



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

I.A. NO. 33 OF 2024

IN

C.P. No. 02 OF 2021

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

**MR. PRASHANT JAIN
(RESOLUTION PROFESSIONAL
SUPERWAYS ENTERPRISES PRIVATE
LIMITED)**

...APPLICANT/RESOLUTION

PROFESSIONAL

IN THE MATTER OF:

PRARTHNA PRIVATE LIMITED

...FINANCIAL CREDITOR

VERSUS

**SUPERWAYS ENTERPRISES PRIVATE
LIMITED**

...CORPORATE DEBTOR

ORDER DELIVERED ON: 24.10.2024.

Coram

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)



Appearance

For the Resolution Professional: Adv. Mily Ghoshal (P.H)

ORDER

Per: Reeta Kohli, Hon'ble Member (Judicial)

The above captioned Application is filed by Mr. Prashant Jain (**“Applicant/Resolution Professional/RP”**) of Superways Enterprises Private Limited (Corporate Debtor). This Application is filed under Section Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with regulation 38 and 39 of the Insolvency and Bankruptcy Board of India (Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulation”) for seeking approval of resolution plan submitted by Resolution Applicant Ashok Investor Trust Limited which was approved by 100% voting shares of the members of the Committee of Creditors (hereinafter referred to as ‘**COC**’).

1. This Hon'ble Tribunal admitted the Corporate Debtor into Corporate Insolvency Resolution Process (CIRP) as per the Insolvency and Bankruptcy Code, 2016 (“**Code**”) vide Order dated July 27, 2022 (“**Admission Order**”). Mr. Hemendra Paliwal (having Registration No. IBBI/IPA-001/IP-P01830/2019-2020/12788) was appointed as the Interim Resolution Professional (“**IRP**”) of the Corporate Debtor. However, Mr. Hemendra Paliwal withdrew his consent to act as the IRP. Therefore, this Hon'ble Tribunal by order dated 20.09.2022 vide



I.A. No. 2317/2022 appointed one Mr. Devang Subodh Thakar as the Interim Resolution Professional of the Corporate Debtor.

2. Subsequent to his appointment, the erstwhile IRP issued a Public Announcement and thereafter collated the claims and constituted the Committee of Creditors (“**CoC**”) of the Corporate Debtor on October 02.10.2022, comprising of Indian Bank Limited and Prarthna Private Limited.
3. Thereafter, the erstwhile IRP convened the First Meeting of the Committee of Creditors on October 29, 2022 wherein the IRP proposed his consideration for appointment as the Resolution Professional (RP). However, the CoC did not confirm the appointment of the IRP as RP and therefore the IRP continued to function as deemed RP.
4. Subsequently, the erstwhile IRP has been conducting the CIRP of the Corporate Debtor and has taken necessary steps for the same. The erstwhile IRP convened the second meeting of the Committee of Creditors on November 17, 2022 wherein the members discussed for publication of Form G for Invitation of Expression of Interest. The IRP in accordance with the Regulation 36A of the CIRP Regulation published Form G for invitation for expression of interest (“**EoI**”) on 19/11/2022 in Navakal and Free Press Journal.
5. It is pertinent to mention that during the tenure of the erstwhile IRP – DBS Bank India Limited (“DBS Bank”), one of the Financial Creditor of the Corporate Debtor filed its claim amounting to INR



1,50,40,59,092 (Rupees One Hundred and Fifty Crore Forty Lakh Fifty-Nine Thousand and Ninety-Two). The said DBS Bank had filed its claim on 20/12/2022 that is after a delay of 57 days. This claim was thus rejected by the IRP on 21/12/2022 on the ground of delay of 57 days in filing the claim. As the claim of DBS Bank was not admitted, they were precluded from being part of the Committee of Creditors (“COC”).

6. Aggrieved by the decision of the IRP, DBS Bank Limited filed an Interlocutory Application before this Hon’ble Tribunal being I.A. No. 834/2023 seeking condonation of delay of 57 days in filing the claim on 13/01/2023.

