

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
COURT-I**

I.A No. 50 of 2025

IN

CP(IB) No. 4491 of 2019

Under Section 30(6) and Section 31 of
the Insolvency and Bankruptcy Code,
2016 read with Regulation 39(4) of the
Insolvency and Bankruptcy Board of
India (Insolvency Resolution Process for
Corporate Persons) Regulations, 2016.

I.A No. 50 of 2025

In the Application of

**Megha Agrawal (Resolution
Professional of T & U Systems
Automobiles Private Limited)**

...Resolution Professional/Applicant

In the matter of

**T & U Systems Automobiles Private
Limited**

...Corporate Applicant

Order Delivered on : 17.06.2025

Coram:

Shri. Prabhat Kumar
Hon'ble Member (Technical)

Justice V. G Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant (RP)

: Ld. Counsel Rohan Agarwal

ORDER

1. The present application, I.A (Plan) 50 of 2025 is filed by **Mrs. Megha Agrawal (“Applicant/RP”)**, Resolution Professional of **T & U Systems Automobiles Private Limited (“Corporate Applicant”)** under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (**“Code”**) r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**“IBBI Regulations”**) for seeking approval of the Resolution Plan submitted by **Mr. Harshit Kothari (“Successful Resolution Applicant/SRA”)** and approved in 100% majority by Committee of Creditors of the Corporate applicant. This application is filed for seeking the following reliefs:
 - a. *That this Hon'ble Tribunal be pleased to approve the Resolution Plan dated 4 October 2024 submitted by Mr. Harshit Kothari which has been approved by the CoC by 100% voting as per Section 30(6) of the Code and declaring the same to be binding on all the stakeholders;*
 - b. *That this Hon'ble Tribunal be pleased to pass an order thereby discharging the Applicant from her duties and responsibilities as the Resolution Professional of the Corporate Applicant;*
 - c. *Any other orders such as this Hon'ble Tribunal may deem fit and appropriate in view of the aforesaid circumstances.*

Particulars of the Parties

2. **T & U Systems Automobiles Private Limited (“Corporate Applicant”)** having CIN: U52190MH2009PTC195795, was incorporated on 15.12.2009 under the Companies Act, 1956 having its registered office at having a registered office at 56, State Bank Colony, Gopal Nagar, Nagpur, Maharashtra, India, 440022. The Corporate Applicant is private

company engaged in the business of agricultural vehicle, heavy vehicles, tractor, farm tractors & tow tractor with effective and timely delivery.

3. **Mr. Harshit Kothari (“Successful Resolution Applicant/SRA”)** is an Indian resident having residential address at Plot No. 55, Nandini Appts, Congress Nagar, Nagpur, Maharashtra - 440012.

Brief facts of the case

4. Under C.P 4491 of 2019, the Corporate Applicant had filed an application under Section 10 of the Code, because the business of the Corporate Applicant has been non-operational since the financial year 2018-2019.
5. Subsequently, the Corporate applicant was admitted into Corporate Insolvency Resolution Process (“**CIRP**”) as per Order dated 09.01.2024 and the Applicant was appointed as Interim Resolution Professional (“**IRP**”) vide the same order.
6. In furtherance of the CIRP proceedings i.e after receipt of the admission order on 29.01.2024, the applicant made a public announcement on 31.01.2024 in Form A format, inviting claims from the creditors of the Corporate applicant. The Applicant after verification of the claims constituted a Committee of Creditors (“**CoC**”) on 22.02.2024. The Applicant had received one claim from a Secured Financial Creditor and two claims from Operational Creditors (other than workmen and employees). The CoC originally comprised of Central Bank of India with an admitted claim of Rs. 13,87,80,172/-. The Applicant was confirmed as the Resolution Professional (“**RP**”) of the Corporate applicant in the 1st CoC meeting held on 02.03.2024.
7. Mr. Abhishek Shukla and Mr. Hemant Ambaselkar were appointed as valuers for valuing Plant and Machinery and Mr. Gaurav Joshi and Mr. Debashish Nanda, for valuing the SFA as on 16.03.2024 to determine the fair market value and liquidation value of the assets of the Corporate

applicant. The valuers submitted their Valuation Reports on 08.05.2024, 28.06.2024, 10.07.2024 and 06.08.2024, respectively.

