

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**IA (IBC)/82/GB/2022  
IA (IBC)76/GB/2022  
IA(IBC) 48/GB/2022  
in CP (IB)/19/GB/2021**

**Coram:**

**Hon'ble Shri Deep Chandra Joshi, Member (J):**                      **Hearing through**  
**Hon'ble Shri Prasanta Kumar Mohanty, Member (T):**            **Video Conference**

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 20.01.2023.**

In the matter of:

Purshotam Gaggar, RP

In

Mukut Chandra Deka

... Petitioner

Versus

JSB Entrade Pvt. Ltd.

... Respondent

S.No. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.	MR. P. GAGGAR Advocate	RP	In person	Present in Video Conference
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**ORDER**

The Applicant is represented through respective Learned Counsel (s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, through video conferencing vide separate sheet.

**Sd/-**

**(PRASANTA KUMAR MOHANTY)  
MEMBER (T)**

**Sd/-**

**(DEEP CHANDRA JOSHI)  
MEMBER (J)**

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In the matter of:

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... Petitioner

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JSB Entrade Pvt. Ltd.

... Respondent

**Order Pronounced On 20.01.2023**

**ORDER**

**Per: Shri Prasanta Kumar Mohanty, Hon'ble Member (T)**

1. This Application has been filed by the Resolution Professional under Section 30(6) 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 for the approval of the Resolution Plan submitted by Successful Resolution Applicant- NK Power and Infrastructure Private Limited which has been approved by the Committee of Creditors of the Corporate Debtor on 20.10.2022, seeking the following reliefs:

- a. This Hon'ble Tribunal being the Adjudicatory Authority be pleased to approve the Resolution Plan as annexed to the present Application and approved by the Committee of Creditors with requisite majority;
- b. Direct that the Resolution Plan shall be binding on the Corporate Debtor along with all Employees, Secured, Unsecured, Financial and

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Operational Creditors and Government/Statutory Authorities and no further approval of the same shall be required for implementing the Resolution Plan.

2. The Applicant submits that:
  - 2.1 The Corporate Debtor i.e. JSB Entrade Pvt Ltd, (incorporated on 19.05.2010) is a private limited company having its registered office at House No. 3/1, Rajdeep Complex, FA Road, Kumarpara, Guwahati-781009, Assam. Corporate Debtor is engaged in the business of manufacturing of Empty Tin, Trading of Paddy, Oil Seed, Mustard Oil, Blended Oil., etc. The Corporate Debtor is a going concern.
  - 2.2 This Hon'ble Tribunal vide order dated 10.12.2021, allowed CP(IB) No. 19/GB/2021, filed under Sec. 7 of IBC titled **“Mukut Chandra Deka vs JSB Entrade Pvt Ltd”**, thereby initiating CIRP against the Corporate Debtor, and further appointed Mr. Manish Agarwalla as IRP.
  - 2.3 Before admission of the Corporate Debtor into CIRP, the directors of the Corporate Debtor were Mr. Amiyo Ishlary, Mr. Nobel Sangma and Mr. Santosh Kumar Harlalka. The power of the Board of Directors of the Corporate Debtor stands suspended pursuant to admission of the Corporate Debtor into CIRP.
  - 2.4 The IRP for the Corporate Debtor, under the IBBI (Insolvency Resolution Process for Corporate Persons Regulations, 2016 (CIRP Regulations) made public announcement as per Regulation 6 of the CIRP Regulations on 16.12.2021 in The North East Times (English daily newspaper) and in Amar Asom (Assamese daily newspaper) and on the basis of the claims received constituted a Committee of Creditors.
  - 2.5 In due compliance of Regulation 27, the Interim Resolution Professional duly appointed registered valuers to determine the fair valuation and liquidation value of the Corporate Debtor in accordance with the resolution passed by the Committee of Creditors in its 1st Meeting held on 13.01.2022.

- 2.6 In the 2nd Meeting of the Committee of Creditors dated 25.02.2022, it was resolved to replace Mr. Manish Agarwalla and appoint the Mr. Purshotam Gaggar (Applicant herein) as Resolution Professional (RP) of Corporate Debtor.
- 2.7 This Hon'ble Tribunal vide order dated 07.04.2022, was pleased to allow the application bearing IA (IBC) No. 22/GB/2022, for appointment of Mr. Purshotam Gaggar (Applicant herein) as RP of Corporate Debtor.
- 2.8 Upon his appointment as the Resolution Professional (vide order dated 07.04.2022), the Applicant herein was handed over limited documents and records pertaining to the CIRP of the Corporate Debtor from the erstwhile Interim Resolution Applicant, wherefrom it became apparent that as required under sub regulation (1) of Regulation 13 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the Interim Resolution Professional, has verified claims, as on the insolvency commencement date.
- 2.9 Accordingly, as required under sub regulation (1) of regulation 13 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the Interim Resolution Professional and the Resolution Professional, have verified every claim, as on the insolvency commencement date and thereupon maintained a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims. In conformity with clause (d) of sub regulation (2) of regulation 13, the list of creditors have been filed with the Adjudicating Authority, Based on the above ruling and following the guidelines of sub regulation (2) of regulation 12 read with sub regulation (1) of regulation 17 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution

Professional constituted Committee of Creditors on 05.01.2022 and the same as on date comprise of the following:

Name of Creditors	Amount claimed by the Creditors (In. Rupees)	Amount Admitted	Security Interest, if any, in respect of such claim (in Rupees)
<b>Secured Financial Creditors</b>			
Punjab National Bank	9,72,36,004.42	9,69,39,754.47	
Total debt from Secured Financial Creditors (A)	9,72,36,004.42	9,69,39,754.47	
<b>Unsecured Financial Creditors</b>			
Mr. Mukut Chandra Deka*	1,77,36,370	1,66,98,440	
Total dues to Unsecured Financial Creditors (B)	11,49,72,374.42	11,36,38,194.47	
<b>Operational Creditors</b>			
Related Party of Corporate Debtor	Nil	Nil	
Other	Nil	Nil	
Total dues to Operational Creditors (C)	Nil	Nil	
<b>Total Claims (A + B + C)</b>	<b>11,49,72,374.42</b>	<b>11,36,38,194.47</b>	

\*Mr. Mukut Chandra Deka is a related party to the corporate debtor; hence, does not have voting rights in CoC.

- 2.10 This Hon'ble Tribunal vide order dated 09.06.2022 in IA (IBC) No. 39/GB/2022, allowed the application for extension, thereby extending CIRP period by 90 days w.e.f. 08.06.2022.
- 2.11 Applicant after perusal of the documents available of the Corporate Debtor formed an opinion that the functioning of the Corporate Debtor had been carried out with the intent to defraud its creditors and that

the business of the Corporate Debtor was not carried out diligently. The Applicant in pursuance of his duties as the Resolution Professional appointed a Transaction Auditor to carry out investigation into the affairs of the Corporate Debtor.

- 2.12 Applicant was provided with the final Transaction Audit Report on 11.06.2022. Upon perusal of the Transaction Audit Report so submitted, it was ascertained that business of the corporate debtor was carried out with the intent to defraud the creditors of the Corporate Debtor. Hence, the applicant on 18.07.2022, filed an application bearing IA No. 48 of 2022, under section 66 of IB Code, 2016, before this Hon'ble Tribunal. The same is pending adjudication
- 2.13 Applicant in conformity with Regulation 35(1)(c) of the said CIRP Regulations, has considered the valuation reports in respect of each segment and duly considered the average value of the two estimates as mentioned in each of the above segments and consequently arrived at the valuation of the assets in respect of the Corporate Debtor.
- 2.14 Meanwhile, the members further approved Form G prepared in accordance with Regulation 36 A (1) of the said CIRP Regulation which was published on 30.04.2022 in English Paper (North East Times) and Assamese paper (Amar Asom). The members to the Committee of Creditors approved the Information Memorandum prepared in conformity with Section 29 of the Code read with Regulation 16 of the said CIRP Regulations, the draft Expression of Interest, Evaluation Matrix and the draft Request for Resolution Plan to be circulated amongst the Prospective Resolution Applicants. The Request for Resolution Plan was prepared following Regulation 36B of the said CIRP Regulations
- 2.15 As the only CoC member had executed confidentiality undertaking, the RP had circulated the Information Memorandum prepared in conformity with Section 29 of the Code read with Regulation 36 of the Regulations.

- 2.16 The Applicant, upon having circulated the Final List of Prospective Resolution Applicants compiled in conformity with Regulation 36A (12) of the said CIRP Regulations, the said Prospective Resolution Applicant duly submitted its expression of interest as per the format and the requirements within the last date for submission of such expression of interest. The Applicant was in receipt of only one Resolution Plan from NK Power and Infrastructure (Resolution Applicant). Upon receipt of such plan, the Applicant issued notice dated 29.06.2022, for convening the 6<sup>th</sup> meeting of the Committee of Creditors on 02.07.2022.
- 2.17 The 6<sup>th</sup> Meeting of the Committee of Creditors took place on 02.07.2022, on which date the plan received by the Applicant was duly opened before the Committee of Creditors. Furthermore, the Applicant also sought opinion of the Committee of Creditors to explore the possibility of a fresh invitation for EOI since only one plan had been received.
- 2.18 The 7<sup>th</sup> Meeting of the Committee of Creditors was held on 26.07.2022, on which date the Applicant placed the compliance certificate with respect to the plan received before the Committee of Creditors. Furthermore, in the said meeting due deliberation on the plan submitted and negotiation with the Resolution Applicant was undertaken by the Committee and the Resolution Applicant was requested to submit an improved plan. Copy of the Compliance certificate issued by the RP has been annexed.
- 2.19 In the 9<sup>th</sup> Meeting, the Committee of Creditors, after due deliberation, with 100% vote rejected the resolution plan so received. Copy of the minutes of the 9<sup>th</sup> meeting of the CoC held on 01.09.2022, has been annexed.
- 2.20 Therefore, the Applicant herein filed an application, under section 33 of IB Code, 2016, bearing IA No. 68 of 2022, for seeking liquidation of