7. However, during the pendency of I.A. No. 834/2023, the following events transpired,

8. **CoC rejected publication of Fresh Form:** - The RP convened the third Meeting of the Committee of Creditors on 21/02/2023 wherein approval for acceptance of the EoI of Kundan Group was considered. Further, it was also informed by the RP that fresh Form G shall be issued if the EoI of Kundan Group is not accepted. However, the CoC did not approve the publication of Fresh Form G and also rejected the EoI of Kundan Group as it was received after last day.

9. **Extension of CIRP period by 90 days:**- That the period of 180 days of the Corporate Insolvency Resolution expired on 19/03/2023. The erstwhile IRP in accordance with the decision taken in the fourth meeting of the Committee of Creditors sought an extension of the



Corporate Insolvency Resolution Process by a further period of 90 days by filing an Interlocutory Application being IA No. 1971/2023. This Tribunal vide order dated 16/05/2023 in IA No. 1971/2023 was pleased to extend the period of CIRP by a further period of 90 days till 17/06/2023.

10. Appointment of Resolution Professional:- That one Indian Bank being the member with 92.89% voting share in the Committee of Creditors decided to replace the Resolution Professional and appoint Mr. Prashant Jain as the Resolution Professional of the Corporate Debtor. Accordingly, I.A. 1515/2023 was preferred seeking appointment of Mr. Prashant Jain as the Resolution Professional (Applicant herein) and the same was allowed by the Hon'ble Tribunal vide order dated 12/06/2023. However, the order dated 12/06/2023 was received by Mr. Prashant Jain only on 17/06/2023 i.e., after lapse of period of 270 days of the CIRP of the Corporate Debtor. In the meantime, it is pertinent to mention here that the erstwhile RP filed an application being IA no. 2621/2203 u/s 33 of the Insolvency and bankruptcy Code, 2016 seeking Liquidation of the Corporate Debtor.

11. Assignment of Debt by DBS Bank to Ashok Investor Trust Limited: - In the meantime, DBS Bank assigned its debt to one Ashok Investors Trust Limited vide Assignment Agreement dated 20/04/2023. Therefore, by virtue of the assignment of debt, Ashok



Investors Trust Limited stepped into the shoes of DBS Bank as the Financial Creditor.

- 12.** The Hon'ble Tribunal by its order dated 24/07/2023 was pleased to condone the delay of DBS Bank in filing its claim before the IRP. The order further directed the RP to consider and verify the claim as per the provisions of the Code.
- 13.** Thereafter Ashok Investor Trust Limited (being the assignee of the debt of DBS Bank Limited) in accordance to the order dated 24.07.2023 filed its claim with the Resolution Professional on 08/08/2023 and while the said claim was under consideration by the Applicant herein the said Ashok Investors Trust Limited preferred another application before this Hon'ble Bench being I.A. No. 3578/2023 inter - alia praying for keeping the application for liquidation of the Corporate Debtor in abeyance, directing the Resolution Professional to reconstitute the Committee of Creditors upon admission of its claim and extend the CIRP by a period as the tribunal may deem fit.
- 14.** This Tribunal by its order dated 06/09/2023 in IA No. 3578/2023 was pleased to keep the application for Liquidation (IA 2621/2023) in abeyance and directed the Resolution Professional to consider the proposal of Ashok Investor Trust Limited. However, no extension of the CIRP in the said order was granted through this order.
- 15.** In compliance of the said order of the Hon'ble Tribunal in IA 3578/2023 the Resolution Professional reconstituted the Committee



of Creditors. The Committee of Creditors was reconstituted with Ashok Investor Trust Limited having the major voting share with 77.19%. The Resolution Professional convened the 8th Meeting of the Committee of Creditors on 21/09/2023. The Members of the Committee of Creditors discussed the future course of action in the CIRP of the Corporate Debtor. Ashok Investor Trust Limited proposed to invite fresh Expression of Interest for revival of the Corporate Debtor. To effectuate the same the members decided to seek an exclusion of 236 Days from the CIRP period. This was the period when the claim of Ashok Investor Trust Limited (assignee of the debt of DBS Bank Limited) was under adjudication and it was not part of the CoC.

