



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – IV

IA/82/2024
In
C.P.(IB)/1164(MB)2020

(Under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.)

IA/82/2024

M/s ARCK Resolution Professional LLP through its Designated Partner Mr. Anil Kohli ...Resolution Professional for Perfect Engineering Products Limited/ Applicant

In the matter of:

Edelweiss Asset Reconstruction Company Limited ...Financial Creditor

Versus

Perfect Engineering Products Limited ...Corporate Debtor

Order delivered on 19.12.2024

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member(Judicial)

Appearances:

For the Applicant/RP

:Adv. Abhishek Anand a/w
Adv. Karan Kohli and Adv.
Yashaswi Bahuguna.

For the Successful Resolution Applicant

: Adv. Amir Arsiwala a/w Adv.
Ashwini Gawde and Adv.
Nashra Siddiqui i/b ASR &
Associates.



ORDER

IA-82/2024

1. This Application has been filed on 17.08.2024 by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 on behalf of the Committee of Creditors seeking approval of the Resolution Plan submitted by the Successful Resolution Applicant and approved by 100% of the voting share of the members of the Committee of Creditors of the Corporate Debtor viz. Perfect Engineering Products Limited (hereinafter referred to as 'Corporate Debtor').

2. Brief Facts: -

2.1. Corporate Insolvency Resolution Process of the Corporate Debtor was initiated vide an order dated 06.06.2023 of this Court in C.P.(IB)-1164(MB)/2020 on an application filed by Edelweiss Asset Reconstruction Company Limited (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code 2016. ARCK Resolution Professionals LLP through its designated partner Mr. Anil Kohli was appointed as Interim Resolution Professional (IRP), who was confirmed as Resolution Professional (RP) in the First CoC meeting held on 05.07.2023. The Applicant made a public announcement in the newspapers (in Business Standard (English- Mumbai & Pune Location covering Maharashtra) & Navrashtra (Marathi- Mumbai & Pune Location covering Maharashtra) in Form-A on 08.06.2023 inviting claims from the creditors, workers/employees of the Corporate Debtor and from government bodies. IRP constituted the Committee of Creditors (CoC) based on the claims received by him and the first meeting of the CoC held on 05.07.2023.



- 2.2. The Applicant submits that there were 17 CoC meetings held and 2 Invitation for Expression of Interest (EoI's) were issued in Form G, i.e., on 08.07.2023(First EoI) and republished on 20.10.2023(Second EoI) were issued and the last date for submission of the resolution plan was on 05.01.2024. In Response, the Resolution Professional had received seven Resolution Plan and out of seven only six Resolution Plans are compliant with the provisions of the code. Thus, the CoC had approved the Resolution Plan submitted by Sarvath Developers LLP.
- 2.3. The Applicant RP submits that the Application were filed for extension during the CIRP period, and the same have been duly tabulated herein-under:

S. No.	I.A. No.	Filed by	Relief Sought	Status
1.	I.A 277/2024	RP	Extension of 90 days	Allowed vide Order dt. 25.01.2024
2.	IA 5784/2024	RP	Extension of 283 days	Allowed vide Order dt. 11.12.2024

- 2.4. The Applicant herein submits that it sought to convene the 17th CoC meeting on 03.08.2024, in view of the Resolution Plan being remanded back for violation of section 30(2) of the code by this tribunal. In lieu of the same, the Applicant has sought to submit a Clarificatory Addendum dated 03.08.2024 and a specific authorisation by the CoC. The Applicant is thus filing the present Application seeking approval of the Resolution Plan dated 06.02.2024 read with clarificatory addendum dated 03.08.2024 submitted by the Successful Resolution Applicant and approved by the CoC in the 17th meeting held on 03.08.2024. The content of the Clarificatory Addendum dated 03.08.2024, are extracted hereunder:

“



[...]