8. The Applicant published an invitation for expression of interest ("**IEOI**") along with the requisite Form G on 29.03.2024 in newspapers. The Applicant informed the COC regarding the admission of a claim of Rs. 19,04,879.40/- received on 27.05.2024 from the Unsecured Financial Creditor (Kotak Mahindra Bank Limited). Accordingly, the COC was reconstituted wherein Central Bank of India held 98.65% voting share and Kotak Mahindra Bank Limited held 1.35% of the voting share. The CoC resolved to approve the re-publication of Form G, for invitation of EOI, conditions of Request for Resolution Plan ("**RFRP**") and Evaluation Matrix in the 4th CoC meeting held on 28.05.2024. Consequently, Revised EOI was published on 10.06.2024 whereby the timelines to submit the resolution plan was 25.06.2024. Following the publication of the revised Form G, the Applicant received 1 EOI, consequently the Applicant published the provisional list of Prospective Resolution Applicants ("**PRA**") on 18.07.2024.
9. During the 7th CoC meeting held on 16.08.2024 the Applicant informed the COC about the receipt of a claim from the Income-Tax department which was admitted to the extent of Rs. 1,71,546/-. The Applicant also informed the CoC that the last date for receipt of Resolution Plan was 07.08.2024, however upon request from the PRA, this deadline for submission of the Resolution Plan was subsequently extended from 07.08.2024 by 15 days i.e. till 22.08.2024. The last date of submission of resolution plans as per revised EOI, which was subject to extensions time and again, was finally fixed as 31.08.2024. In the 8th CoC meeting, held on 11.10.2024, the Resolution Plan received from the Resolution Applicant was opened for discussion before the COC by the representative of the PRA which was further adjourned for discussion on the Plan.

10. During the 9th COC meeting held on 27.09.2024, the Resolution Applicant (1) agreed to pay the entire CIRP cost in full up to the date of order passed by this Tribunal; (2) informed the COC that the CIRP cost would be paid within 30 days of approval of the Plan; (3) clarified that the Corporate applicant shall have no rights/claims over the personal guarantors or any corporate guarantees provided by the Corporate Applicant in relation to the loan or credit facilities from the existing financial creditor; and (4) clarified that payment of fees of chairman of the monitoring committee during the implementation of the Plan would be made by the Resolution Applicant. A resolution was adopted by the COC to conduct due diligence of the Resolution Applicant in terms of Section 29A of the Code.
11. During the 12th COC meeting held on 03.12.2024, the CoC resolved to put the resolution plan to e-voting. Subsequently, the e-voting was held from 07.12.2024 to 03.02.2025. Upon conclusion of the e-voting, the Resolution Plan of the Resolution Applicant was approved with 100% voting share.
12. The Applicant issued the letter of intent, to the SRA upon approval of the Resolution plan by the CoC, which was unconditionally accepted by the SRA on 11.02.2025. In furtherance to the same, the SRA provided the performance security as per clause 1.10.1 of RFRP.
13. The Applicant in the 6th CoC meeting, informed the COC that the period of CIRP was expiring on 27.07.2024. Hence, with the approval of the CoC, the RP filed an application IA 4372/2024 seeking extension of time of 90 days beyond 180 days expiring on 08.07.2025 for completion of CIRP, which was granted by this Tribunal thereby extending CIRP till 09.01.2025, vide order dated 20.09.2024. Another application was filed seeking further extension in CIRP timelines, which was allowed by this Tribunal further extending the CIRP timeline from 06.10.2024 to

05.12.2024 vide Order dated 18.12.2024 passed in IA 5897 of 2024. The Applicant had filed an I.A 1047 of 2025 seeking extension of the CIRP period by 60 days from 06.12.2024 to 03.02.2025 (i.e beyond 330 days), which was allowed by this Tribunal vide order dated 03.03.2025. In the 13th CoC meeting held on 10.02.2025, the CoC resolved to extend the CIRP for a period of 30 days i.e. from 04.02.2025 to 05.03.2025 for the purpose of filing the Application for approval of Resolution Plan before this Tribunal. The Tribunal vide order dated 26.05.2025 allowed the extension of the CIRP beyond 330 days from 04.02.2025 onwards under I.A 2093 of 2025.