- 16.** This Tribunal in I.A. No. 4482/2023 vide order dated 11.10.2023 was pleased to allow an exclusion of 236 days from the CIRP. Therefore, the CIRP was reinstated to 155th Day and accordingly 115 days were remaining for completion of the CIRP. The CIRP end date was extended till 14.03.2024.
- 17.** The Applicant, in accordance with the decision of the CoC taken in the 8th Meeting dated 21st September 2023 published Form G in Financial Express (All India Edition) in English Language and Navakal (Mumbai Edition) in Marathi Language on 9th November, 2023 for inviting Expression of Interest. That vide the said notice, the last date for submitting the expression of 24th November, 2023.



- 18.** However, no Expression of Interest was received in response to the publication of Form G. Therefore, the CoC in its 10th Meeting held on 23/11/2023 decided to extend the last date for submission of Expression of Interest till 09/12/2023.
- 19.** Therefore, a Form G for extension of last date for submission of Expression of Interest was published in the Financial Express (All India Edition in English Language) and Navakal (Mumbai Edition in Marathi Language) on 24.11.2023. The last date for submission of Expression of Interest was extended till 09/12/2023. In response to the extension the Applicant received EOIs from two participants.
- 20.** Further the 11th Meeting of the Committee of Creditors was held on 03.01.2024 wherein the Terms of Request for Resolution Plan (RFRP) and Bid Evaluation Matrix (BEM) was approved. The Applicant issued the RFRP, Bid Evaluation Matrix BEM and Information Memorandum (IM) to the Prospective Resolution Applicants (PRA's) on 06.01.2024. The last date for submission of the Resolution Plan was 05.02.2024.
- 21.** That till the last date for submission of Resolution Plan, i.e. 5th February, 2024 the Applicant herein received only one Resolution Plan from Ashok Investor Trust Limited. It is pertinent to mention that the sole Resolution Applicant is also the majority shareholder in the Committee of Creditors.
- 22.** That the Resolution Professional convened the 12th meeting of Committee of Creditors on 6th February, 2024 and opened the Resolution Plan. Further, the Financial Proposal offered by the



Resolution Applicant was briefed to the members of the Committee of Creditors. However, it was also communicated to the members that the Resolution Plan submitted was not compliant and marred with some ambiguities. The non-compliances and the ambiguities were communicated to the Resolution Applicant.

- 23.** That the Resolution Applicant submitted a revised compliant plan on 20th February, 2024. The ambiguities in the Plan were also addressed. The compliant Resolution Plan was discussed with the CoC in the 13th meeting held on 26th February 2024.
- 24.** Subsequently, the Resolution Professional then convened the 14th meeting of Committee of Creditors on 2nd March, 2024 for closing the negotiation between the members of the Committee of Creditors. The members of the Committee of Creditors discussed upon the enhancement of the financial proposal provided in the Resolution Plan. The Resolution Applicant sought time to consider the same. Therefore, the meeting was adjourned to 07th March 2024. In the meanwhile, the Resolution Applicant through email informed the Applicant that the amount proposed to the secured financial creditor shall be enhanced.
- 25.** The adjourned meeting was reconvened on 07th March 2024. The Applicant informed the members that the Resolution Applicant has proposed to enhance the offer for the secured financial creditors. The Applicant apprised the members that the CIRP period shall lapse on 14th March 2024. Therefore, it was decided by the members that an



extension of 15 days in the CIRP period shall be proposed on an in-principal basis to give members sufficient time to vote on the Resolution Plan.

