

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

**CP (IB) NO. 2541 OF 2019**

In the matter of:

M/s Tata Hitachi Construction Machinery  
Company Private Limited

... Operational Creditor

Versus

M/s Universal Industrial Equipment and  
Technical Services Private Limited

...Corporate Debtor

AND

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

**I.A NO. 773 OF 2021**

**IN**

**CP (IB) NO. 2541 OF 2019**

Ms. Megha Agrawal

...Applicant/ Resolution Professional

**I.A NO. 1430 OF 2021**

**IN**

**CP (IB) NO. 2541 OF 2019**

Luvkush Corporation Pvt. Ltd.

..... Unsuccessful Resolution Applicant

Vs.

Mrs. Megha Agrawal  
(Resolution Professional)

.....Respondent No. 1

And

Committee of Creditors (CoC) of Universal  
Industrial Equipment and Technical  
Services Private Limited

... Respondent No. 2

**I.A NO. 1599 OF 2021**  
**IN**  
**CP (IB) NO. 2541 OF 2019**

Tata Hitachi Construction Machinery  
Company Private Limited.

...Applicant / Operational Creditor/ Objector

Versus

Ms. Megha Agarwal and 2 Ors.

...Respondent No.1 / Resolution Professional

Order Pronounced on: 07.10.2021

**Coram:**

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

For the Resolution Professional: Mr. Harsh Kesharia, Advocate a/w Ms. Megha  
Agrawal, Resolution Professional

For the Successful Resolution Applicant: Mr. Sandeep Goenka, Partner of M/s. Saral  
Industries

For Unsuccessful Resolution Applicant: Adv Rohit Gupta I/b Apex Law Partners

For the Objector: Mr. K. S. Ravichandran, CS I/b KSR & Co.

For SBI: Mr. Zarir Bharucha a/w. Mr. Rishi Thakur, a/w/ Umang Thakar, Advocates i/b  
ZBA

*Per:* Suchitra Kanuparthi, Member (Judicial)

## ORDER

- 1 I.A No. 773 of 2021 in CP (IB) No. 2541 of 2019 is filed by the RP under section 30 of IBC hereinafter refer to as Code seeking approval of the Resolution Plan of M/s Saral Industries (“Resolution Applicant/ RA”) in respect to the Corporate Debtor which is approved by the CoC with 90.57 % voting in its 13<sup>th</sup> meeting on 06.03.2021.
- 2 The CIRP against the Corporate Debtor was initiated vide an order dated 18.12.2019 on the application filed by Tata Hitachi Construction Machinery Company Private Limited under section 9 of IBC. The IRP appointed and issued public announcement on 25.12.2019.
- 3 The detail of CIRP are as follows;

<b>Sr. No.</b>	<b>Particulars</b>	<b>Description</b>
1.	Date of Initiation of CIRP	18-12-2019 (Order received on 23-12-2019)
2.	Date of Expiry of 180 days	Original 180 days expired on <b>22-06-2020</b>
		180 days excluded upto 27-10- 2020 135 days excluded vide Order dated 03-11-2020 in IA No. 1789 of 2020 (Ex-J; Order at Pg. 500 & 501 of Application; Vol-3)
3.	Date of Order extending period of CIRP by 90 days	90 days extended vide Order dated 07-01-2021 in IA No. 2095 of 2020 (Ex-K; Order at Pg. 502 of Application; Vol-3)
4.	Date of Expiry of 270 days	25-01-2021
5.	Date of approval of Resolution Plan by CoC	22-03-2021
6.	Date of Order extending period of CIRP by 90 days	This Hon’ble Tribunal vide Order dated 30-04-2021 in IA No. 266 of 2021 extended the period of CIRP from 26-01-2021 upto 26-03-2021. (Order dated 30-04-2021

		annexed to Written Submissions)
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4. The constitution of COC as on 13.01.2021 is as follows;’

Name of Member	% share in CoC	Nature of Claim
State Bank of India	89.63%	Secured
Tata Capital Finance Service Limited	9.54%	Unsecured
HDB Financial Service Limited	0.59%	Secured
Geeta Demble	0.24%	Unsecured

5. The COC was reconstituted on 22.06.2020 as follows;

Name of Member	% share in CoC	Nature of Claim
State Bank of India	86.91%	Secured
Tata Capital Finance Service Limited	9.21%	Unsecured
SREI Equipment Finance Service Limited	2.92%	Secured
HDB Financial Service Limited	0.57%	Secured
Geeta Demble	0.22%	Unsecured

Sheetal Water Development Corporation	0.17%	Unsecured
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6. The applicant was approved and confirmed the Resolution professional on 12.02.2020. In the second meeting of CoC the applicants / RP appointed Registered valuer i.e. Mr. Abhishek Joshi Mr. Girish B. Pawar and Mr. RV Kalyani Rajesh Phadke (**Valuer - II**) and who have given the fair market value and liquidation value as under

Particulars of assets	Valuer - I		Valuer - II		Average of the two closest (I & II)	
	Fair Value	Liquidation Value	Fair Value	Liquidation Value	Fair Value	Liquidation Value
LAND & BUILDING						
Freehold Land Raipur (Sondongri)	44340000	35472000	40600000	30450000	42470000	32961000
Lease Land Plot C-78 , MIDC, Nagpur	7552500	6042000	8056000	5639000	7804250	5840500
Lease land, C-72, MIDC Nagpur & Structures	7500000	6000000	8000000	5600000	7750000	5800000
	4741755	2845053	4800000	3360000	4770877.5	3102526.5
Lease land at plot B-33, MIDC, Nagpur & Structures	62387500	49910000	103000000	72100000	82693750	6100500
	7775644	4665386	6000000	4200000	6887822	4432693
Flat at Mauza (3 Flat Rai Udyog)		2758038	3340000	2338000	3968373.5	2548019
<b>TOTAL (A)</b>	<b>138894146</b>	<b>107692487</b>	<b>173796000</b>	<b>123687000</b>	<b>156345073</b>	<b>115689743</b>
<b>PLANT &amp; MACHINERY (B)</b>	<b>609464</b>	<b>609464</b>	<b>690000</b>	<b>690000</b>	<b>649732</b>	<b>649732</b>
SECURITY & FINANCIAL ASSETS						
Non Current Investments	-	-	5000	5000	2500	2500
Long Term Loans & Advances	43633	43633	272787	204590	158210	124111.5
Trade Receivables	25435818	19076864	20426057	15319543	22930937.5	17198203.5

