dues)</i>	3,10,42,940 /-	Within T + 30 days	100%	Settlement at 100% of the claim amount admitted (Ref. Para 3.0 Part B)
<i>iii.Workmen & Employees dues</i>	22,67,253 /-	Within T + 30 days	100.0%	Settlement at 100% of the claim amount admitted (Ref. Para 4.0 Part B)
<i>iv. Redeemable Preferential Shares to Existing Promotors</i>	2,00,00,000/-	Within T + 30 days	0%	(Ref. Para 5.0 Part B)
<i>v.Secured FCs</i>				
Upfront Cash Payments	13,46,47,273.47/-	Within T + 30 days	100%	Full settlement with Secured FCs, & transfer of collateral securities as per para 5.0 Part-G to the RA (Ref. Para 2.0 Part B)
Upfront Interest Payment from CIRP commencement Date till April'22	1,00,00,000/-	Within T + 30 days		
Deferred Cash Payments	0	Within T + 31-180 days		
Secured FCs Total	14,46,47,273.47/-			

<i>vi. Unsecured FCs</i>	0.00	NA	0%	No Claim Received & Admitted
<i>vii. Statutory Dues</i>	25,00,000 /-	Within T + 30 days	0%	As per the books of account
<i>viii. Working Capital</i>	5,00,00,000/-	Within T + 60 days	-	NA
	25,39,57,466.47			

C. Snapshot of Source & Application of Funds

SOURCE OF FUNDS	TOTAL	T + 30 days	T + 60 days
New Investment as Equity			
Lalita Santosh Powle	1,50,00,000.00	1,50,00,000.00	
Suyog Agro & Poultry Products Pvt Ltd	2,00,00,000.00	2,00,00,000.00	
Equity to friends and relatives of the promoter/ director	2,00,00,000.00	2,00,00,000.00	
Preferential Shares - Exiting Shareholders of CD	2,00,00,000.00	2,00,00,000.00	
NEW EQUITY TOTAL	7,50,00,000.00	7,50,00,000.00	
New Investment as Debt			
Unsecured Loans from shareholders	17,89,57,466.47	12,89,57,466.47	5,00,00,000
NEW DEBT TOTAL	17,89,57,466.47	12,89,57,466.47	5,00,00,000
SOURCE GRAND TOTAL	25,39,57,466.47	20,39,57,466.47	5,00,00,000
APPLICATION OF FUNDS	TOTAL	T + 30 days	T + 60 days
Payment for CIRP	35,00,000.00	35,00,000.00	
Payment to OCs	3,10,42,940.00	3,10,42,940.00	

Payment to Workmen & Employees dues	22,67,253.00	22,67,253.00	
Payments to Secured FCs	14,46,47,273.47	14,46,47,273.47	
Statutory Dues	25,00,000.00	25,00,000.00	
Preferential Shares - Exiting Shareholders of CD	2,00,00,000.00	2,00,00,000.00	
Working Capital for operational activities	5,00,00,000.00		5,00,00,000.00
APPLICATION GRAND TOTAL	25,39,57,466.47	20,39,57,466.47	5,00,00,000.00

Note:- Out of Total Funds required, Funds from Equity Shares infusion shall be utilized towards working capital requirements of Rs 5 Crs and the balance amount shall be met out of borrowings from bank/directors of RA and/or its associates.

D. Proposal for Payment to Various Stakeholders

1. Payment Towards Corporate Insolvency Resolution Process (CIRP) Costs

1.1 The Resolution Applicant Proposes to pay an amount of Rs. 0.35 Cr out of the Investment Amount for its use for the payment at actuals of any unpaid CIRP Costs at T + 30 days in priority to payment of any other debt.

- If the actual CIRP Cost payable is lower than the amount proposed under the plan, then the surplus after payment of CIRP Cost in full, shall be utilized for working capital purposes. Further in case the actual CIRP Cost payable is more than the amount proposed under the plan, then the deficit amount shall be met up by reducing the number of preference shares to be issued to

the existing shareholders/promoters which amount equals to the deficit. In no case the total Resolution Amount payable shall increase or reduce.