14. The Applicant has filed an Application I.A 288 of 2025 in terms of Section 43 and 66 of the Code for reporting Preferential and Fraudulent Transactions praying for the return of approx. Rs. 2.60 crores to the account of the Corporate Applicant and the said application is pending for adjudication before this Tribunal.

Salient Features of the Resolution Plan

15. The key features and summary of the final Resolution Plan submitted by the Resolution Applicant and as approved by the COC are as under:

A) AMOUNT UNDER THE RESOLUTION PLAN

- (i) The Resolution Plan is for an aggregate amount of Rs. 16,00,000/- (Rupees Sixteen Lakh only) as per terms set out in this Resolution Plan. The Resolution Applicant shall infuse funds from its own reserves. Upon payment of the specified amounts, the Corporate applicant shall not be under any obligation to make payments to any stakeholder of the Corporate Debtor, including any Creditor whether the Financial Creditors, Employees, Workmen, Government and Statutory Authorities, Operational Creditors,

Shareholders or any other stakeholder and the liabilities of the Corporate Debtor towards the Creditors and other stakeholders shall be extinguished and settled, on and from the Effective Date. The payments to the Operational creditors. Government and Authorities and other operational creditors shall according to Section 30(2)(b) of the Code.

B) TREATMENT OF CIRP COSTS

- (i) The amount to be paid towards the CIRP cost shall be determined by the RP after the NCLT approval date and in any event not later than 10 days from the date thereof. The Resolution applicant proposes to pay an amount of Rs. 5,00,000/- towards full payment of the CIRP cost on the date of approval of the Resolution Plan by NCLT. In case such cost increases beyond Rs. 5,00,000/-, the actual CIRP cost as on the date of approval of resolution plan is proposed to be paid in full.
- (ii) The Corporate Applicant will, out of the Fund Infusion, make payment of the CIRP Costs in full and in priority to all other Creditors in terms of the provisions of the Code as on the Effective date.

C) TREATMENT OF FINANCIAL CREDITORS (SECURED & UNSECURED)

- i) The Resolution Applicant proposes to pay Rs. 10,00,000/- towards the Secured Financial Creditors and Rs. 19,049/- towards the Unsecured Financial Creditors ("**Financial Creditors Payments**") for settlement of dues of the Admitted Financial Creditor Debt from the Financial Creditors.
- ii) Upon payment of dues, all admitted Financial Creditors Debt shall be extinguished and the securities provided by the corporate debtor

shall be transferred, assigned or notated on the same terms (including contractual terms) in favor of the Resolution Applicant, or such other entity identified by the Resolution Applicant, on the same terms and condition, in the manner satisfactory to the Resolution Applicant.

iii) Upon Financial Creditor payments as per the value proposed in the Resolution Debt, neither the Corporate Applicant nor the Resolution Applicant shall have any liability to make any payments to any Financial Creditor and all liabilities of the Corporate applicant and the Resolution Applicant towards the Financial Creditors shall be settled fully and finally, on and from Effective Date nor shall the Financial Creditors have no further liability towards the Resolution Applicant or Corporate Debtor, after the completion of the payments.