Cash & Cash Equivalents	207150	207150	207150	207150	207150	207150
Short Term Loans & Advances	330156	264125	2740244	2055183	1535200	1159654
<b>TOTAL (C)</b>	<b>26016757</b>	<b>19591772</b>	<b>23651238</b>	<b>17791466</b>	<b>24833997</b>	<b>18691619</b>
<b>Total (A+B+C)</b>	<b>164027809</b>	<b>128068809</b>	<b>198137238</b>	<b>142168466</b>	<b>181082523</b>	<b>135118637</b>

7. The valuation report was shared by the Resolution Professional in the 6<sup>th</sup> CoC meeting which is held on 23.06.2020.
8. The Applicant also appointed a transaction based Auditor M/s. Amit Ray & Co., Chartered Accountant to conduct transaction audit in the 3<sup>rd</sup> CoC meeting which is held on 27.02.2020. The auditor report filed its report on 14.08.2020 and observed that there are no transaction falling under section 43, 45, 50 and 66 of the Code.
9. The applicant published Form G on 04.03.2020 and the COC meeting held on 20.03.2020, approved the evaluation matrix, bid bond guarantee of 1 crores, 20 % of performance guarantee. The RA received three EOI from prospective from resolution applicant namely;
  - a. Mr. Narendra Sabnani, the director of the suspended board of the Corporate Debtor
  - b. Mr. Satyanarayan Agrawal
  - c. Luvkush Corporation Private Limited.
10. However, it was noticed that Mr. Narendra Sabnani did not submit the bid guarantee of Rs. 1 crore and therefore their plan was rejected.
11. Mr. Satyanarayan Agrawal after going through the information memorandum and conducting due diligence, decided not to submit a resolution plan and requested vide email dated 29.06.2020 to refund the amount of EMD submitted by him,
12. The representative of M/s. Luvkush Corporation attended the 7<sup>th</sup> CoC

- meeting on 14.09.2020 and increase a bid amount to 8,25,86,100/- which is inclusive of working capital of Rs. 2 crores and post negotiations in the CoC meeting. Finally, the M/s. Luvkush Corporation increased a bid amount of Rs. 850,86,100/-.
13. The applicant issued second Form G on 10.11.2020 as the CoC in its 9<sup>th</sup> meeting held on 06.11.2020 resolved to issue a fresh Form G the applicant received 4 Resolution plans namely;
- i. Saral Industries
  - ii. Manisha Sales (Vithoba)
  - iii. Luvkush Corporation
  - iv. Narendra Sabnani (Director of suspended board of CD)
14. The Resolution plan submitted by Narendra Sabnani was not compliant and therefore his plan was not considered. M/s. Luvkush Corporation has submitted a bid amount of Rs. 8,200,86,100/- in its 11<sup>th</sup> meeting of CoC which is held on 04.02.2021. The bid was revised by 2 crores and final amount was Rs. 10,00,86,100/- .
15. M/s Saral Industries submit a bid of Rs. 920,05,000 and increase a bid to Rs. 11.50 crores. Manisha Sales (Vithoba ) submitted a bid amount of Rs. 4.80 crores and eventually the plan was withdrawn and the same was recorded in the CoC in its 13<sup>th</sup> meeting which is held on 06.03.2021.
16. In the 12<sup>th</sup> CoC meeting M/s. Luvkush Corporation did not revise the bid amount and however submit a plan of 10,56,86,100/- M/s Saral Industries revised its bid amount to Rs.13.50 crores and agreed to completion date of 9 months from the date of approval.
17. The CoC in its 13<sup>th</sup> CoC meeting discussed the plans and approved the plan of M/s Saral Industries by 90.57 % voting. The CoC in its 14<sup>th</sup> meeting which is held on 22.03.2021 and recorded the voting results and captured the results for approval/ disapproval of resolution plan

## **Contours of Resolution plan**

18. The Resolution plan provides for.
  - a. The term of the plan and its implementation schedule; the total term is 9 months.
  - b. The entire management and control of all the business and assets of the Corporate Debtor during its term shall lie with the Resolution applicant and thereafter.
  - c. Supervision of the implementation of the Resolution plan shall be entrusted to the Resolution Professional at a fee of Rs.50,000/- per month till implementation of Resolution Plan.
19. The resolution plan does not contravene any of the provisions of the law for the time being in force and confirms to the requirements as specified by the IBBI.
20. In the Resolution plan, the interest of all the stakeholders including financial creditor, dissenting financial creditor, and operational creditors has been taken care of.
21. The Resolution applicant and its related parties have not failed to implement or contribute to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past as per Regulation 38 of the CIRP Regulations
22. Strategy for the proposed Plan:

The resolution applicant proposes that he is interested in obtaining the dealership of earth movers from the companies such as Caterpillar, TATA Hitachi, and L&T. The Resolution Applicant is confident that the experience and network in mining and mineral business, will provide an edge to obtain dealership in earth moving machinery.

On approval of the plan the Resolution Applicant shall make an entry into the automotive sector. As first step, the Resolution Applicant shall make necessary investment for maintaining the stock to obtain the dealership of earth mover as mentioned.