- Within 5 days of Effective Date, the Resolution Professional shall provide a certified statement containing details of the CIRP Cost to the Resolution Applicant

2. Settlement With Financial Creditors

- 2.1 It is proposed under this Plan that the Secured Financial Creditors shall be settled in full-and-final by way of payment of Rs. 14,46,47,273.47/- Since as per Information Memorandum, there is only one secured financial creditor for Rs 13,46,47,273.47/-, this consideration is to be paid 100% to Union Bank of India only & including Rs 1,00,00,000/- interest cost from CIRP commencement date till April 2022.
- 2.2 In terms of Information Memorandum, there are no claims received or admitted from any Unsecured Financial Creditors. As such no payment is required to be made to Unsecured Financial Creditors under the provisions of I.B. Code, 2016.
- 2.3 Details of claims made by Secured Financial Creditors, amount admitted as provided in IM, and settlement amount as per this Resolution Plan are shown in the following table:

Sr No.	Name of Creditors	Amount Claimed (In Rs)	Claims Admitted (In Rs) as per IM	Security Interest	Amount Proposed under this Plan
1	Union Bank of India	13,54,92,369	13,46,47,273	As per Note no. 4(k) Page 17 of IM, which is as below.	13,46,47,273*
	TOTAL	13,54,92,369	13,46,47,273		13,46,47,273

* In addition, RA proposes to pay Rs 1,00,00,000/- being interest cost from CIRP commencement date till April 2022 to the Secured Financial Creditor, i.e Union Bank of India.

Security Interest :-

Primary:-

Hypothecation of Stock in Trade & Book Debts not older than 90 days, including Stock meant for Export, Bills covering export of products, of the Company both present and future.

Collateral: -

- First Charge by way of composite hypothecation of all tangible movable machineries, plant, machinery, fixtures, fittings, vehicles, computers tools and accessories etc. and the whole of movable goods and assets, both

present and future including all stocks of materials and all the present and future book debts etc.of the Company.

- First Charge by way of Equitable Mortgage on lease plot of Land admeasuring 5000 Sq.Mtrs and building of 550.19 sq.mtrs built up area, situated at Plot No.-M 13, MIDC Taloja , Panvel, Distt.Raigad, Maharashtra of the Company.
- 3.Mortgage of Flat No. 301, 3rd floor, Sea Breeze CHS Ltd., Tower No. 6, Plot No. 16, Sector 16, Nerul (West), Navi Mumbai – 400 706 owned by Mr Rosario Luka Dsouza.
- 4.Perosnal Guarantees of Mr Rosario Luka Dsouza and Mrs Maria D Souza

2.4 Manner and timeframe for infusion of Investment Amount for payment to Secured Financial Creditors is mentioned below:

APPLICATION OF FUNDS	TOTAL	T + 30 days
Cash Payments to Secured FCs	14,46,47,273	14,46,47,273

2.5 On payment to the Secured Financial Creditor, as aforesaid, all claims, debts and dues of the Secured Financial Creditor pertaining or related to the period prior to the approval of the Resolution Plan by the COC as against the CD's assets mortgaged with the SFCs shall stand extinguished or may be vested in any

entity nominated by the Resolution Applicants. Further, Personal Guarantee may continue with the existing lenders.

- 2.6 The Secured Financial Creditor shall irrevocably, unconditionally and absolutely, on without recourse basis, extinguish, release or assign the security interest on all the underlying collateral securities, in favour of the Resolution Applicants and/or other corporate entity as may be nominated by the Resolution Applicants.

It is hereby clarified that any amount appearing in the borrowings over and above the amounts for which the treatment given shall stand extinguished and shall be written back in the books of accounts and such write back share go to capital reserve/ general reserve.

- 2.7 No amounts shall be payable to the Financial Creditors, unless the CIRP Cost and Operational Creditors are paid in accordance with the provisions of this Resolution Plan.
- 2.8 No interest shall be payable by RA to Financial Creditors, for the payments that are being done.
- 2.9 RA proposes that Financial Creditors who have not voted in favour of this Resolution Plan (“Dissenting Financial Creditors”) will be paid in priority to Financial Creditors who vote in favour of the Resolution Plan in accordance to and as required

under Section 30(2)(b) of I.B. Code 2016, read with Regulation 38(1)(b) of CIRP Regulations.