D) TREATMENT OF OPERATIONAL CREDITORS
(GOVERNMENT DUES)

i) The Corporate applicant is currently non-operational. The RP admitted Rs. 3,25,79,688/- towards operational creditors (government dues) however, the Resolution Applicant proposes to pay a sum of Rs. 80,951/- towards the full and final settlement of operational creditors in respect of the Government Dues. The claims of Operational creditors (Government dues) and the amount proposed by the Resolution applicant is given in the table below:

SN	Name of Govt. Department	Claim Admitted	Proposed payment	Remarks
1	Sales Tax Department	Rs. 3,13,31,521/-	Rs. 77,851/-	-
2	Employee State Insurance Corporation	Rs. 3,267/-	Rs. 100/-	-
3	Income Tax Department	Rs. 12,44,900/-	Rs. 3,000/-	-
	Total	Rs. 3,25,79,688/-	Rs. 80,951/-	

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- ii) In case any Claims of Operational Creditors are admitted at a later stage for any reason whatsoever, then the same shall be treated in the same manner as set out in this Resolution Plan.

E) TREATMENT OF OPERATIONAL CREDITORS (WORKMEN & EMPLOYEES)

- i) The Corporate applicant is currently non-operational. The Resolution Applicant shall pay NIL amount towards full and final discharge of the Operational creditors (Workmen & employees) claims against the Corporate applicant as there are no admitted claims towards the same by the RP.

F) TREATMENT OF OPERATIONAL CREDITORS (OTHER THAN GOVERNMENT DUES, EMPLOYEES, WORKMEN)

- i) The Corporate applicant is currently non-operational. The Resolution Applicant shall pay NIL amount towards full and final discharge of the Operational creditors (other than government dues, employees, workmen) claims against the Corporate applicant as there are no admitted claims towards the same by the RP.

G) TREATMENT OF DISSENTING FINANCIAL CREDITORS

- i) As per Section 30 of the Code, the Resolution Applicant, undertakes to pay the dues of the dissenting financial creditors, equivalent to the amount such creditor would have been entitled to in case of liquidation of the Company before any recoveries are made by the financial creditors who voted in favour of the resolution plan.
- ii) In case any amount is paid to dissenting financial creditors, the same will be reduced from payment to financial creditors as mentioned in the Resolution Plan. The payment to dissenting financial creditors

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shall be made from the Resolution applicant's own reserves.

16. The Resolution Applicant has reserved the liberty to alter the inter se distribution of payments amongst the stakeholders in pursuance to this Resolution Plan, if required, with the consent of the COC. The Resolution Applicant will not make any payments other than as specified in the Resolution Plan, for settlement of dues payable to any - stakeholder, whether the Claims of such Creditors have been admitted or not by the Resolution Professional, or contingent or otherwise. The summarised table of the amount proposed to be payable to stakeholders of the Corporate Applicant is given as below:

Particulars	Amount Proposed	Schedule of Payment (Day/Year) from NCLT approval		Total
		30	60	
CIRP Cost*	Rs. 5,00,000/-	Rs. 5,00,000/-	-	Rs. 5,00,000/-
Secured FC	Rs. 10,00,000/-	Rs. 5,00,000/-	Rs. 5,00,000/-	Rs. 10,00,000/-
Unsecured FC (Other than Related Party)	Rs. 19,049/-	-	Rs. 19,049/-	Rs. 19,049/-
Operational Creditors (Govt. Dues)	Rs. 80,951/-	Rs. 80,951/-	-	Rs. 80,951/-
Operational Creditors (Other than Govt. Dues and workmen and employees)	-	-	-	-
Operational Creditors (workmen and employees)	-	-	-	-
Total	Rs. 16,00,000/-	Rs. 10,80,951/-	Rs. 5,19,049/-	Rs. 16,00,000/-

**The above CIRP cost is the indicative amount proposed at the time of submission of resolution plan. We are proposing the payment of the actual CIRP cost as on the date of approval of resolution plan is to be paid in full on priority as per the provisions of the IBC law.*

H) TREATMENT OF ALL OTHER STAKEHOLDERS

- i) With respect to the potential third parties (including Creditors or stakeholders) whose Claims have not been specifically covered in the Resolution Plan, no payment shall be due to them except as may be mandatorily required in accordance with the provisions of the Code within the timelines prescribed therein. Accordingly, Re. 1 shall be

payable to such remaining Creditors and stakeholders, as full settlement under this Resolution Plan.