Apart from the strategy proposed above, the Resolution applicant shall have the right to take any other measure as may be necessary to obtain maximum value of the assets of

the Corporate Debtor, which may include and shall not be limited to:

- transfer of all or part of the assets of the corporate debtor to one or more persons
- sale of all or part of the assets whether subject to any security interest or not;
- restructuring of the corporate debtor, by way of merger, amalgamation, demerger, acquisition of shares, consolidation

23. Performance Bank Guarantee (PBG)

As per clause 1.9.1 of the Request for Resolution Plan, the Resolution Applicant, if successful, undertakes to provide a performance bank guarantee of an amount of 20% of the bid value within 7 days from the date of approval of the Resolution plan by Committee of Creditors. The Resolution Applicant herein undertakes to provide a Performance bank guarantee of Rs.3,10,00,000 (Rupees Three Crore Ten Lakhs) under the resolution plan, i.e. 20% of the bid value of the plan.

24. Payments of Full and Final Settlement of All Claims as envisaged in the Resolution Plan is tabled below;

Sr. No.	Particulars	Time period in days from approval of Resolution Plan by Adjudicating Authority	Amount
1.	Payment towards CIRP cost	Within 45 days from	At actual (Estimated at 50,00,000/-)
2.	Payment to Operational Creditors		
	40 % of the total amount of Operational Creditors	Within 4 months	6,90,000/-
	60 % of the total amount of	Within 9 months	10,35,000/-

	Operational Creditors		
	Total amount to be paid to Operational Creditors		17,25,000/-
3.	Payment to Unsecured Financial Creditors		
	40 % of the total amount for Unsecured Financial Creditors	Within 4 months	4,00,000/-
	60 % of the total amount for Unsecured Financial Creditors	Within 9 months	6,00,000/-
	Total amount to be paid to Unsecured Financial Creditors		10,00,000/-
4.	Payment to Secured Financial Creditors		
	20 % of the total amount for Secured Financial Creditors	Within 45 months	2,54,55,000/-
	30 % of the total amount for Secured Financial Creditors	Within 4 months	3,81,82,500/-
	50 % of the total amount for Secured Financial Creditors	Within 9 months	6,36,37,500/-
	Total amount to be paid to Secured Financial Creditors		12,72,75,000/-

	Total amount to be paid to all the stakeholders (Including CIRP Cost)	13,50,00,000/-
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The plan provides for working capital infusion of Rs. 2,00,00,000/- as and when required.

## 25. Limit on Liability

Notwithstanding anything contained in this Resolution Plan, in no event the total payments by the Resolution Applicant or the Corporate Debtor to its stakeholders, for claims relating to a period prior to the Completion Date (including claims recognized in this Resolution Plan and claims that may arise in future), shall exceed the Total Consideration set out in Clause 7.1 of the Resolution Plan.

Subject to applicable laws, the amounts to be paid to the all the stakeholder in terms of this plan shall be included in the Total Consideration to be deposited into the Designated Account which shall be operated by the Monitoring Agency, on or before the Completion Date. The amount payable under this plan shall be then paid from this account to all the stakeholders to accordance with their proposed share under this plan.

## 26. Sources of funds

It is proposed that the entire funds required towards the CIRP shall be raised from the existing business of the Resolution applicant i.e. M/s. Saral Industries and the private funds of its partners.

The resolution applicant along with its partners Le:, Cash & Cash Equivalent in terms of audited Financial statement as on 31<sup>st</sup> March 2020 as follows.

S. No	Source of Fund	Amount
1	Liquid Assets/ Cash & Cash Equivalent of Saral Industries	7,59,12,798.08/-
2	Liquid Assets/ Cash & Cash Equivalent of Mr. Sandeep Goenka	5,00,11,437.00/-
3	Liquid Assets/ Cash & Cash Equivalent of Mr. Mithilesh Goenka	4,50,00,710.00/-
	TOTAL	17,09,24,945.08/-

27. The Resolution Applicant in compliance has placed Form H which is as follows;

**FORM H  
 COMPLIANCE CERTIFICATE**

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

I, Megha Agrawal, an Insolvency Professional enrolled with IIPICAI Insolvency Professionals Agency, and registered with the Board with registration number IBB/IPA/001/IP-01456/2018-19/12272, am the Resolution Professional for the Corporate Insolvency Resolution Process (CIRP) of Universal Industrial Equipment & Technical Services Pvt. Ltd.

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	Universal Industrial Equipment & Technical Services Pvt. Ltd.
2	Date of Initiation of CIRP	18.12.2019 (Order Received on 23.12.2019)
3	Date of Appointment of IRP	18.12.2019 (Order Received on 23.12.2019)
4	Date of Publication of Public Announcement	25.12.2019
5	Date of Constitution of CoC	Constituted on 13.01.2019 and modified on 22.06.2020
6	Date of First Meeting of CoC	21.01.2020
7	Date of Appointment of RP	01.02.2020
8	Date of Appointment of Registered Valuers	08.02.2020
9	Date of Issue of Invitation for EoI	04.03.2020 (Original) 10.11.2020 (Fresh)
10	Date of Final List of Eligible Prospective Resolution Applicants	14.12.2020
11	Date of Invitation of Resolution Plan	05.12.2020
12	Last Date of Submission of Resolution Plan	05.01.2021
13	Date of Approval of Resolution Plan by CoC	20.03.2021 (E-voting Result)
14	Date of Filing of Resolution Plan with Adjudicating Authority	26.03.2021
15	Date of Expiry of 180 days of CIRP	27.10.2020 (After Exclusion of 135 days)  Order for exclusion was received on 03.11.2020

		(Exclusion of COVID period and late receipt of the Order by RP)
16	Date of Order extending the period of CIRP	07.01.2021 (Extension of 90 days)  <i>* IA for extension of 60 days was filed on 28.01.2021, the matter is not yet listed.</i>
17	Date of Expiry of Extended Period of CIRP	25.01.2021 (As per order dated 07.01.2021 for Extension of 90 days)  26.03.2021 *  <i>* IA for extension of 60 days was filed on 28.01.2021, the matter is not yet listed. RP has deemed the Expiry of Extended Period of CIRP as 26.03.2021 on the basis of this IA.</i>
18	Fair Value	181,082,523.5
19	Liquidation value	135,118,637.5
20	Number of Meetings of CoC held	14

3. I have examined the Resolution Plan received from M/s. Saral Industries, Resolution Applicant and approved by Committee of Creditors (CoC) of M/s. Universal Industrial Equipment & Technical Services Pvt. Ltd.

4. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) M/s. Saral Industries, the Resolution Applicant has submitted an affidavit pursuant to section 30(1) of the Code confirming their eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 90.57% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) ~~The voting was held in the meeting of the CoC on [state the date of meeting] where all the members of the CoC were present.~~

or

I sought vote of members of the CoC by electronic voting system which was kept open from 09<sup>th</sup> March, 2021, 12:00 Noon till 20<sup>th</sup> March, 2021, 05:00 PM as per the regulation 26 of IBBI (CIRP) Regulations.

5. The list of financial creditors of the Universal Industrial Equipment & Technical Services Pvt. Ltd. being members of the CoC and distribution of voting share among them is as under:

Sl.	Name of Creditor	Voting Share	Voting for Resolution Plan
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No.		(%)	(Voted for / Dissented / Abstained)
1	State Bank of India	86.91%	Voted For
2	Tata Capital Finance Service Ltd	9.21%	Dissented
3	SREI Equipment Finance Ltd.	2.92%	Voted For
4	HDB Financial Service Ltd.	0.57%	Voted For
5	Geeta Demble	0.22%	Abstained
6	M/s Sheetal Water Development Corporation	0.17%	Voted For

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

7. The amounts provided for the stakeholders under the Resolution Plan is as under:  
 (Amount in Rs)

S. No	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	66,00,17,579	65,75,67,416	12,72,75,000	19.28%
		Total[(a) + (b)]	66,00,17,579	65,75,67,416	12,72,75,000	19.28%
2	Unsecured Financial	(a) Creditors not having a right to vote	-	-	-	-

	Creditors	under sub-section (2) of section 21				
		(b) Other than (a) above:				
		(i) who did not vote in favour of the Resolution Plan	6,92,65,813.55	6,87,03,530.07	9,82,720.67	1.42%
		(ii) who voted in favour of the resolution plan	1,208,025	1,208,025	17,279.33	1.43%
		Total[(a) + (b)]	7,04,73,838.55	6,99,11,555.07	10,00,000	1.42%
3	Operational Creditors	(a) Related Party of Corporate Debtor	45,152.07	45,152.07	225.8175052	0.50%
		(b) Other than (a) above:				
		(i) Government				
		(ii) Workmen				
		(iii) Employees				
		(iv) Other	37,27,35,216.28	34,48,67,527.28	17,24,774.18	0.46%
		Total[(a) + (b)]	37,27,80,368.35	34,49,12,679.35	17,25,000	0.46%
4	Other debts and dues		58,33,439.960	58,33,439.960	0	0
Grand Total			110,91,05,225.77	107,82,25,090.87	13,00,00,000.0	21.16%

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	66821	0	100%	0%
2	Preference	-	-	-	-

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of	Clause 5	Yes

	business of the CD?		
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Clause 1.3	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Clause 1.3	Yes
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Clause 7.2	Yes
	(b) provides for the payment to the operational creditors?	Clause 7.3	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause 7.4	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Clause 11	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Clause 12.1	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	Clause 1.3 (5)	No
Section 30(4)	Whether the Resolution Plan		
	(a) is feasible and viable, according to the CoC?	Clause 7.8	Yes
	(b) has been approved by the CoC with 66% voting share?	Approved by 90.57%	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 12.1	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	NA	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?	Sub Clause (4) of Clause 7.3	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 1.3 (6)	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?	Clause 1.3 (7)	No
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation	Clause 11.2	Yes

	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 2.5 Clause 7.8 Clause 12.1 Clause 12.3 (c)  Clause 3.4 & Clause 10	Yes Yes Yes Yes  Yes
39(2) (b)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No	No
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Clause 6	Yes

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

Section of the Code / Regulation No.	Description of Activity -	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	Order received on 23.12.2019 [Order passed on 18.12.2019]
Regulation 6(1)	Publication of Public Announcement	T+3	25.12.2019
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	06.01.2020
Regulation 13(1)	Verification of Claims	T+21	13.01.2020
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	15.01.2020
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	21.01.2020
Regulation 35A	Determination of fraudulent and other transactions	T+115	10.06.2020
Regulation 27	Appointment of two Registered Valuers	T+47	08.02.2020
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54	17.02.2020
Regulation 36A	Invitation of EoI	T+75	04.03.2020
	Publication of Form G	T+75	04.03.2020 10.11.2020
	Provisional List of Resolution Applicants	T+100	01.12.2020
	Final List of Resolution Applicants	T+115	14.12.2020
Regulation 36B	Issue of Request for Resolution Plan,	T+105	05.12.2020



	which includes Evaluation Matrix and Information Memorandum to Resolution Applicants		
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	26.03.2021
Section 31(1)	Approval of Resolution Plan	T=180	

11. The time frame proposed for obtaining relevant approvals is as under: As per clause 12.3 (c) of the resolution plan, if any approvals of any authority is required, it is submitted that such approvals shall be deemed to have been received once the plan is approved and it is further stated that if any disclosure/necessary filing is required to be done, the same shall be done by the Resolution Applicant.

12. The Resolution Plan is not subject to any contingency.

or

~~The Resolution Plan is subject to the following contingencies (Elaborate the contingencies)~~

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same): NA

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	-	-	-	-

14. The Resolution Plan is being filed 0 days before the expiry of the period of CIRP provided in section 12 of the Code.