2.10 Notwithstanding the aforesaid or any other provision contained in this Plan, it is proposed that the Dissenting Financial Creditors will be settled at an amount which they would have got had the Liquidation Value being distributed in terms of Section 53(1) and such amount shall be deducted from the amount payable to the Financial Creditors voting in favor of the Resolution Plan

2.11 The interest accrued on the debts of Corporate Debtor from CIRP commencement date until Transfer Date shall be settled at NIL value.

3. Payment Towards Operational Creditors (Excluding Workmen & Employees Dues)

3.1 As per Section 30(2)(b) of I.B. Code, 2016 payment of debts of Operational Creditors should be in such a manner as may be specified by the board, which shall not be less than the amount to be paid to the Operational Creditors in the event of liquidation of Corporate Debtor under Section 53.

3.2 It is proposed under this Plan that Operational Creditors as per IM & other updates provided by RP (excluding related Parties to and/or Connected Persons of the Corporate Debtor and its promoters) shall be settled by way of 100% of the amount admitted. If any of such Operational Creditors are later found to be related Parties to and/or Connected

Persons of the Corporate Debtor and its promoters, no payment shall be payable to them as per this plan.

3.3 Claim amount as per IM, amount admitted by IRP/RP as per IM, and the proposed settlement amounts as per this Resolution Plan are shown in the following table:

Sr no	Creditor's Name	Total Claim Amount (Rupees)	Total Amount Admitted (Rupees)	Amount proposed under this plan (100% of Claim amount admitted)
1	Shree Saikrupa Aquaculture Pvt Ltd	34,65,404	17,87,000	17,87,000
2	Arabian Petroleum Ltd	32,235	32,235	32,235
3	Hitech Ultraviolet Pvt Ltd	28,820	28,820	28,820
4	Prakash Shetty & Co. Chartered Accountants	2,40,000	2,40,000	2,40,000
5	Maharashtra State Electricity Distribution Company Limited	33,40,964	33,40,964	33,40,964
6	Venus Multitrades	1,34,781	1,29,654	1,29,654
7	Chamunda Bearing	1,03,282	84,658	84,658
8	Aapco Industries	2,38,756	2,38,756	2,38,756
9	Heena Print Pack	1,14,518	1,07,508	1,07,508
10	Geo Remedies	6,974	6,974	6,974
11	United Guard Force	6,01,547	5,68,047	5,68,047
12	ArtPAck Corrugation Pvt Ltd	1,00,000	1,00,000	1,00,000

13	Purva Sea Foods	8,23,273	7,62,092	7,62,092
14	Narayan B. Lanke	7,16,601	7,16,601	7,16,601
15	Aryan Sea Foods	51,07,430	50,96,883	50,96,883
16	Dashrath Daudavathe	5,87,000	5,66,110	5,66,110
17	Abraham Sea Foods	11,14,151	11,14,151	11,14,151
18	Mysore Ammonia Pvt Ltd	48,675	48,675	48,675
19	Sanjay Kawad	13,58,053	8,47,798	8,47,798
20	Rajamma Animan	22,54,729	11,85,425	11,85,425
21	Lanke Sea Food	71,26,290	71,26,291	71,26,291
22	Jyoti Fisheries	21,14,031	21,14,031	21,14,031
23	Namdev Mahadu Patil	29,500	29,500	29,500
24	Royal Electricals	5,17,339	5,17,339	5,17,339
25	Mahesh Dagadu Phadke	1,30,000	1,29,527	1,29,527
26	Vilas Bhausahab Kulat	10,14,778	10,14,778	10,14,778
27	Vishal Kamlakar Patil	25,000	25,000	25,000
28	Bombay Ammonia and Chemical Company	1,03,897	75,039	75,039
29	Omkar Traders	35,985	28,679	28,679
30	Sunraj Corrugators	3,77,410	3,67,410	3,67,410
31	Compressor Engineering	49,746	49,196	49,196
32	Dtech Engineering	41,886	41,886	41,886
33	Seashell Logistics Pvt Ltd	3,85,371	2,47,335	2,47,335
34	Goldline Enterprises	1,64,824	1,64,824	1,64,824
35	Maharashtra Industrial Development Corporation	2,34,224	2,34,224	2,34,224
36	Envirocare Labs Pvt Ltd	1,40,613	86,007	86,007
37	Chirag International	12,65,558	10,34,154	10,34,154
38	Pushpa Enterprises	13,12,297	5,43,409	5,43,409