the Corporate Debtor. During the hearing on 13.10.2022, this Hon'ble Tribunal passed the following orders.

*“3. Since the CD is an MSME Unit, the provision in the Resolution plan of the RA is more than the liquidation value and the Liquidation is the last resort, the RP is hereby directed to convene a meeting of the CoC and the Resolution Applicant within 7 days so that the CoC may relook at the Resolution Plan submitted/negotiate with the RA for further improvement, if any, in the Proposal so that the CD is not pushed into Liquidation for issues like non-payment of interest on deferred payment etc. The RP is to submit the report within 10 days thereafter.”*

Copy of order dated 13.10.2022, passed by this Hon'ble Tribunal in IA(IBC)No. 68/GB/2022 in C.P(B)19/GB/2021, has been annexed.

2.21 As per the directions of this Hon'ble Tribunal, the Applicant herein convened 10 meeting of CoC on 20.10.2022. During the 10th meeting of CoC, the Resolution Plan of NK Power and Infrastructure Private Limited (Resolution Application) was once again discussed. The COC members requested the Resolution Applicant to improve upon the resolution amount proposed in their resolution plan, which after discussion the Resolution Applicant agreed to increase to Rs. 840 lakhs as against Rs. 820 lakhs submitted earlier. The Resolution Applicant submitted fresh plan before the COC immediately which was taken on record. All other terms & conditions of the plan remained same and COC members after due discussion put the resolution plan on vote, which was approved with by COC members with 100 % vote in favour of the plan. Copy of the Revised Resolution Plan as submitted by the Resolution Applicant has been annexed.

2.22 NK Power and Infrastructure Private Limited (Resolution Application) is a private limited company registered under the Companies Act, having its registered address at 1<sup>st</sup> Floor, Plaza Building, Ganeshguri, G.S. Road, Guwahati, Assam-781006. The Company was incorporated on 18.02.2009 and has CIN No. U40101AS2009PTC008965. The Company is engaged in execution of turnkey projects in power sector and is also engaged in manufacturing of PSC poles and transformers.

- 2.23 The Resolution Applicant has adequate financial capability and experience and can provide required capital to continue and grow business of Corporate Debtor from own sources and by contracting Debt.
- 2.24 The Resolution Applicant, as required under the RFRP, has submitted Affidavit confirming eligibility from the point of view of section 29A of the Insolvency and Bankruptcy Code, 2016. Copy of the affidavit submitted by Resolution Applicant/NK Power and Infrastructure Private Limited has been annexed.
- 2.25 The liquidation value of the corporate debtor as determined by the Registered Valuers is Rs. 8,16,90,936.11 whereas the Resolution Amount offered by the Resolution Applicant is Rs. 8.40 crores.
- 2.26 Form H as required under sub regulation (4) of regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, duly completed by the Applicant has been annexed.
- 2.27 The Successful Resolution Applicant had deposited performance bank guarantee on 09.11.2022 Copy of the performance bank guarantee has been annexed.
- 2.28 In view of the above facts and circumstances, the Applicant humbly prays that this Hon'ble Tribunal be pleased to consider and approve the Resolution Plan in full, as annexed with the present application and as approved by the Committee of Creditors.

3. The RP has under Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, submitted the Compliance Certificate as stated below:

- 3.1 The RP, Purshotam Gaggar, CA, an Insolvency Professional enrolled with the Institute of Company Secretaries of India and registered with the Board with registration number IBBI/IPA-001/IP-NOO487/2017-18/10875, is the Resolution Professional for the Corporate Insolvency Resolution Process (CIRP) of JSB Entrade Private Limited.