15. Provide details of section 66 or avoidance application filed / pending: Not Applicable

Sl. No	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	-	-	-
2	Undervalued transactions under section 45	-	-	-
3	Extortionate credit transactions under section 50	-	-	-
4	Fraudulent transactions under section 66	-	-	-

15A. The committee has approved a plan providing for contribution under regulation 39B as under:

- Estimated liquidation cost: Rs. 65,33,828/-
- Estimated liquid assets available: Rs. 5,59,326/-
- Contributions required to be made: Rs. 59,74,502/- i.e. the amount over and above the estimated liquid asset available shall be contributed by the CoC members in proportion of their voting share i.e. in proportion of Contribution of CoC)



d. Contribution by all the financial creditors in proportion of their voting share is as under:

S. No.	Name of financial creditor	Amount to be contributed (Rs.)
1	State Bank of India (86.91%)	51,92,440
2	Tata Capital Finance Service Ltd (9.21%)	5,50,251
3	SREI Equipment Finance Ltd. (2.92%)	1,74,455
4	HDB Financial Service Ltd. (0.57%)	34,055
5	Geeta Dumble (0.22%)	13,144
6	M/s Sheetal Water Development Corporation (0.17%)	10,157
	<b>Total (100%)</b>	<b>59,74,502</b>

15B. The committee has recommended under regulation 39C as under:

- a. Sale of corporate debtor as a going concern: Yes/No\*  
b. Sale of business of corporate debtor as a going concern: Yes/ No\*

The details of recommendation are available with the resolution professional. NA

*\*The CoC members were of the view that the provisions of Regulation 39B 39C and 39D is only suggestive and not mandatory, and the Resolution Plan is approved by the CoC Members so this was not decided upon.*

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D

16. I, Megha Agrawal, hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed there from.

  


Megha Agrawal  
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28. The Resolution plan has sought to be approved under section 30(1) of the Code is as follows;

*“30. Submission of resolution plan. –*

*(1) A resolution applicant may submit a resolution plan 2[along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.”*

29. The conditions provided for in the section 30(1) of the Code for approval of Resolution plan are therefore;

- a. The Resolution plan is approved by COC under section 30(4)of the code
- b. The Resolution plan as approved meets the required provisions under section 30(2) of the Code.
- c. The Resolution plan has provisions for its effective implementation.
- d. The Resolution plan is approved by vote of 90.57% of voting share of financial creditors and therefore the conditions provided for by section 30(4) of the Code are satisfied.

30. The provision of section 30(2) are as follows;

*30(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –*

*(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the 3[payment] of other debts of the corporate debtor;*

*[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*

*(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*

*(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,*

*whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less*

*than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.*

*Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*

*Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-*

*(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;*

*(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*

*(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]*

*(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;*

*(d) The implementation and supervision of the resolution plan;*

*(e) does not contravene any of the provisions of the law for the time being in force*

*(f) confirms to such other requirements as may be specified by the Board.*

*[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]*

31. The compliance of section 30(2) in form H is examined as under

- i. Section 30(2) (a) Resolution plan provides for payment of Rs. 13.50 crores. However, the same was revised during the hearing and the Resolution applicant agreed to pay an amount of Rs 14 crores. The Resolution Professional has filed an additional affidavit capturing the revised amounts.
- ii. Section 30(2)(b) the Liquidation value being 13.51,18,637/-. The total amount of monies payable to the Operational Creditor is Rs. 17,25,000/-. As per the Information memorandum, the Corporate Debtor do not have employees on their role and hence, no claims received from workmen or employees.
- iii. Section 30(2)(c) and (d) the Resolution plan provides the complete

detail about the affairs of the Corporate Debtor and the interim monitoring committee comprises of three members i.e. the Resolution Professional as one member, one member nominated by the Financial Creditors and one member nominated by the Resolution Applicant and the same is accepted by M/s Saral Industries.

- iv. Section 30(2)(e) in form H (supra) the Resolution Professional has certified that the Resolution plan comprise the provision of the code and regulation does not contravene any provisions of law for the time being inforce .
32. The Resolution plan contains information regarding background of Resolution Applicant , particular of Resolution plan and sources of funds having cash and cash equivalent in terms of its audited financial statement as on 31.03.2020 is Rs. 17,09,24,945.08/-. The Resolution Professional also certifies that the Resolution Applicant has filed an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code annexed at pg. 560 to 564 of the Application to submit the Resolution plan of the code considering the feasibly and viability as specified under the CIRP regulations. The Resolution Plan provides working capital of Rs. 2,00,00,000/-. The Resolution Applicant has not sought for any Waiver.
33. It is relevant to refer the case of Hon'ble Supreme Court in case of K. Sashidhar vs. Indian Overseas Bank & Ors. wherein it was held that the Hon'ble Supreme Court inter alia held that no corresponding provision has been envisaged by the legislature to empower the Resolution Professional, NCLT or NCLAT to reverse the commercial decision of CoC. It also held that from the legislative history there were contra indications that the commercial or business decisions of the financial creditors are not open to any judicial review by the Adjudicating authority or by appellate authority. In view of the above decision the decision taken by the CoC within the ambit of it commercial and banking wisdom is therefore not being interfere able

with. It is also pertinent to refer the judgment of Hon'ble Supreme Court in Maharashtra Seamless Limited vs Padmanabhan Venkatesh & Ors. wherein it was held that at para 26 that no provision of the code or regulations has brought to our notice as a bid of any resolution and applicant has to match any liquidation value arrived at in the manner provide under clause 30(5) regulations.