39	The Seafood Exporters Association of India	1,61,306	1,61,306	1,61,306
40	Nero Acqua System	50,666	50,656	50,656
	TOTAL	3,56,97,913	3,10,42,940	3,10,42,940

3.4 Above payments in respect of the Operational Creditors shall be made starting 25 (Twenty Five) days from the Effective Date, and completed preferably within 4-5 days thereafter.

3.5 The amount due to the operational creditors under a Resolution Plan shall be given priority in payment over financial creditors as per Regulation 38(1) of the CIRP Regulations.

3.6 Payment shall be made in proportion of claim amount admitted, without any preference to any Operational Creditor.

3.7 Source of funds shall be upfront payment by Resolution Applicant into a Designated Bank account of Corporate Debtor brought in as Equity and /or unsecured debt.

4. Payment Towards Workmen & Employees

4.1 As per IM, amount claimed to IRP/ RP towards workmen & employee dues is Rs 30,15,914/-. IRP/RP has admitted dues of Rs. 22,67,253/-.

4.2 RA proposes under this Plan that RA shall pay 100% of such admitted amount.

4.3 Above payments shall be made within 30 (Thirty) days from the Effective Date.

5. Preferential Shares

5.1 1% Redeemable Preferential Shares of Rs. 100/- each will be issued to the existing shareholders/promoters of the CD which is redeemable at the rate of 20% of the amount i.e. Rs. 40,00,000/- at the end of 1st, 2nd,3rd, 4th & 5th year aggregating to Rs. 2,00,00,000/-.

E. PROPOSAL FOR FUNDING

1. Aggregate amount of funds to be infused by the Resolution Applicant to meet the expenditure planned as per Resolution Plan or for reduction of Outstanding Debt

As part of this Plan, the Resolution Applicant shall infuse / bring in an investment amount of Rs. 25.39 Crores into the Corporate Debtor. The snapshot of the fund infusion is as follows:

(Rs. in Crores)

S.No	Particulars	Investment Amount
1	As Equity	5.50
2	As Preferential Shares to be allotted to Exiting Shareholder of CD against their existing shares	2.00
3	As unsecured loans from shareholders/promoters	17.89
	Total Sources of Fund	25.39

2. Nature/type of instrument for infusion of the Successful Resolution Applicant's Investment into the Company and key terms thereof

2.1 **Equity Infusion by Resolution Applicant:** The Resolution Applicant alongwith its related entities

propose to invest an aggregate amount of Rs. 5.50 Crores into the Company by way of issued, subscribed & paid-up equity share capital of the Company.

2.2 Redeemable preferential shares will issued to the erstwhile promoters in lieu of their existing share capital at 1% which is redeemable at the rate of 20% of the amount i.e. Rs. 40,00,000/- at the end of 1st, 2nd,3rd, 4th & 5th year aggregating to Rs. 2,00,00,000/-.

2.3 Terms of Equity Infusion:

2.3.1 The Resolution Applicant shall infuse in equity as per the time schedule in table shown at para 3.0 Part A

2.3.2 The said issuance of shares at face value shall be deemed to be considered a fair market value for all purposes including Companies Act, 2013, Income Tax Act, 1961 or any other law.

2.3.3 No dividend payout is proposed during the term of this Resolution Plan implementation.

2.4 Scheme of Change in Capital Structure:

2.4.1 List of existing shareholders of CD as on CIRP Commencement Date are as follows with shareholding more than 1% are:

Name of Shareholder	No. of Equity Shares	%age of Shareholding	No. of preference shares to be allotted
Rosario Luka D'Souza	1,82,400	91.20	1,82,400
Maria Rosario D'Souza	00	5.60	11,200
Valerian Luka D'Souza	3,200	1.60	3,200
Rakesh D'Souza	3,200	1.60	3,200
TOTAL	2,00,000	100%	2,00,000

2.4.2 RA proposes to extinguish/ cancel all the paid-up equity capital of the Company subsisting as on CIRP Commencement date, and in lieu thereof they shall be allotted 1% preference shares of Rs. 100/- each totally aggregating to Rs. 2.0 Crores which is redeemable at the rate of 20% of the amount i.e. Rs. 40,00,000/- at the end of 1st, 2nd,3rd, 4th & 5th year aggregating to Rs. 2,00,00,000/-.