I) INFUSION OF FRESH EQUITY

- i) The Resolution Applicant proposes to infuse Rs. 1.00 Lacs in the Corporate Applicant from its own sources in the form of equity after the completion of payment and as and when required.

J) SUPERVISION & IMPLEMENTATION OF THE PLAN

- i) The Corporate Applicant shall be managed by the Implementation and Monitoring Committee from the NCLT Approval Date till the Effective Date. The Implementation and the Monitoring Committee shall comprise of one nominee of the Resolution Applicant, the Insolvency Professional and one nominee of the Approving Financial Creditors. The terms of appointment of the members of the Implementation and Monitoring Committee, and details of the functioning of the Implementation and Monitoring Committee will be finalized by the COC and the Resolution Applicant jointly and any related costs relating to such appointments, and terms thereof, shall be borne by the Resolution Applicant.
- ii) The newly appointed Implementation and Monitoring Committee shall be responsible for the supervision of the day to day affairs of the Corporate Debtor till the Effective Date. On the Effective Date, the existing suspended Board of the Corporate Debtor shall be dissolved and all directors of the existing Board shall be deemed to have resigned without any further act or deed from any other person, and the Resolution Applicant shall reconstitute the Board of the Corporate Debtor on such date in accordance with Applicable law. After the Effective Date, the Resolution Applicant shall constitute the

Board of the Corporate Debtor and appoint key managerial personnel. Further, the Resolution Applicant may appoint an independent observer to the Reconstituted Board in accordance with Applicable Laws from the NCLT Approval Date till the Effective Date.

- iii) The Implementation and Monitoring Committee will also supervise the functioning of the Reconstituted Board. The Implementation and Monitoring Committee shall also be deemed to have the same responsibility as the COC and Resolution Professional have during the CIRP. An authorized signatory of the Corporate Debtor under directions of the implementation and Monitoring Committee, will sign all applications on behalf of the Corporate Debtor that are proposed to be made to any regulatory authority in order to obtain the necessary approvals for implementation of this Resolution Plan within the timelines set out herein.

K) RELIEFS AND CONCESSIONS

- i) the Resolution Plan envisages certain waivers/ reliefs/concessions, dispensations, other rights and benefits as stated in Section 10 of the Resolution Plan. It is also stated that the Resolution Plan is based on the averment that the non-granting of any of the below mentioned reliefs by the Adjudicating Authority shall not affect the implementation of the Resolution Plan by the Resolution Applicant in accordance with the terms hereof.

Statutory Compliances

17. In compliance to **Section 30(1) of Code**, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant and confirms that the Resolution Applicant is eligible under section 29A

of the Code, and an undertaking to this effect has been obtained from the Resolution Applicant.

18. In compliance of **Section 30(2) of the Code**, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant and confirms that this Resolution Plan:

- a. Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the Corporate applicant;
- b. Provides for payment of debts of Operational Creditor 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 liquidation of the Corporate applicant under Section 53; or the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distribute in accordance with sub-section (1) of Section 53 in the event of liquidation of the Corporate applicant; whichever is higher, and
 - (ii) 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 applicant.
- c. Provides for management of the affairs of the Corporate applicant after approval of Resolution Plan;
- d. The implementation and supervision of Resolution Plan;
- e. Does not contravene any of the provisions of the law for time being in force

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19. In compliance of **Section 30(4) of the Code**, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant and confirms that this Resolution Plan is feasible and viable according to the CoC and has been approved by the CoC with 66% voting share.
20. In compliance of **Regulation 37(a) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“IBBI Regulations”)** the Resolution Professional confirms that the Resolution plan even though doesn’t envisage the transfer or sale of the assets of the corporate debtor to the successful resolution applicant rather the Resolution Applicant will acquire the company's shares and under **Regulation 37(c) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**, the Resolution Applicant will subscribe to 100% of the corporate Applicant's share capital post-capital reduction, effectively taking full control of the corporate debtor;
21. In compliance of **Regulation 38 of CIRP Regulations**, the Resolution Professional confirms that the Resolution plan provides that:
- a. The amount payable under the Resolution Plan to the Operational Creditors shall be paid in priority over Financial Creditors.
 - b. The amount payable under the Resolution Plan to the financial creditors, who have a right to vote under subsection (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.
 - c. A resolution plan includes a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the Corporate applicant.