34. In view of the above discussion the decision taken by the Financial Creditor falls under the banking and commercial wisdom and its not being interfere with.
35. The Resolution Plan provides a bank guarantee by the RA to the tune of Rs. 1 crore and the bank guarantee shall remain into the force till the date of 6 months from the date of submission of Resolution Plan. The RA also under took to provide a performance bank guarantee 20% of bid value within 7 days from the date of approval of Resolution plan by the Committee of Creditors. The Resolution Plan applicant has enclosed a performance bank guarantee of Rs.3.10 crores at annexure Exhibit O. the Performance Guarantee is for a period of 23.03.2021 to 30.06.2022 and the last date of allotment of claim 30.06.2023. it is therefore submitted that the requirement of performance security under regulation 39(4) of the Regulation r/w 36B(4A ) of the Regulations are complied with.
36. On the basis of aforesaid discussion and in view of the provisions of Section 30(4), the Bench approves the Resolution plan as approved by the CoC. The Resolution plan so approved shall be binding of the Corporate Debtor its employees , members , creditors including central government and state government or any other local authority to whom the debt of in respect of payment in dues arising any other law for the time being in force. Such authorities to whom statutory dues are owned. Guarantors and other stake holders involved in the Resolution plan.

**I.A NO. 1430 OF 2021**

37. The I.A NO. 1430 OF 2021 is filed by the Unsuccessful Applicant whose Resolution Plan was rejected by the CoC and the Unsuccessful Applicant submits that they have revised the plan by increasing a sum of Rs. 4,56,00,000/- and offered to increase it further. However, the Respondent No. 1 namely the RP vide an email dated 23.03.2021 informed the applicant that the Resolution plan was rejected by the CoC in their 13<sup>th</sup> CoC meeting.
38. This Bench refers to the relevant aspects of the Resolution plan of the Unsuccessful Resolution Applicant which is captured in its 13th meeting as follows;

*“RP further moved to the discuss the major changes in the revised resolution plan submitted by Luvkush Corporation Pvt. Ltd. as per the discussion in the previous COC Meeting, and as per the suggestions of one of the COC Members, SBI, which are as follows:*

- 1. A clause has been added stating that the release of security interest upon approval of plan shall be only for the assets of the corporate debtor and the third-party security shall not be affected*
- 2. The amount of working capital amount is increased from Rs. 2 Crore to 4 Crore, and the total payment to the stakeholders has been increased from Rs. 10,00,86,100/- to Rs.10,56,86,100/-.*

*The representative of SBI asked whether all the changes have been made by Luvkush as per the COC observation and RP has confirmed the same.”*

39. The Resolution plan of M/s. Saral Industries namely Successful Resolution Applicant and the Luvkush Corporation Pvt. Ltd. i.e. the Unsuccessful Resolution Applicant were put to vote and the Resolution Plan of Saral Industries has approved by the voting of 90.57% and the Resolution Plan of Luvkush Corporation Pvt. Ltd. was disapproved. Therefore, this Bench is not inclined to interfere with the commercial wisdom of CoC and hence the I.A

No. 1430 of 2021 is dismissed.

**I.A NO. 1599 OF 2021**

40. Tata Hitachi Construction Machinery Company Private Limited has filed an Interlocutory application under section 60(5) r/w section 30(2) of the Code as part for the rejection of Resolution plan as it is prejudicial to the interest of the applicant.
41. The Applicant / Operational Creditor is a Company engaged in the business of manufacturing and sale of construction, earth moving and mining machinery, including spare parts; having service networks and dealers across the Country.
42. The Corporate Debtor - Universal Industrial Equipment Technical Services Private Limited (UIETS) ("the Corporate Debtor") owed a sum of Rs. 32,92,85,313.28/- pursuant to an Arbitral Award dated 29th November 2017 passed against the Corporate Debtor which was payable to the Applicant/ Operational Creditor along with interest at 16% p.a. to be calculated 30 days from the date of the Award (30/12/2017-Constued as Date of Default) up to the date of actual payment. On the basis of the Application of the Applicant / Operational Creditor made under Section 8 & 9 of the I&B Code and upon being satisfied that a default has occurred, this Hon'ble Tribunal vide its Order dated 18th December 2019 ordered for the commencement of CIRP of the Corporate Debtor. Interim Resolution Professional Ms. Megha Agarwal of Nagpur ("Respondent No.1 / Resolution Professional") was appointed vide the said Order and moratorium took effect as per the provisions of the I&B Code.
43. The 1st COC Meeting of the Corporate Debtor, in the CIRP of the Corporate Debtor, commenced on the 21st of January 2020 and the last

COC Meeting i.e., 14th COC Meeting was held on the 22nd of March 2021. The timeline of 180 days for completion of CIRP provided under Section 12 of the I&B Code completed on 15th June 2020 and therefore, Exclusion of 135 days and total extension of 150 days (90 plus 60 days) was obtained vide Order of this Hon'ble Tribunal by the Respondent No. 1/ Resolution Professional. The last date for completion of CIRP, after extension and exclusion of CIRP period, was 27<sup>th</sup> March 2021.

44. The Corporate Debtor received three Resolution Plans from three Resolution Applicants namely
- a. M/s. Saral Industries
  - b. Manisha Sales
  - c. Luvkush Corporation
45. The Resolution Plan with respect to Manisha Sales was withdrawn and same was taken on record vide 13th COC Meeting Minutes dated 06th March 2021. The other two Resolution Plans were put to vote on the 9th of March 2021 and the Resolution Plan of M/s. Saral Industries was approved with a majority vote of 90.57% of the COC.
46. The Respondent No. 1 / Resolution Professional has made an application for sanctioning the Resolution Plan under Section 31 of the I &B Code. However, the Applicant / Operational Creditor, has certain major objections, as set out hereunder, to the Resolution Plan of M/s. Saral Industries submitted by Mr. Sandeep Goenka (Partner), the Respondent No. 3 / Resolution Applicant; which was approved by the COC at the 13th COC Meeting of the Corporate Debtor: -It is humbly submitted that this Resolution Plan approved herein, is actually a farce and an eye-wash. It is nothing but a Liquidation Plan in the guise of a Resolution Plan. The Respondent No. 3/ Resolution Applicant has not provided in a clear manner the viability and feasibility of the Resolution Plan. It has been agreed to by the members of the