2.4.3 In accordance with the General Circular No. IBC /01/2017 bearing number 30/14/2017 issued by the Ministry of Corporate Affairs, Government of India, approval of the shareholders/members of the corporate debtor/company, which would have been required under Companies Act, 2013 or any other law if the resolution plan was being considered outside the scope of the Code, shall not be required for cancellation and issuance of shares and any other action

under the Resolution Plan for its implementation.

2.4.4 The approval of this Resolution Plan by the NCLT shall be deemed to have waived off all the procedural requirements in terms of Section 66 of the Companies Act, 2013 and the NCLT (Procedure of Reduction in Share Capital) Rules, 2016

2.4.5 The share certificates held by shareholders shall stand cancelled without any further act or deed. The Capital Reduction shall not require the consent of any of the Creditors of the Company or approval of any of the shareholders of the Company, or any other person having security interest over such shares and the approval of Adjudicating Authority for the reduction of share capital shall be binding on the Company and all its stakeholders (including Creditors & pledge holders of any such shares and shareholders).

2.4.6 On approval of the Resolution Plan, the equity shares already allotted to the shareholders shall stand extinguished/cancelled without any further deed.

2.4.7 The RA shall allot the preference shares to the shareholder mentioned in clause 2.4.1 within 30 days of the approval of resolution plan.

2.4.8 The preference share shall be non-cumulative and shall be entitled dividend @

1% in priority to the equity shareholders of the Company and the same shall be redeemed at the end of 1st/2nd/3rd/4th/5th years in equal instalments of 20% of the amount. The preference shares shall not have any other preference.

2.4.9 Accounting Treatment: The amount of reduction in the equity share capital of the Corporate Debtor shall be credited to the capital reserve/ general reserve of the Company and the amount of increase in preference share capital shall be debited to the capital reserve/general reserve A/c of the Company.

2.5 **Infusion of funds as Debt**: Resolution Applicant shall infuse debt funds as per the time schedule in table shown at para 3.0 Part A. Such Debt funds shall be unsecured and interest free during the term of the plan.

2.6 The Resolution Applicant retains the right to find alternate source(s) of funding the Resolution Plan. In this regard, the Resolution Applicant may induct other financial sponsors/ Section 29A of I.B. Code compliant strategic partners. Resolution Applicant along with other financial sponsors/ strategic partners, collectively or individually may infuse additional funds in the Company by subscribing to equity and/or quasi equity instruments and/or Inter-Corporate Deposits (ICDs) issued by the Company.

2.7 The Resolution Applicant also assures to arrange funds as Unsecured Loans as may be required from friends/ relatives/ acquaintances, or meet the commitments in this Resolution Plan from the internal accruals of the operations of the Company

9. **Terms Of The Resolution Plan And Its Implementation Schedule**

- i. **Term of the Plan:** The Term of Resolution Plan shall be T + 60 days, wherein T is the Effective Date.
- ii. The Resolution Plan shall be considered to have been implemented on the payments as set out in this Resolution Plan. In case such payments are completed before T + 60 days, the Term of this Plan shall deem to be reduced, and charge release timelines mentioned in Para 5.0 below shall get preponed accordingly.
- iii. **Implementation Schedule:** Activity Timeline along with Responsibility Matrix

S. No	Activity	Indicative Timeline	Responsibility
A. Approval Process of Resolution Plan			
1	Approval of Plan by CoC and issuance of letter of intent	X	CoC / Resolution Professional
2	Acceptance & Submission of Performance Security	X + 7 Days	Resolution Applicant