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- d. A resolution plan includes a statement stating that neither the resolution applicant nor any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the adjudicating authority at any time in the past.

22. In compliance of **Regulation 38(2) of CIRP Regulations**, the Resolution Professional confirms that the Resolution plan provides for:

- a. the term of the plan and its implementation schedule;
- b. The management and control of the business of the Corporate applicant during its term.
- c. Adequate means of Supervising its implementation.
- d. provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.

23. In compliance of **Regulation 38(3) of CIRP Regulations**, the Resolution Professional confirms that the Resolution plan provides that:

A resolution plan shall demonstrate 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; and
- e. the resolution applicant has the capability to implement the resolution plan

24. In compliance of **Regulation 39(2) of CIRP Regulations**, the Resolution Applicant has provided an undertaking that the RP has filed

applications in respect of transactions observed, found or determined by him under the Code.

25. The Resolution Professional has submitted Form-H under **Regulation 39(4) of the CIRP Regulations** to certify that the Resolution Plan as approved by the CoC meets all the requirements of the IBC and its Regulations.

Discussion and Decision:

26. Heard learned Counsel and perused the records.

27. The RP has filed Compliance Certificate in Form-H along with the Plan. Also, it has been noted that an Affidavit dated 25.06.2024 regarding the compliance of Section 29A of the Code of the Resolution Applicant has been placed on record by the Resolution Professional.

28. The Bench also observes that, Resolution Plan of the SRA, provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
- c) For management of the affairs of the Corporate applicant, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
- d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

29. This Bench observes in the present application that the CoC has approved to the Resolution Plan in the 12th CoC meeting with 100% voting share respectively, hence as per the CoC, the plan meets the requirements of being viable and feasible for the reviving the Corporate

applicant. The Resolution Plan provides for a detailed implementation schedule with specific timelines and the manner in which the management, control and supervision of the Corporate applicant would lie.

30. The Bench has also observed that the Resolution Professional has placed on record a Performance Bank guarantee amounting to Rs. 3,20,000/- issued in favour of the Central Bank of India by the bank of Resolution Applicant as on 15.02.2025.

31. In the matter of ***K Sashidhar v. Indian Overseas Bank & Others***, (2019) 12 SCC 150, the Hon'ble Supreme 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"). The excerpt from the judgement is reproduced hereinbelow:

"55.Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent 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. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such

other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code.....”

32. The Applicant has complied with the requirement of the Code in terms of Section 25(2) (h), Section 30(1), 30(2)(a) to 30(2)(f), Section 30(4), Section 31(1), and Regulations 38(1), 38(1A), 38(1B), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3)(a) to 38(3)(e), and 39(2), 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.

Relief & Concessions and other stipulations in the Resolution Plan

33. In Section 10 of the Resolution Plan, the SRA has sought certain waivers/ reliefs/concessions, dispensations, other rights and benefits. The reliefs & concessions as prayed in the Resolution Plan shall be available in accordance with the principle laid down by Hon'ble Supreme Court in case of *Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited* {[2021] 13 S.C.R. 737} and subject to the observations or limitations in the following paras and judicial precedents in case of *Municipal Corporation of Greater Mumbai vs. Abhilash Lal and Ors. (2019) ibclaw.in 480 NCLAT*.

- a. As regards liberty to restructure the extinguished debts of the creditors transferred to the SRA, this Adjudicating authority has no objection so long as such transfer of unpaid debt is permissible in terms of judicial precedents, whereby the unpaid debt of the

Creditors stands extinguished, or under the Companies Act, 2013 and accounting standards notified thereunder, and subject to necessary procedures and filing as prescribed under the Companies Act, 2013. Further, the Income Tax Department shall be at liberty to examine the tax implications arising from such conversion in terms of Section 2(24), Section 28 and Section 56 of the Income Tax Act, 1961 read with GAAR provisions thereunder in relation to assignment of unpaid debt and conversion thereof into equity of the Corporate applicant as well as subsequent treatment of such converted debt in the scheme of amalgamation.