3.2 The details of the CIRP are as under:

<b>SL. No.</b>	<b>Particulars</b>	<b>Description</b>
1.	Name of the CD	<b>JSB Entrade Private Limited.</b>
2.	Date of Initiation of CIRP	<b>10.12.2021</b>
3.	Date of Appointment of IRP	<b>10.12.2021</b>
4.	Date of Publication of Public Announcement	<b>16.12.2021</b>
5.	Date of Constitution of CoC	<b>05.01.2022</b>
6.	Date of First Meeting of CoC	<b>13.01.2022</b>
7.	Date of Appointment of RP	<b>07.04.2022</b>
8.	Date of Appointment of Registered Valuers	<b>29.01.2022</b>
9.	Date of Issue of Invitation for EoI	<b>30.04.2022</b>
10.	Date of Final List of Eligible Prospective Resolution Applicants	<b>26.05.2022</b>
11.	Date of Invitation of Resolution Plan	<b>25.05.2022</b>
12.	Last Date of Submission of Resolution Plan	<b>25.06.2022</b>
13.	Date of Approval of Resolution Plan by CoC	<b>20.10.2022</b>
14.	Date of Filing of Resolution Plan with Adjudicating Authority	*
15.	Date of Expiry of 180 days of CIRP	<b>08.06.2022</b>
16.	Date of Order extending the period of CIRP	<b>09.06.2022</b>
17.	Date of Expiry of Extended period of CIRP	<b>06.09.2022</b>
18.	Fair Value	<b>Rs. 11,59,70,046.27</b>
19.	Liquidation value	<b>Rs. 8,16,90,936.11</b>
20.	Number of Meeting of CoC held	<b>10</b>

3.3 The RP has examined the Resolution Plan received from Resolution Applicant/ NK Power & Infrastructures private Limited and approved by the CoC of J S B Entrade Private Limited.

3.4 **The RP has certified 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, NK Power and Infrastructure Private Limited has submitted an affidavit pursuant to Section 30(1) of the code confirming its eligibility under Section 29 A of the Code to submit resolution plan. The contents of the said affidavit are in order.
- iii. The said Resolution has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made there under. 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. The voting was held in the meeting of the CoC on 20.10.2022 where the 100% members of the CoC holding voting power were present.

3.5 The list of financial creditors of the CD – JSB Private Limited 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.	Punjab National Bank	100%	<b>Voted for</b>

3.6 The Resolution Plan includes a statement under regulation 38(1 A) of the CIRP Regulations as to how it has dealt with the interests of all

stakeholders in compliance with the Code and regulations made there under.

3.7 The amounts provided for the stakeholders under the Resolution Plan are as under:

(Amount in Lakhs)

<b>S. NO.</b>	<b>Category of Stakeholder*</b>	<b>Sub-Category of Stakeholder</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>	<b>Amount Provided under the Plan #</b>	<b>Amount Provided to the Amount Claimed (%)</b>
(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	0.00	0.00	0.00	0.00
		(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	972.36	969.40	840.00#	86.39
		Total [(a)+(b)]	972.36	969.40	840.00	86.39
2.	Unsecured Financial Creditor	(a) Creditors not having a right to vote under Sub-Section (2) of Section 21	177.36	166.98	0.00	0.00

		(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	0.00	0.00	0.00	0.00
		Total [(a)+(b)]	177.36	166.98	0.00	0.00
3.	Operational Creditors	(a) related party of Corporate Debtor	0.00	0.00	0.00	0.00
		(b) Other than  (a) above:  (i) Government  (ii) Workmen  (iii) Employees  (iv) Other	0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00	0.00 0.00 0.00 0.00
		Total [(a)+(b)]	0.00	0.00	0.00	0.00
4.	Other debts and dues		0.00	0.00	0.00	0.00
<b>Grand total</b>			<b>1149.72</b>	<b>1136.38</b>	<b>840.00</b>	

[\* If there are sub-Category, please add rows for each sub-category.

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

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

S. 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	2500000 Equity shares of Rs. 10/- Each	NIL	100	NIL
2.	Preference	NIL	NIL	NIL	NIL

3.9 The compliance of the Resolution Plan is as under:

<b>Section of the Code/ Regulation No.</b>	<b>Requirement with respect to Resolution plan</b>	<b>Clause of Resolution Plan</b>	<b>Compliance (yes/No.)</b>
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the Complexity and sale of operations of business of the CD?	Part I @ Page 3,4	YES
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or order, if any, of the Adjudicating authority?	Part I page 3 Declaration u/s 29A also submitted	YES
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit, Format IIIA-IB Code related undertaking by Resolution Applicant	YES

Section 30(2)	Whether the Resolution Plan-		
	(a) Provides for the payment of insolvency resolution process costs?	Part II point 5 page 17 to 18	YES
	(b) provides for the payment to the operational creditors?	Part II, Point 7 & 8 Page 20 to 22	YES
	(c) Provide for the payment to the financial creditors who did not vote in favour o the resolution plan?	Part II, Point 6 page 18 to 20	YES
	(d) Provides for the management of the affairs of the corporate debtor?	Part II, Point 6 page 18 to 20	YES
	(e ) Provides for the implementation and supervision of the resolution plan?	Part II, Point 11 Page 23 to 26	YES
	(f) Contravenes any of the provisions of the law for the time being in force?	Part II, Point 13 Pages 28  (Declaration given by RA in Resolution Plan)	YES
Section 30(4)	Whether the Resolution Plan  (a) is feasible and viable, according to the CoC?  (b) has been approved by the CoC with 66% voting share?	NA  NA	YES
Section 31(1)	Whether the Resolution plan has provisions for its effective	Clause 12 @ Page 26	YES