- 26.** That in pursuance of the approval for seeking an extension of 15 days, the Applicant filed an application before this Hon'ble Tribunal praying for an extension for a period of 15 days beyond the 270 days. The Hon'ble Tribunal was pleased to grant an extension of 15 days vide I.A. No. 1187/2024 dated 20.03.2024.
- 27.** The 15th Meeting of the Committee of Creditors was convened on 13/03/2024. The members discussed the Resolution Plan. The Resolution plan was put for E-Voting between 16/03/2024 (11:00 AM) to 08/04/2024 (06:00 PM). The Committee of Creditors **by a majority of 100% approved the Resolution Plan of Ashok Investor Trust Limited.**
- 28.** It is pertinent to mention that the E-Voting on the Resolution Plan was completed after the CIRP period ended on 29/03/2024. Further, after the approval of the Plan a Letter of Intent had to be issued to the Successful Resolution Applicant. The Successful Resolution Applicant had to be given a time of three business days to submit the performance security. The Resolution Professional also required time to prepare the application for approval of the Resolution Plan. Therefore, considering these constraints the Committee of Creditors in the 16th Meeting convened on 10/04/2024 approved for seeking another extension of 25 days i.e., till 23/04/2024 to complete all the



procedural formalities. The members also confirmed that e-voting is not required for approval and they confirmed the decision through email after circulation of minutes.

29. Accordingly, the Resolution Professional Preferred Application bearing I.A. no. 2443/2024 seeking an extension of further 25 days in the CIRP period i.e., till 23/04/2024 and further sought condonation of delay of 22 days in filing the said Application. The same was allowed by this Hon'ble Tribunal vide order dated 17/05/2024 in I.A. No. 2443/2024 and accordingly the CIRP period was extended till 23/04/2024.

30. The following is the financial proposal and the terms of the payment are as follows:

For	In Amount (INR)	
	Upfront Payment Amount	Residual Payment in absolute terms
Mandatory Payments		
<i>-Insolvency Resolution</i>	As per actuals	As per actuals



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<i>Process Cost</i>		
Unsecured Financial Creditor	1.00 Lakh	Nil
Secured Financial Creditor (except Ashok Investors Trust Limited)	40.00 Lakhs	360.00 Lakhs
Operational Creditor	1.00 Lakh	NIL
Other Creditors (Unsecured Financial Creditors)	Nil	NIL
<i>Working Capital</i>	10 lakhs	
Total	52 Lakhs	360 Lakhs
Grand Total	412 Lakhs + CIRP	
Resolution Amount	Expenses at actuals	

Terms of Payment – The entire payment shall be made as upfront within 30 days. While, immediately after approval of the Plan a performance bank guarantee of 10% of the amount proposed to the Secured Financial Creditor shall be paid. While, the remaining amount shall be paid within 30 days.



The entire payment of Rs. 4 Crores is towards the admitted claim of Indian Bank Limited only. This is due to the fact that the other secured financial creditor is the Resolution Applicant himself. Further on successful payment of resolution amount the entire debt of the Corporate Debtor from Indian Bank including outstanding dues along with interest and collateral securities and personal guarantees/guarantors as well as corporate guarantors will stand assigned in favour of Resolution Applicant and the Resolution Applicant will have all the rights to enforce the same.

- 31.** The Resolution Plan also makes a provision of infusion of working capital amounting to INR 10 Lakhs within 10 days of the effective date (i.e., 30 days from the approval of the Resolution Plan by the Hon'ble NCLT)
- 32.** The Applicant states that the due diligence is conducted on the Resolution Plan and it is compliant as per the Code and the Rules and Regulations made thereunder.
- 33.** Consequently, the Applicant has issued the Letter of Intent dated August 23, 2023, to the Successful Resolution Applicant. On August 25, 2023, the Successful Resolution Applicant has unconditionally accepted the Letter of Intent and submitted the performance bank guarantee.
- 34.** It is pertinent to note that the Approved Resolution Plan submitted by the Successful Resolution Applicant is unconditional. The Successful Resolution Applicant has also sought certain prayers,



reliefs, concession and entitlement, which are set out in paragraph 'h' at page no. 40 of the Approved Resolution Plan.