- b. Any increase in the authorized share capital shall be subject to payment of prescribed fee, if any applicable, and filing of prescribed forms with the Registrar of Companies.
- c. The Applicant shall file necessary forms and pay prescribed fees, if any, in terms of provisions of the Companies Act, 2013 in relation to reduction in capital and issuance of fresh capital, however, the Registrar of Companies shall waive the additional fees, if any, payable on such filing.
- d. ROC shall update the records and reflect the Corporate applicant as 'Active' upon filing of pending returns/forms after payment of normal fees (not additional fee). In case such filing is not permitted by the e-filing portal, the ROC shall accept such forms/returns in physical format and manage to upload the same by back-end. The Corporate applicant shall be exempted from using the words "and reduced".
- e. The SRA may approach prescribed authorities for waiver/reduction in fees, charges, stamp duty, and registration fees, if any arising from actions contemplated under the Resolution

Plan and such request shall be subject to the relevant law/statute and adherence to the procedure prescribed thereunder.

- f. The SRA may file appropriate application, if required, for renewal of all Business Permits, licenses, permissions, rights, entitlements, benefits, subsidies and privileges whether under applicable Law, contract, lease or license granted in favour of the Corporate applicant or to which the Corporate applicant is entitled to or accustomed to, which have expired on the Effective Date, and follow the dues procedure prescribed for the purpose upon payment of prescribed fees. The contract with third parties shall be subject to consent of such parties. It is clarified that continuance or renewal of approvals/permission/license shall not be refused on account of extinguishment of any dues under IBC and extension or renewal thereof shall not be denied on account of past insolvency of the Corporate applicant.
- g. The resolution applicant shall, obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan or within such period as provided for in such law, whichever is later.
- h. The carry forward of losses and unabsorbed depreciation shall be available to the extent and in the manner provided under the provisions of Income Tax Act, and the Income Tax Department shall be at liberty to examine the same. Further, the concerned tax authorities shall be at liberty to examine the carry forward of input tax credit available under Indirect Tax for its further carry forward.
- i. No orders levying any tax, demand or penalty from the Corporate applicant in relation to period upto approval of the Resolution Plan shall be passed by any authority and such demand, if created,

shall not enforceable as having extinguished in terms of approved Resolution Plan.

- j. An application for compounding/condoning shall be filed in accordance with the procedure specified in respective law or concerned authority, however, no fine or penalty shall be imposed for non-compliances till the date of approval of this Plan or such further period as is permitted in terms of this Order.
- k. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate applicant and may be dealt by the appropriate Authorities in accordance with law in so far as such obligation pertains to a period after the approval of the Resolution Plan unless otherwise relaxed specifically.

34. 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 same needs to be approved. Hence, ordered.

35. The Resolution Plan thereto annexed to the Application is hereby **allowed**. Further, we hereby hold that this Plan shall deemed to be an order of sanctioning the approval of the reduction of share capital, subject to issuance of notice as stipulated in para 39 and filing of necessary forms, giving effect to the proposed scheme. It shall become effective from this date and shall form part of this order with the following directions:

- i. It shall be binding on the Corporate applicant, its employees, members, creditors, including the Central Government, any State

Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate applicant and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned in light of the Judgment of Supreme Court in *Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited*, the relevant paras of which are extracted herein below:

“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.”

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- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the jurisdictional Registrar of Companies (RoC), Maharashtra 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.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. 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.
- vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

36. The **Interlocutory Application No.50/2025** in **C.P.(IB)/4491(MB)2019** is accordingly **allowed and disposed of**.

Sd/-

Prabhat Kumar
Member (Technical)

/JJ/

Sd/-

Justice V.G. Bisht
Member (Judicial)