	implementation plan, according to the CoC?		
Regulation 38(1A)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	No such statement is there in the plan, however, details of dealing with respective stakeholders with respect their payments is given in Part II points 5 to 9 (Pages 17 to 23)	YES
Resolution 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 Resolution Applicant has submitted the statement giving details of such non-implementation?	Part 1 Point 3 in Page 3  Not Applicable	YES
Regulation 38(2)	Whether the Resolution Plan provides:		
	(a) The term of the plan and its implementation schedule?	Part II Pages 24 to 26	YES
	(b) Adequate means for supervising its implementation?	Part II Point 12 in Pages 27 to 28	YES
	(c) Adequate means for supervising its implementation?	Part II point 12 in Pages 27 to 28	YES

38(3)	Whether the resolution plan demonstrates that-		
	(a) it addresses the cause of default?	Part II Page 9 to 10	YES
	(b) it is feasible and viable?	Page 10	YES
	(c) it has provisions for its effective implementation?	Part II, Point II Pages 24 to 26	YES
	(d) it has provisions for approvals required and the timeline for the same?	Part II, Point II Pages 25 to 26	YES
	(e) the resolution applicant has the capability to implement the resolution plan?	YES	YES
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		YES
Regulation 39(4)	Provide details of Performance security received, as referred to in sub-regulation (4A) of regulation 36B.	NA	Performance Bank Guarantee no. H58GPGE22 3135001 of Rs. 1.26 Crore received from RA.

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

<b>Section of the Code/ Regulation No.</b>	<b>Description of Activity</b>	<b>Latest timeline under Regulation 40 A</b>	<b>Actual Date</b>	<b>Actual Time Line</b>
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	10.12.2021	T

Regulation 6(1)	Publication of Public Announcement	T+3	16.12.2021	T +6
Section 15(1) (C) /Regulation 12(1)	Submission of Claims	T+14	28.12.2021	T+18
Regulation 13(1)	Verification of Claims	T+21	04.01.2022	T+25
Section 26 (6A)/ Regulation 15A	Application for Appointment of Authorized Representative, if necessary	T+23	NA	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	05.01.2022	T+26
Section 22 (1) and regulation 17(2)	First Meeting of the CoC	T+30	13.01.2022	T+34
Regulation 35A	Determination of fraudulent and other transactions	T+115	08.06.2022	T +180
Regulation 27	Appointment of two Registered Valuers	T+47	29.01.2022	T+50
Regulation 36(1)	Submission of Information Memorandum to CoC	T+54	25.02.2022	T+77
Regulation 36A	Invitation of EoI	T+75	30.04.2022	T+141
	Publication of Form G	T+75	30.04.2022	T+141
	Provisional List of Resolution Applicants	T+100	20.05.2022	T+161
	Final List of Resolution Applicants	T+115	26.05.2022	T+167
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to	T+105	25.05.2022	T+166

	Resolution Applicants			
Section 30(6)/ Reg. 39(4)	Submission of CoC approved Resolution Plan	T+165		T+
Section 31(1)	Approval of Resolution Plan	T=180		T+

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

**NA.**

3.12 The Resolution Plan is not subject to any contingency.

3.13 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**

3.14 **The Resolution Plan has been filed on 12.11.2022.**

3.15 Details of section 66 or avoidance applicable filed/pending

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	NA	NA	NA
2	Undervalued transactions under Section 45	NA	NA	NA
3	Extortionate credit translations under Section 50	NA	NA	NA
4	Fraudulent transactions under Section 66	18.07.2022	PENDING	NA

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

- a. Estimated liquidation cost: Rs. 22,11,000.00
- b. Estimated liquid assets available: Rs. 22,12,710.00
- c. Contributions required to be made: Contribution not required as the assets are under lease rent is generated to meet Liquidation Cost.
- d. Financial creditor wise contribution is as under: NA

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

- a. Sale of corporate debtor as a going concern: Yes
  - b. Sale of business of corporate debtor as a going concern: Yes
- The details of recommendation are available with the resolution professional.