- 35.** Lastly, the compliance certificate under Form H provided under the CIRP Regulations is annexed hereto:

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, Prashant Jain, an insolvency professional enrolled with Indian Institute of Insolvency Professional of ICAI and registered with the Board with registration number IBBI/IPA-001/IP-P01368/2018-2019/12131, am the resolution professional for the corporate insolvency resolution process (CIRP) of Superways Enterprises Private Limited

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	Superways Enterprises Private Limited
2	Date of Initiation of CIRP	26/07/2022
3	Date of Appointment of IRP	Mr. Hemendra Paliwal



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		was appointed as the IRP via order dated 26/07/2024. However, Mr. Hemendra Paliwal withdrew his consent after approval. Thereafter, by order dated 20.09.2022 Mr. Devang Thakkar was appointed as the IRP.
4	Date of Publication of Public Announcement	02/10/2022
5	Date of Constitution of CoC	22/10/2022. Report taken on record by the Hon'ble NCLT on 14/11/2022.
6	Date of First Meeting of CoC	29/10/2022
7	Date of Appointment of RP	12/06/2023
8	Date of Appointment of Registered Valuers	06/11/2022
9	Date of Issue of Invitation for EoI	First- 19/11/2022.



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		Second- 09/11/2023 Extension of 15 days for submitting EoI published on 24/11/2023
10	Date of Final List of Eligible Prospective Resolution Applicants	03/01/2024
11	Date of Invitation of Resolution Plan	06/01/2024
12	Last Date of Submission of Resolution Plan	05/02/2024
13	Date of Approval of Resolution Plan by CoC	08/04/2024
14	Date of Filing of Resolution Plan with Adjudicating Authority	20.04.2024
15	Date of Expiry of 180 days of CIRP	19/03/2023
16	Date of Order extending the period of CIRP	Extension of CIRP by 90 days- 16.05.2023 (IA 1971/2023). Exclusion of 236 days from CIRP – 11.10.2023



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		(IA 4482/2023) Extension of CIRP by 15 days- 20.03.2024 (I.A. 1187/2024). Extension/Condonation of Delay of 25 days- 23/04/2024
17	Date of Expiry of Extended Period of CIRP	After 90 days extension- 17/06/2024 After Exclusion of 236 days- 14/03/2024 After Extension of 15 days- 29/03/2024 Extension/Condonation of Delay of 25 days- 23/04/2024
18	Fair Value	INR 31,493
19	Liquidation value	INR 31,493
20	Number of Meetings of CoC held	16



3. The Applicant submitted that it has examined the Resolution Plan received from Resolution Applicant- Ashok Investor Trust Limited and approved by Committee of Creditors (CoC) of Superways Enterprises Private Limited.

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) the Resolution Applicant- **Ashok Investor Trust Limited** has submitted an affidavit pursuant to section 30(1) of the Code confirming its 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 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.



5. The list of financial creditors of the Corporate Debtor being members of the CoC and distribution of voting share among them is as under:

Sl . No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan)Voted for / Dissented /Abstained(
1	Ashok Investor Trust Limited	77.19%	Voted For Approval
2	Indian Bank Limited	22%	Voted for Approval
3	Prarthna Private Limited	0.81%	Voted for Approval

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 INR)

Sl. 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	NA	NA	NA	NA
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of	NA 1,95,56,1	NA 1,88,05,03	NA 4,00,00,0	NA 2.04%



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		the resolution plan	0,693 (Indian Bank Claim-45,15,51,601)	,217 (Indian Bank-41,70,13,168)	00	
			*Total Admitted Claim of Secured Financial Creditor is INR 1,89,58,96,368. Out of this INR 1,46,34,90,049 is the admitted claim of Ashok Investor Trust Limited (CoC member with majority voting share and the Resolution Applicant) while INR 41,70,13,168 is the admitted claim of the Indian Bank Limited. The Resolution Applicant has not allocated any amount to itself in the Resolution Plan. Therefore, as per the treatment in the Plan only the admitted claim of Indian Bank Limited is included. The Plan is allocating 9.59% against the admitted claim of Indian Bank Limited.			
		Total[(a) + (b)]	1,95,56,10,693	1,88,05,03,217	4,00,00,000	2.04%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:				