S. No	Activity	Indicative Timeline	Responsibility
3	Approval of Resolution Plan by Adjudicating Authority and receipt of order	T	Resolution Professional
B. Implementation of Plan (After Effective Date)			
1	Continuation of the RP as MSP	T	Resolution Professional/ Monitoring & Supervising Professional (MSP)
2	Opening of Designated Bank Account	Within T + 15 Days	
3	Depositing the Performance Security Demand Draft into the Designated Bank Account	Immediately on completion of above step	
4	Signing of Definitive Agreements	Within T + 21 days	
5	Intimation to the Registrar of Companies, Tax authorities and various other statutory authorities (as applicable)	Within T + 30 Days	
C. Implementation of Plan (Before & On Transfer Date)			
1	Part Upfront Investment Amount for priority payments (CIRP costs & OCs) shall be transferred to the Designated Bank Account by Resolution Applicant	Within T + 30 days	Resolution Applicant
2	Payment of CIRP Costs from Designated Bank account in priority, in the manner detailed in Para 1.0 Part B	Within T + 30 days	Monitoring & Supervising Professional (MSP)
3	Payment of Operational Creditors from Designated Bank account in priority	Starting T + 30 Days	Monitoring & Supervising Professional (MSP)
4	Transfer of Part Upfront Investment Amount as per payment schedule to the Designated Bank Account by the Resolution Applicant.	Immediately after above Step (before T + 30 days)	Resolution Applicant
5	Part Upfront Payment to Financial Creditors from Designated Bank account	On Transfer Date (On T + 30 days)	Monitoring & Supervising Professional (MSP)

S. No	Activity	Indicative Timeline	Responsibility
D. Implementation of Plan (Immediately after Transfer Date)			
1	Constitution of new Board of Directors	Immediately after Transfer Date	Resolution Applicant
2	Handover of physical possession of Corporate Debtor alongwith all documents and records, in digital or physical form, by the RP/MSP to the RA	Immediately after Transfer Date	Resolution Professional/ Monitoring & Supervising Professional, and Resolution Applicant
3	Change of Signatory in Designated Bank Account from MSP to person(s) nominated by Resolution Applicant	Immediately after Transfer Date	Monitoring & Supervising Professional/ Resolution Applicant
4	Passing of necessary entries in the books of accounts of the Company pertaining to the Scheme of Change in Capital Structure	Within Transfer Date + 5 Days	Resolution Applicant
E. Implementation of plan (till Final Implementation Date)			
1	Infusion of Investment Amount by Resolution Applicant/ its Financial Sponsors as per payment schedule in the form of debt/ equity & Disbursement of deferred payment tranches to Financial Creditors	Within T + 30 days	Resolution Applicant
2	No dues statement & intimation of CIBIL, CERSAI & other authorities and making the account standard of the company.	Immediately after above step	Financial Creditors
3	Interim Working Capital	Within T + 60 days	Resolution Applicant

iv. Miscellaneous Implementation Considerations

- a) While approving this Resolution Plan, the Committee of Creditors (CoC) may approve the allocation of the amount payable to various creditors out of aggregate

- settlement amount(s) payable as per this Resolution Plan. Later, during Resolution Plan implementation, it shall be the responsibility of the Monitoring Committee (MC) to distribute the amounts to various creditors in accordance with the allocation decided by CoC.
- b) For the purpose of depositing the debt and equity investments made by the Resolution Applicant and its Consortium Member, the Resolution Professional (RP) or Monitoring & Supervising Professional (MSP) shall open a separate Bank account of the Company (Designated Bank Account), from which bank account the payments will be made in accordance with the terms set out in this Resolution Plan.
- c) **Stamp duty & ROC fee:** Any fee required to be paid to ROC including for the increase in the authorized share capital (if any), and the Stamp Duty on issue of shares, shall be funded from the cash flows of the Company, and if cash is not available with the Company, then such expenses shall be funded by the Resolution Applicant.
- d) **Corporate Actions:** The Company shall take appropriate corporate actions necessary for implementation of the all the provisions of the Resolution Plan, which includes:
- Filing of appropriate documents or forms with amongst others, the Registrar of Companies and Ministry of Corporate Affairs;
 - Issuance of shares and instruments as provided in the Resolution Plan; and Other compliance as per the governing law.