**3.15.C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D - YES, the liquidators fee is decided as Rs. 1,00,000.00 plus GST per month during the liquidation period.**

4. As directed by the Hon'ble Bench , the Applicant, in accordance with the Bench's order dated 09.12.2022 conducted a meeting of the CoC and Resolution Applicant on 09.01.2023 for clarifications on certain points in the Resolution Plan submitted with regard to the Transfer of the land, Transactions relating to the Section 43,45,50,66 etc., of IBC, Guarantees, Subsidy Receivable, Members of the Monitoring committee and have filed an affidavit dated 11.01.2023 enclosing the minutes of the meeting. The relevant portion of Agenda Item No. 2 (Discussion as per the directions of Hon'ble NCLT) is reproduced below:

*"... Thereafter RP asked both the CoC member and the Resolution Applicant to have a discussion on the matter to come into conclusion.*

**I. THE TRANSFER OF THE LAND**

*Mr. Sachin Kumar Chaudhary, representative of RA, stated that:*

- a. Details with regard to the status of land (Land measuring 8 Bighas, 3 Katha covered by Dag No 75, Patta - 27, Vill-Ambher, Mouza-Sonapur, Circle-Sonapur) and the proposed mechanism for transfer of the land were duly discussed in the eleventh meeting of the CoC held on 28.11.2022 and which were duly recorded.*
- b. During the seventh meeting of the CoC held on 26.07.2022 Mr. Kamal Kumar Harlalka being an authorised representative of all the directors of the suspended board raised objection with regard to lease hold right over the land*
- c. the factory building and the manufacturing unit of CD is located on the above mentioned land and the complete business operations of CD are operated from the said land. Thus without the transfer of land the business operation of the CD cannot be continued, hence the RA through the resolution plan requested for the transfer of said land so that the revival of CD can be successfully completed and Resolution Plan can be implemented, and the CD can continue to be a going concern.*
- d. Considering the above facts, for successfully implementation of resolution plan. the RA once again requested to transfer the above stated land through SARFAESI Act, 2002*

***After discussion the COC agreed to transfer the land to Corporate Debtor/Resolution Applicant in the manner prescribed under the provision of SARFAESI Act, 2002 by treating the consideration for land within the overall consideration as stated in the approved resolution plan by CoC.***

## **II. TRANSACTIONS UNDER SEC 43, 45, 50 ETC.**

*The Resolution Professional updated the COC, that the Resolution Professional has filed an application bearing IA (IBC)/48/GB/2022, under section 66 of the IB Code, 2016 before Hon'ble NCLT. The same is pending adjudication.*

*Mr. Sachin Kumar Chaudhary, representative of RA, clarified that in page No. 28 and 29 vide point no. 14(i) & (ii) of the resolution plan contains details with regard to transaction under Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code that:*

- a. the existing promoters, shareholders, managers, directors, officers, or such other person in charge of the affairs and management of the Corporate Debtor (including any person who was an 'officer in default' or 'occupier') prior to the Insolvency Commencement Date shall continue to be responsible and liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the Adjudicating Authority pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code) or any acts or omissions in breach of Applicable Law which occurred prior to the Insolvency Commencement Date. Further, for the avoidance of doubt and without prejudice to the generality of the foregoing, it is expressly clarified that any criminal proceedings initiated against the officers of the Corporate Debtor prior to the Insolvency Commencement Date shall continue against such officers without any liability accruing to the Resolution Applicant in its capacity as promoters and management of Corporate Debtor in relation to such criminal proceedings. Further on and with effect from the NCLT Approval Date, all the negotiable instruments issued by the Corporate Debtor under which liabilities are due and payable by the Corporate Debtor or by any person on behalf of the Corporate Debtor shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished.*
- b. The proceedings filed or to be filed by the RP towards Preferential Transactions, Undervalued transactions, Extortionate credit transactions and Fraudulent trading or wrongful trading will be*

*pursued by the resolution applicant at the cost of the financial creditors and any recovery from the said proceedings will be transferred to the financial creditors after deduction of cost of pursuing the claim / proceedings.*

***After discussion the COC agreed to the above clause of resolution plan in respect of transactions under Sec 66.***

### **III. GUARANTEES**

***After discussion the COC stated that the guarantees already offered by any person for borrowing by the Corporate Debtor as on the Insolvency commencement date, shall continue to be responsible and liable for all the liabilities, claims, demand, obligations, penalties etc. and no waiver of the same is allowed. The CoC will pursue the personal guarantee independently.***

### **IV. SUBSIDY RECEIVABLE**

***Mr. Sachin Kumar Chaudhary, representative of RA, clarified that any subsidy claims or receivable pending on the Insolvency commencement date will be the assets of the CD. In this regard, the CoC agreed that clause 14(a), 14(b) and 14(c) of the Resolution plan (page 15) all benefits under NEIIPP 2007 or under any state or Central Industrial policy will accrue to the Corporate Debtor.***

### **V. MEMBERS OF THE MONITORING COMMITTEE**

*Mr. Sachin Kumar Chaudhary, representative of RA, clarified that in page No. 26 vide point no. b(i) with regard to Monitoring Committee stated that:*