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		(i) who did not vote in favour of the resolution Plan	1,54,35,247	1,53,93,151	1,00,000	0.64
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	1,54,35,247	1,53,93,151	1,00,000	0.64
3	Operational Creditors	(a) Related Party of Corporate Debtor				
		(b) Other than (a) above:				
		(i)Government	1,58,45,34,530	1,58,45,34,530	1,00,000	0.006%
		(ii)Workmen				
		(iii)Employees				
		(iv)				



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		Total[(a) + (b)]	1,58,45,34,530	1,58,45,34,530	1,00,000	0.006%
4	Other debts and dues					
Grand Total			3,55,55,80,470	3,48,04,30,898	4,01,00,000	

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

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	100	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	Net worth	Yes



	meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Certificate given by the Resolution Applicant	
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?	Undertaking given by the Resolution Applicant and due diligence by the RP. (Pg. No. 17-23)	
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Page 17-23 of the Plan.	YES
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Page 49	Yes
	(b) provides for the payment to the operational creditors?	Page 49	Yes
	(c) provides for the payment to the financial creditors who did not vote	Page 50	Yes



	<p>in favour of the resolution plan?</p> <p>(d) provides for the management of the affairs of the corporate debtor?</p> <p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?]</p>	<p>Page 29</p> <p>Page 29</p> <p>Page47-48</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
Section 30(4)	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66 %voting share?</p>		<p>Yes</p> <p>Yes</p>
Section 31(1)	<p>Whether the Resolution Plan has provisions for its effective implementation, according to the CoC?</p>	<p>Page 30</p>	<p>Yes</p>
Regulation 38(1)	<p>Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial</p>	<p>Page 49</p>	<p>Yes</p>



	creditors?]		
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Page 49	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?]	Page 46-47	No
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising	Page 45 Page 29 Page 29	Yes Yes Yes



	its implementation?		
38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default?</p> <p>(b) it is feasible and viable?</p> <p>(c) it has provisions for its effective implementation?</p> <p>(d) it has provisions for approvals required and the timeline for the same?</p> <p>(e) the resolution applicant has the capability to implement the resolution plan?</p>	<p>Page 33</p> <p>Page 34</p> <p>Page 30-34 and</p> <p>Page 67</p> <p>Page 56</p> <p>(Pg. No. 33-34)</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NO	
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Yes	Amount received in the CIRP



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			account of the Corporate Debtor
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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	26/07/2022. Mr. Hemendra Paliwal was appointed as the IRP via order dated 26/07/2024. However, Mr. Hemendra Paliwal withdrew his consent after approval. Thereafter, by order dated 20.09.2022 Mr.



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			Devang Thakkar was appointed as the IRP.
Regulation 6(1)	Publication of Public Announcement	T+3	02/10/2022
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	13/10/2022
Regulation 13(1)	Verification of Claims	T+21	20/10/2022
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	N/A
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	22/10/2022. Report taken on record by the Hon'ble NCLT on 14/11/2022.
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	29/10/2022
Regulation 35A	Determination of fraudulent and other	T+115	NA



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	transactions		
Regulation 27	Appointment of two Registered Valuers	T+47	06/11/2022
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54]	
Regulation 36A	Invitation of EoI	T+75	First- 19/11/2022. Second- 09/11/2023 Extension of 15 days for submitting EoI published on 24/11/2023
	Publication of Form G	T+75	First- 19/11/2022. Second- 09/11/2023 Extension of 15 days for submitting EoI published on 24/11/2023
	Provisional List of Resolution Applicants	T+100	19.12.2023
	Final List of Resolution Applicants	T+115	03.01.2024
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix	T+105	06/01/2024



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

I.A. No. 33 of 2024 In C.P. No. 02 of 2021

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

11. The time frame proposed for obtaining relevant approvals is as under:

Sl.No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
12	Trade License			30 Days of approval
13	Requisite license and approvals required to undertake business			Within 1 year.