- e) **Operations of the Company by the MC as a going concern:** The MC will on a best effort basis take all such actions and execute all such documents/ agreements as may be required to maintain the Company as a going concern until the Resolution Applicant acquires control over the Company on and from the Transfer Date in the manner set out in this Resolution Plan.
- f) **Applications for approvals:** The MC shall authorize signing of all applications on behalf of the Company that are proposed to be made to any Governmental Authorities to obtain the necessary approvals for implementation of this Resolution Plan within the timelines set out thereof.
- g) **Accounting Treatment:**
- Upon approval of the Plan by the Hon'ble Adjudicating Authority, the Resolution Applicant be permitted to draw up the financial statements of the Company for a period ending on the Transfer Date (or any date closest to that date as may be practicable) in compliance with applicable accounting standards such that it truly reflects the claims verified and the realisable, fair value of the assets as may be determined by the board of directors of the Resolution Applicant.
 - For the above purpose, the Resolution Applicant be permitted to carry out necessary write off of assets, creation of additional liability or expenses or write back of liability or provision (as the case may be) in the books of accounts of the Company.

- It is proposed to transfer reduction/ cancellation of share capital & write-off of liabilities to Financial creditors in the Resolution Plan, duly adjusted for various non-currents assets written-off or reduced in value to a Capital Reserve. This will help in strengthening the Balance Sheet of the Corporate Debtor and enable it to raise resources for further growth.
- Pursuant to the order of the Hon'ble Adjudicating Authority approving this Plan, any debit or credit, being the balancing figure, shall be adjusted by the Company in the capital reserve at its sole discretion and the same shall be deemed to be in compliance with the applicable accounting standards.

v. Schedule Of Release Of Charge By Secured Creditors

- a) On payment to the Secured Financial Creditor, as aforesaid, all claims, debts and dues of the Secured Financial Creditor pertaining or related to the period prior to the approval of the Resolution Plan by the COC as against the CD's assets mortgaged with the SFCs shall stand extinguished or may be vested in any entity nominated by the Resolution Applicants. Further, Personal Guarantee may continue with the existing lenders.
- b) The Secured Financial Creditor shall irrevocably, unconditionally and absolutely, on without recourse basis, extinguish, release or assign the security interest on all the underlying collateral securities, in favour of the Resolution Applicants and/or other corporate entity as may be nominated by the Resolution Applicants.

It is hereby clarified that any amount appearing in the borrowings over and above the amounts for which the treatment given shall stand extinguished and shall be written back in the books of accounts and such write back share go to capital reserve/ general reserve.

vi. Mechanism regarding management and control of the affairs of the Company

- a) In the interim period between CoC approval date and Effective date, the Resolution Professional shall manage the Company and exercise all the powers of the management with respect to the Company. The Directors of the Company will remain suspended and voting rights of the existing shareholders shall stand suspended and shall not be exercised. If there is any matter that requires shareholders resolution, it shall be done as per directions of the Hon'ble Adjudicating Authority.
- b) With effect from the Effective Date, the Resolution Professional shall be released of his duties and responsibilities, and the CoC shall be dissolved.
- c) In the period between Effective date and Transfer date, Monitoring Committee (MC – as explained in subsequent paras) shall exercise all the powers of the management with respect to the Company.
- d) On the Transfer Date, the control of Corporate Debtor would be transferred to the Resolution Applicant. Resolution Applicant shall appoint a Board of Directors of the Corporate Debtor to spearhead its business plan.
- e) The Resolution Applicant shall have sole right to appoint KMPs and managerial personnel to run the operations of the Corporate Debtor during the term of the Resolution Plan.

vii. Manner of supervision the implementation

- a) As effective from the “Effective Date,” Powers vested in Resolution Professional in relation to Corporate Debtor shall cease, therefore, effective from the “Effective Date,” Resolution Professional (RP) is proposed to be suo-moto appointed as “Monitoring & Supervising Professional (MSP)”, subject to prior acceptance by him for such appointment.
- b) Effective from the “Effective Date,” and until the Final Settlement Date (i.e., during the Term of the Plan), a monitoring committee (MC) shall be constituted with the following 3 members:
 - Resolution Professional as Coordinator,
 - One representative nominated jointly by Financial Creditors; and
 - One professional nominated by Resolution Applicant
- c) The MC would supervise the implementation of the resolution plan and would continue to do so even after above formation of a Board until the final payment to secured financial creditors is done as per this Resolution Plan. Fee of MSP shall be borne by Resolution Applicant as per mutually agreed terms.
- d) The frequency of meetings of MC shall ordinarily be at the end of every quarter, to review the implementation progress made during the period.
- e) Resolution Professional shall Chair the meeting of MC.
- f) In case MC is of the view that certain assets are non-core or are not providing adequate return, it reserves the right to authorize disposal of such asset to third

parties, with the proceeds accounted for as part realization by FCs against this resolution plan.