*"Upon the NCLT Approval Date, an Implementation and Monitoring Committee comprising of 3 (three) persons of which 1 (one) will be an independent professional nominated jointly by the Resolution Applicant and the Lenders, 1 (one) will be nominated by the Lenders, and 1 (one) will be an independent member as selected by the Resolution Applicant, will be constituted without any further action*

*required from the Corporate Debtor or the Resolution Applicant (Implementation and Monitoring Committee)"*

*Further representative of RA, clarified that considering the effective implementation RA would like to propose that Monitoring Committee comprising of 3 (three) persons of which 1 (one) will be the Resolution Professional headed as chairman of Monitoring Committee, 1 (one) will be nominated by the lenders, and 1 (one) will be nominated by the Resolution Applicant. The remuneration payable to members of the monitoring committee will be fixed in the first meeting of monitoring committee.*

***After discussion the COC agreed with proposed constitution of Monitoring Committee..."***

5. The following IAs are pending before this bench for adjudication in this matter:

5.1 **IA (IBC)/76/60(5)/GB/2022** has been filed by Amiyo Ishlary under Section 60[5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016 in order to bring to the notice of the Hon'ble Tribunal legal anomalies and objections to the Resolution Plan approved by the Committee of Creditors at the 10<sup>th</sup> meeting of the Committee of Creditors of JSB Entrade Private Limited, seeking the following reliefs:

- a. Reject the resolution plan approved by the Committee of Creditors.
- b. pass any further order(s) in the facts and circumstances of the present case

5.2 **IA(IBC) 48/66/GB/2022** has been under Section 66 of the Insolvency and Bankruptcy Code, 2016, by the Resolution Professional seeking the following reliefs:

- a. Pass an order declaring that the transactions as stated in the present application are fraudulent in terms of Section 66 (1) and (2) of the Insolvency and Bankruptcy Code 2016;

- b. Pass an order thereby directing the Respondents being the suspended board of directors/erstwhile directors/promoters/related party to make such contributions to the assets of the corporate debtor as this Hon'ble Tribunal may deem fit on account of fraudulent and wrongful trading in terms of Section 66 of the Code;

### **ORDER**

6. The Insolvency and Bankruptcy Code, 2016, defines Resolution Plan as a plan for Insolvency Resolution of the Corporate Debtor as a going concern. **The Resolution Plan must resolve insolvency (rescue a failing, but viable business); should maximize the value of assets of the 'Corporate Debtor', and should promote entrepreneurship availability of credit and balance the interests of all the stakeholders.**

7. In the backdrop of the object of the IBC, it is amply clear that the **Resolution is Rule and the Liquidation is an Exception.** Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. **IBC therefore, does not allow liquidation of a corporate debtor directly.** It allows liquidation only on failure of corporate insolvency resolution process. It rather facilitates and encourages resolution in several ways.

8. Keeping in view such object behind the enactment of the Code, intention of the Legislature is that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for bringing a Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per

the apex court's decision in the matter of ***K. Saahidhar Vs. Indian Overseas Bank & Ors.***

9. The Resolution Plan was heard by this Bench on 12.01.2023 at length in the presence of the CoC members, RP, SRA and their learned Counsels and this Bench had sought certain clarifications from them relating to the Transfer of the land, Transactions relating to the 43,45,50,66 etc., of IBC, Guarantees, Subsidy Receivable, Members of the Monitoring committee. During the hearing on 12.01.2023, the learned Counsel for the Applicant as well as the RA submitted that they have filed their submission with the registry after detailed discussion in CoC with the SRA relating to the transfer of land which may be considered as part of the Resolution Plan. **Both have agreed that the Resolution plan can be passed without transfer of the land now in the name of the SRA. However, the land can be transferred by them as per the law under SARFAESI in due course. Resolution Plan can be approved with the factory land on lease basis as being continuing till now as per the terms of the lease deed so that smooth production and transition can take place.**

As observed by this Bench, the RP had called the meeting of Committee of creditors and Successful Resolution Applicant on 09.01.2023 and deliberated upon and considered all the points for which the clarifications were sought for by this Bench on 09.12.2022. Thereafter, the RP has filed the Affidavit on the basis of the discussions held at the meeting and the said affidavit has been taken on record as part of the Resolution Plan submitted.