COC that the Respondent No. 3 /Resolution Applicant will not be able to continue the same business and will be doing business in the automotive sector. Under Para No. 7.8 of the Resolution Plan, the Respondent No. 3 I Resolution Applicant has stated as follows: "Since the Corporate Debtor has lost its Dealership, the previous business of the company cannot be continued, and the Applicant intends to venture into automotive business immediately by obtaining a dealership in earth moving machinery',

47. It can be seen that the Terms of the Resolution Plan, provided under Para No. 12.2 of the Resolution Plan is a period of "9 months within which payments shall be made to the financial creditors, operational creditors and other creditors". However, the Resolution Plan does not anywhere provide for the time period within which the dealership, as stated to be obtained under Para No. 5 - "Strategy for the Proposed Plan" will be obtained by the Respondent No. 3 / Resolution Applicant. Further, there is also no timeline provided by the Respondent No. 31 Resolution Applicant in the Resolution Plan, within which the Corporate Debtor shall be revived. Thus, the Resolution Plan can be said to be a mere assets sale by the Respondent No. 31 Resolution Applicant, which may be possible by way of Liquidation of the Corporate Debtor itself.
48. There is no credibility in the whole process. It appears to be fishy exercise. Since financial creditors appear to be getting large chunk of the cake, they are making no effort to bring to book, proper value for the business and assets of the Corporate Debtor. They appear to be driving the closure of what is actually a liquidation plan. The Respondent No. 1/ Resolution Applicant has not placed on record what is credibility, established track record, business proposals, strategies so as to study the genuineness of the deal. There is an attempt to close the CIRP, by this process in which several things have been incorporated in a very vague and loose manner. There is proposal for actual revival the business of the Corporate Debtor.
49. It is further submitted that the Resolution Plan does not demonstrate that

it has sufficient provisions for providing for its effective implementation not as required under Regulation 38(3)(b) & (c) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

50. No action has been contemplated against the suspended directors of the Corporate Debtor for their inaction to recover moneys lawfully due to the Corporate Debtor. There is no report of the Respondent No. 1 / Resolution Professional to bring to book avoidance transactions. The forensic report in this respect appears to be an eye-wash.
51. Further, the Revised Resolution Plan shared with the members of the COC on the 11th February 2020, provides for a total infusion of Rs. 13,50,00,000/- payable to all stakeholders, including CIRP cost and excluding a working capital infusion of Rs. 2 Crores. Initially, the Resolution Plan of the Respondent No. 3 / Resolution Applicant provided for an amount of Rs. 9,20,05,000/-, which was discussed and agreed to be increased to Rs. 13.5 Crores. The same is recorded in the Minutes of the 12th COC Meeting held on 11th February 2021.
52. It is humbly submitted before this Hon'ble Tribunal, that such infusion of extra Rs. 4 Crores and odd by the Respondent No. 3 / Resolution Applicant, has not seen any proportional increase to the amounts to be paid to the Operational Creditors of the Corporate Debtor, under the Revised Resolution Plan. It is submitted that at the 12th COC Meeting held on 11th February 2021, when such objection regarding proportional distribution in case of further infusion of funds by Resolution Applicants, was raised by the Applicant / Operational Creditor, the Respondent No. 1 / Resolution Professional, had simply stated that the Resolution Plan was in compliance of Section 30(2)(b) of the I & B Code. It is however, submitted, that such a distribution cannot be held to be a in the interests of all its stakeholders. At this meeting, the Resolution plans of both the final Resolution

Applicants i.e. M/s. Luvkush Corporation and M/s Saral Industries came up for being considered by COC. It lacks fairness and it is arbitrary.

53. It is humbly submitted that the increase *in* overall amount infused by the Respondent No. 3 / Resolution Applicant, has simply resulted in increase of funds payable to the Financial Creditors alone. The details of the same is tabulated herein under:

SI. No.	Resolution Plan of Respondent No. 31 Resolution Applicant			Revised Resolution Plan of Respondent No.3 /Resolution Applicant		
	AMOUNT PAYABLE TO			AMOUNT PAYABLE TO		
1.	Unsecured Financial Creditors	Secured Financial Creditors	Operational Creditors	Unsecured Financial Creditors	Secured Financial Creditors	Operational Creditors
2.	Rs. 2,80,000/-	Rs. 9,00,00,000/-	Rs. 17,25,000/-	Rs. <b>10,00,000/-</b>	Rs. 12,72,75,000/-	Rs. 17,25,000/-

54. Secondly, Para No, 8 of the Revised Resolution Plan - "The Right to Receivables", provides as follows:

"Recovery, if any, made from the debtors of the Corporate Debtor shall be distributed in manner specified below:

1. 50% of the recovery amount (including the cost of recovery, if any) shall be paid to financial creditors in proportion of their admitted claim.
2. 50% of the recovery amount shall be used by the resolution applicant for working capital or otherwise used in the business of the Corporate Debtor."

55. It is humbly submitted that such a clause contained in the Resolution Plan is against the interests of all the stakeholders including but not limited to Applicant / Operational Creditor. The Applicant / Operational Creditor has been an essential service provider to the Corporate Debtor and must have the first right to any receivables recovered by the Corporate Debtor. Further, it appears to be a clear case where without any basis the Resolution Applicant seeks to appropriate 50% of the amounts to be recovered for doing its business in the name of the Corporate Debtor. Such a proposition simply exhibits the objective of making unreasonable gains at the cost of the creditors of the Corporate Debtor.
56. Thus, it is humbly submitted before this Hon'ble Tribunal that the Resolution Plan approved by the COC is a mere eye-wash and a Liquidation / assets sale in the guise of a Resolution Plan. If a Resolution Plan with such haircut for Operational Creditors as approved is allowed, then it would cause irreparable loss not only to the Applicant / Operational Creditor but to other creditors as well.