- g) MSP shall issue a certificate that the Resolution Plan has been duly implemented and the mandatory payments contemplated in this Resolution Plan have been duly completed. If a person has not collected its payment (despite the Company having notified such person, and accordingly created a special reserve for payment of such amount), it shall be deemed to be a discharge of Company's payment obligations.
- h) Issuance of a certificate by the MSP shall be a discharge of the Resolution Applicant from their obligations under this Resolution Plan.
- i) Any modification in the terms of this Resolution Plan post approval of the Hon'ble Adjudicating Authority shall be implemented with the mutual consent of the Financial Creditors of the Company at that stage and the Resolution Applicant. It shall not be construed to be a violation or an event of default as per the provisions of the Code.

10. Statement Reg. Meeting/ Protecting Interest Of All Stakeholders (Vide Regulation 38(1A) of CIRP Regulations)

Following table shows the mode in which this regulation plan has addressed the interests of various stakeholders:

S.No.	Stakeholder	Interests as addressed in the Resolution Plan
1	Financial Creditors	Covered in Para 2.0 Part B
2	Operational Creditors	Covered in Para 3.0 Part B
3	Workmen & Employees	Covered in Para 4.0 Part B

4	Shareholders	Covered in Para 5.0 Part B
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Thus, Resolution Plan has addressed the interests of all stakeholders in a fair and balanced manner.

Furthermore, no creditor or any other stakeholder of the Company shall be entitled to receive any settlement more than the proportionate settlement payable to a similarly placed class of creditors or stakeholders.

11. The Applicant states and submits that the Resolution Plan along with the addendums are compliant with Section 30(2) and Regulations framed under the IBC. Compliance Certificate in Form H required under Regulation 39(4) of the CIRP Regulation is submitted by the Resolution Professional.
12. The Resolution Applicant is eligible to submit resolution plan. The successful Resolution Applicant has given an Affidavit satisfying the eligibility criteria as per the provisions under section 29A of the Insolvency & Bankruptcy Code, 2016.
13. **Observations and Findings:**
 - 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 Resolution plan provides for payment to the Operational Creditors an amount which shall not be less than the amount to be paid to the Operational Creditors in the event of liquidation of Corporate Debtor under Section 53.
 - 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 liquidation value to unsecured financial creditors who dissent from the plan.

- iv. The Resolution Plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(d).
- v. The Resolution Plan provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2)(e) & Regulation 38(2)(c).
- vi. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- 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 amount payable under a resolution plan to the Financial Creditors, who have right to vote under sub-section (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
 - f. 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.
 - g. 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.
 - h. Provides for the management and control of the business of the Corporate Debtor during its term.
 - i. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
 - j. 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.

k. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).

14. The Resolution Plan has been approved in the 13th COC meeting held on 22.04.2022 with 100% 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***, 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 ruling of the Apex Court, 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 provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.
19. In view of the discussions and the law thus settled, 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. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- a) The Interlocutory Application No. 1736 of 2022 is allowed. The Resolution Plan submitted by **Lalita S Powle in consortium with Suyog Agro & Poultry Products 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 approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of which are extracted herein below:

“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 to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority

grants its approval under Section 31 could be continued.”

- c) We shall clarify here that any amount recovered under any avoidance applications relating to the Corporate Debtor being allowed by the Adjudicating Authority would enure unto the benefit of the Resolution Applicant.
- d) 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.
- e) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- f) The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- g) 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.
- h) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- i) The Interlocutory Application No. 1736 of 2022 is accordingly **allowed and disposed of.**

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

Kuldip Kumar Kareer
Member (Judicial)