10. **On perusal of the records, it is found that the Resolution Plan confirms to the criteria as provided under clauses (a) to (f) in section 30(2) of the Code and the CoC approved the Resolution Plan by 100% voting. The value offered by the Resolution Plan is higher than the value of liquidation.** The Resolution Plan also confirms to such other requirements as may be specified by the Board. **The Resolution Professional has also**

**certified that the Final Resolution Plan is in conformity with the provisions of the IBC.**

11. **Transactions relating to Sec. 66: IA(IBC) 48 of 2022** under sec 66 of IBC is pending for adjudication before this tribunal. With regard to this IA, as per the point no. 14 (i) & (ii) of the Resolution and also as discussed and agreed in the meeting held on 09.01.2023 that the Successful Resolution Applicant would pursue the Applications before this Tribunal and any amount to be realized from the Applications shall be distributed as per the resolution plan among the secured financial creditors in accordance with the provisions of the code. Since this IA has no bearing on the approval of the Resolution Plan, the IA(IBC) 48 of 2022 is kept outside of the Resolution Plan and the same shall be heard and disposed of by this Bench later on. **The Registry is directed to list the IA on 09.02.2023 for hearing.**

12. **IA (IBC)/76/60(5)/GB/2022** has been filed by Amiyo Ishlary under Section 60[5] of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016 in order to bring to the notice of the Hon'ble Tribunal legal anomalies and objections to the Resolution Plan approved by the Committee of Creditors at the 10<sup>th</sup> meeting of the Committee of Creditors of JSB Entrade Private Limited with the prayer to reject the resolution plan. During the hearing of this IA on 12.01.2023, the authorized proxy counsel appearing on behalf of the Learned Senior Counsel submitted that since the CoC and the SRA have agreed to not transfer the land now then they have no objection to the plan submitted. It is also submitted by the CoC and the RA that without the transfer of land, but keeping the land on lease as being continued now, the business operation of the CD can be continued. Moreover, the Resolution Plan submitted by NK Power and Infrastructure Private Limited and approved by the CoC is before us for approval and the liberty is available with the CoC as agreed between the CoC and the RA to transfer the land as per the law under SARFAESI in due course. **Hence, this**

**IA(IBC)/76/GB/2022 has become infructuous and is disposed of accordingly.**

13. **Personal guarantees not be waived:** Personal Guarantors are not to be discharged by virtue of the approval of this Resolution Plan.

14. On perusal of the Resolution Plan, we are of the considered view that the Resolution Plan meets the requirement of Section 31 r/w Section 30(2) of the Code. **Therefore, the present application IA (IBC) No. 82/GB/2022 is allowed and the Resolution Plan is approved with the certain observations and compliances of the following Conditions:**

14.1 Approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/ Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/ own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicant, on approval of the Plan, has liberty to approach those Competent Authorities/ Courts /Legal Forums/ Offices-Govt. or Semi Govt./State or Central Govt. for appropriate relief or concession, or dispensation sought for in the plan as the case may be.

This is not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution

14.2 **The Monitoring Committee would be three members monitoring committee consisting of one member/representative of the SRA, (ii) representative of Financial Creditor having highest voting share in the CoC and (iii) Mr. Purshotam Gaggar Resolution Professional, as Head of Monitoring Committee.** The Resolution Professional is hereby appointed as the Head/Chairman of the monitoring Committee for supervision of the implementation of the Resolution Plan. **The Monitoring Committee needs to be wound up at an early date on implementation of the Resolution Plan.** Fees

of the RP as the Chairman of the Monitoring Committee is to be decided at the First meeting of the Monitoring Committee.

15. **It is further directed that:**

15.1 **The approved Resolution Plan shall come into force with immediate effect.**

15.2 The moratorium order passed under section 14 of the Code on **JSB Entrade Pvt. Ltd.** shall cease to have effect from today;

15.3 The Resolution Professional, **Mr. Purshotam Gaggar** is discharged from the duties of the resolution professional of the CD but he is to work as the Chairman of the Monitoring Committee till the Plan is implemented.

15.4 This Adjudicating Authority holds that it is beyond its scope to grant any Concessions/waivers etc. in respect of any dealings/transactions between the different parties, and/or as regards any statutory obligations/liabilities that are visualized or may arise subsequently while giving effect to the Plan, as the same would be dealt with by the SRA.

15.5 The Resolution Plan shall be subject to the various existing laws in force and shall also conform to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.

15.6 The Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws for the time being in force **within a period of one year from** the date of approval of the Resolution Plan by the Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.

15.7 All relevant parties in relation to the Final Resolution Plan are to be bound by the terms and conditions mentioned therein in accordance with Section 31(1) of the IBC 2016.

- 15.8 All relevant parties are directed **to extend full cooperation to carry** out the terms and conditions of the Final Resolution Plan. If there is any deviation in implementing the Final Resolution Plan, the concerned parties/entity will be liable for punishment as per Chapter 7 (Offences and penalties) of the IBC, 2016.
- 15.9 **The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.**
16. **Accordingly, IA (IBC)/82/GB/2022 in CP (IB)/19/GB/2021 is allowed and the Resolution Plan is approved with the above Observations and Directions.**

**Sd/-**

**(Prasanta Kumar Mohanty)  
Member (Technical)  
& Adjudicating Authority**

**Sd/-**

**(Deep Chandra Joshi)  
Member (Judicial)  
& Adjudicating Authority**