### **Reply of the RP**

57. The Respondent No. 2 provided financial assistances to the Corporate Debtor aggregating to Rs. 30.00 crore (Rupees Thirty Crore) ("SBI Facility") for working capital and other requirements of the Corporate Debtor. The SBI Facility is secured by charge over the assets of the Corporate Debtor. The total outstanding amount under the SBI Facility as on the insolvency commencement date of the Corporate Debtor is Rs. 63.45 crore (approx.) (Rupees Sixty Three Core and Forty Five Lakhs) (approx.). Consequently, the Respondent No. 2 is the secured financial creditor of the Corporate Debtor
58. The Corporate Debtor was admitted for corporate insolvency resolution process under the Code on 18 December 2019 pursuant to an order passed

by the Hon'ble National Company Law Tribunal, Mumbai, Accordingly, the CoC was formed by the resolution professional of the Corporate Debtor (i.e. Respondent No. 1 herein) with Respondent No. 2 being the largest financial creditor having 86.91% voting rights in the CoC.

59. Saral Industries ("Successful Resolution Applicant") submitted its resolution plan of Rs. 13.50 crore (Rupees Thirteen Crore and Fifty Lakhs) ("Successful Resolution Plan") for the Corporate Debtor, The Successful Resolution Plan was deliberated and finally approved by the Coe with 90.57% votes in favour of the Successful Resolution Plan,
60. The Respondent No. 2 submits that the present interim application seeking rejection or modification of the Successful Resolution Plan should be dismissed with exemplary cost on following grounds;
- The Successful Resolution Plan has been approved by the CoC applying their commercial wisdom, which must be upheld. The Applicant cannot be allowed to seek modification to suit its interest at the cost of the successful resolution of the Corporate Debtor*
61. It is a trite law that whether a resolution plan is feasible, viable and maximizing a corporate debtor's value is a commercial decision, which the CoC is to make applying their commercial wisdom, It is very well established that there is an intrinsic assumption that financial creditors of a corporate debtor are fully informed about viability of the corporate debtor and feasibility of a resolution plan.
62. The Successful Resolution Plan was approved by the Coe of the Corporate Debtor after due deliberation. The collective decision of the CoC cannot be challenged by the Applicant.
63. The Applicant's allegation that the Successful Resolution Plan is not feasible and viable is patently false and without any basis, The CoC has approved the Successful Resolution Plan after considering all aspects and

such collective decision of the CoC is not required to be mathematically precise. The subjective satisfaction of the financial creditors is bound to be a mixed baggage of variety of factors. Such subjective satisfaction is entrusted by the legislature to the financial creditors and not to the operational creditors. Consequently, the Applicant is patently incorrect in questioning the Successful Resolution Plan on the basis of feasibility and viability.

64. The interim application is an afterthought and filed belatedly with the mala fide intention to arm twist the CoC to increase the Applicant's pay out under the Successful Resolution Plan, If such unwarranted demand is entertained then this will defeat the resolution of the Corporate Debtor and ultimately, the purpose of the Code.

*The Successful Resolution Plan provides for more than the liquidation value of the Applicant.*

65. The liquidation value of the assets payable to operational creditors of the Corporate Debtor including the Applicant is NIL and consequently, even if the Successful Resolution Plan offers no payment to the Applicant, the same will be in compliance with the Code. However, the Successful Resolution Plan proposes a payment of Rs. 17.25 lakhs (Rupees Seventeen Lakhs and Twenty-Five Thousand) to the operational creditors, which is more than the liquidation value payable to the operational creditors including the Applicant in the event of liquidation under section 53 of the Code.

66. The Applicant's claim that it is entitled to proportionate increase in its payment pursuant to the increase in the resolution amount is patently false and incorrect. The distribution of the resolution amount under the Successful Resolution Plan has been collectively decided by the CoC, which has taken care of all stakeholders including the Applicant in

accordance with the requirements of the Code. Such collective decision of the CoC ought not to be challenged.

**Finding**

67. All the allegation put forth by the Intervenor Applicant/ Operational Creditor have been discussed in the COC in its meetings, the COC in its commercial wisdom have approved the Resolution plan and this Bench finds no reason to interfere with the plan approved by the CoC and with the distribution of assets and the amount paid to the Operational Creditor and hence rejects the interim application filed by the Operational Creditor.
68. The Objector/ Operational Creditor have participated in the 13<sup>th</sup> Meeting of CoC which is held on 06.03.2021 and the observations made on the plan submitted and evaluation matrix is as follows;
  - i. There is change in the upfront cash payment clause with respect to evaluation matrix as has to be given within 30 days of approval of plan whereas the evaluation matrix of the plan discussed is within 45 days which is not matching with the evaluation matrix provided before hence there could be a variation.
  - ii. There was no discussion with respect to the Receivables which are required to be recorded and part of Resolution Plan
  - iii. In the resolution plan there is nothing termed as going concern plan of Corporate Debtor business and it look as good as Liquidation plan rather than resolution plans.
69. The Resolution Professional clarified that since the dealership of Corporate Debtor was gone before the company has gone in to the CIRP process, so continuing exact same business was not possible for any RA with obtaining fresh dealership.
70. The Objector / Operational Creditor having participated in all the meetings

of CoC and have not taken any objection with regard to the issues raised in the Interim Applications and hence, the objections are untenable.

71. Under the provision of section 31(3) of the Code, this Bench directs as follows
- a. The Resolution Plan is approved;
  - b. The moratorium period as on 20.01.2020 ceased to have an effect;
  - c. The Resolution Professional shall forward all record relating to conduct of CIRP and the Resolution Plan to be record in its data based;
  - d. I.A. 773 of 2021 is disposed off;
  - e. I.A. 1599 of 2021 is dismissed;
  - f. I.A 1430 of 2021 is dismissed.

Sd/-  
Chandra Bhan Singh  
Member (Technical)

Sd/-  
Suchitra Kanuparthi  
Member (Judicial)