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

14A. Whether the resolution professional has, in accordance with regulation 35A,-

(a) applied to the Adjudicating Authority on or before the one hundred and thirty-fifth day of the insolvency commencement date:

No – There is no reportable Avoidance found after the Transaction Audit exercise

(b) filed Form CIRP 8 with the Board on or before the one hundred and fortieth day of the insolvency commencement date. - Yes

15. Provide details of section 66 or avoidance application filed / pending. - N/A

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	N.A	N.A	N.A
2	Undervalued	N.A	N.A	N.A



	transactions under section 45			
3	Extortionate credit transactions under section 50	N.A	N.A	N.A
4	Fraudulent transactions under section 66	N.A	N.A	N.A

15A. The committee has approved a plan providing for contribution under regulation 39B as under: - The members postponed this agenda and decided that in the event of approval of liquidation of the Corporate Debtor, the CoC meeting shall be convened and the decision as per Regulation 39B, 39C and 39D shall be made before filing for an application for initiation of liquidation of the Corporate Debtor.

36. The value offered in the Resolution Plan is more than the liquidation value. Following is the summary of the valuation,

	Valuer 1		Valuer 2		Average	
	Fair Value	Liq Value	Fair Value	Liq Value	Fair Value	Liq Value
SFA	43,328.00	43,328.00	19,658.00	19,658.00	31,493.00	31,493.00



37. The Monitoring Committee shall comprise of the following-

- I. Resolution Professional (Existing RP will be given preference and in case of his rejection any IBBI approved Insolvency Professional will be appointed)
- II. 1 representatives of Financial Creditors
- III. 1 representatives of Resolution Applicant.

38. OBSERVATION AND FINDINGS

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid not less than the value they would have been paid in the event of liquidation of the Corporate Debtor.
- iv. The plan provides for the management of the affairs of the Corporate Debtor after approval of the Plan.
- v. The Resolution Plan does not contravene being in force.
- vi. Resolution Plan provides for the implementation and supervision of the resolution plan as per Section 30(2) (e)
- vii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).



- viii. The resolution applicant or any of its related parties have not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- ix. The Resolution Plan is in compliance of the Regulation 38 of the Regulations and also in terms of Section 30(2)(f) as under:
- a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. The Resolution Plan has all the adequate means of supervising the implementation of the Plan as required under Regulation 38(2)(c) of the IBBI, Insolvency Resolution Process for Corporate Persons, Regulation 2016.
 - c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
 - d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
 - f. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.



- g. The plan provides for the management and control of the business of the Corporate Debtor during its term.
- h. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- i. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
- j. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).

The Resolution Plan has been approved in the in **15th COC Meeting held** between 16/03/2024 (11:00 AM) to 08/04/2024 (06:00 PM) **with 100%** Voting Majority through e-voting starting on 8th April, 2024 at 12:30 P.M. and ended on 3rd May, 2024 at 06:00 P.M. in accordance with the provisions of the Code.

In view of the case law, the legislature has given paramount importance to the commercial wisdom of Committee of Creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent of scrutiny provided under section 31 of Code and the direction of the Appellate Authority is limited to the extent provided under sub-Section (3) of Section 61 of the Code. In view of the discussions, this Bench is of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law.



The Resolution Plan is feasible and viable. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- a) The Interlocutory Application No. 33 of 2024 is **allowed**. The Resolution Plan submitted by **Ashok Investor Trust Limited**, is hereby approved. **It shall become effective from this date and shall form part of this order.** It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- b) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of which are extracted herein below:

“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan



shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

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

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- c) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- d) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- e) The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall file status of its implementation before this Authority from time to time, preferably every quarter.



- f) 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.
- g) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- h) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- i) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- j) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- k) The Interlocutory Application No. 33 of 2024 is accordingly allowed.**

Sd/-

Madhu Sinha

Member (Technical)

/Aakansha/

Sd/-

Reeta Kohli

Member (Judicial)