- i. The SRA has already provided for payment of entire admitted claims of EPFO in the plan, however, it is hereby clarified that the finally assessed liabilities, if any of ESIC and EPFO regarding period prior to ICD will be duly paid in full by the SRA i.e. the entire dues of EPFO and ESIC will be paid.
- ii. That the SRA further submits that the provisions regarding payment towards CIRP cost (including regulatory fees payable to IBBI) and to OCs in the table as mentioned under clause 4.1 (A) may now be read as under-

Description of Total Cash Outlay to all the Creditors		
Particulars	Amount (in Rs.)	Time Frame
A) Payment towards CIRP Cost	25,00,000	<i>Payment of the Unpaid CIRP Cost will be done within 3 days from the effective date i.e. date of approval of the Resolution Plan by Hon'ble NCLT."</i>
B) Payment towards IBBI Regulatory fees: <i>0.25% of payments allocated to SFC</i>	1,344,389.03	<i>Payment of the Unpaid CIRP Cost will be done within 3 days from the effective date i.e. date of approval of the Resolution Plan by Hon'ble NCLT."</i>

D) Payments towards remaining Operational Creditors:		<i>Payment to Operational Creditors will be done within 5 days from the effective date i.e. date of approval of the Resolution Plan by Hon'ble NCLT.</i>
• Government dues	30,00,000	
• Other than Government dues	20,00,000	

*In case, the Unpaid CIRP cost is more than Rs. 25,00,000/-, the same will be paid as per actuals.

- iii. That the SRA further submits that Clauses 4.2.2 pertaining to Payment of CIRP Cost as envisaged in the Resolution Plan may now be read as under:-

Clause 4.2.2-

“As per the information provided by the office of the Resolution Professional, all the CIRP cost incurred till date has been met by the cash flows generated from the business and hence there is no outstanding and payable CIRP cost as on the date of submission of this the Resolution Plan. However, unpaid CIRP cost, if any, which remains payable till the Resolution Plan is approved by CoC & Hon'ble NCLT i.e. till the effective date, shall be paid in priority by the Resolution Applicant i.e. within 3 days from the effective date which is date of approval of the Resolution Plan by Hon'ble NCLT.”

- 2.5. The Resolution Plan submitted by the Resolution Applicant viz. Sarvath Developers LLP which was approved by the CoC in the 17th meeting held on 03.08.2024 and the same was put for e-voting which was concluded on the same day by 100% of the CoC member voting in favor of the Resolution Plan. The resolution is reproduced below: -


To consider and approve compliant Resolution Plan along with Addendum dated 03.08.2024 as submitted by M/s Sarvath Developers LLP and authorize

RP to file a fresh application for approval of the Resolution Plan along with Addendum dated 03.08.2024 before Hon'ble NCLT in terms of Section 30(6) of the Code:

“RESOLVED THAT in accordance with sections 30(4) and 30(6) of the Code read with regulations made thereunder, the approval of the members of the CoC be and is hereby accorded to the Resolution Plan dated 06.02.2024 along with clarificatory Addendum dated 03.08.2024 submitted by M/s Sarvath Developers LLP in the matter of Perfect Engineering Products Limited.”

“RESOLVED FURTHER THAT Resolution Professional is authorized to file the CoC approved resolution plan with the Hon'ble Adjudicating Authority i.e. NCLT.”

- 2.6. The RP issued Letter of Intent on 29.02.2024 in favor of the Resolution Applicant and also sought for Performance Guarantee of Rs.7,99,13,342/-. The Applicant has furnished the Performance Security to the tune of Rs. 6,84,13,342/- by way of deposit in the designated Bank account of the Corporate Debtor. The Earnest Money already deposited is to the tune of Rs. 1,15,00,000/-.
- 2.7. The Resolution Professional states that the Resolution Plan approved by the CoC is in compliance with the requirements of Section 30(2) of the Code. In compliance of Section 30(2) of IBC, 2016, 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 debtor;

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-
- b. Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;
 - c. The implementation and supervision of Resolution Plan;
 - d. Does not prima facie contravene any of the provisions of the law for time being in force,
 - e. Conforms to such other requirements as may be specified by the Board.
 - f. As per the Affidavit received and the further documents submitted, the Resolution applicants are not covered under 29A.

2.8. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that:

- i. The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.
- ii. It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD.
- iii. A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have contributed to the failure of implementation of any other Resolution Plan approved by the AA in the past.
- iv. The terms of the plan and its implementation schedule.
- v. The management and control of the business of the CD during its term.
- vi. Adequate means of Supervising its implementation.
- vii. The Resolution Plan Demonstrates that it addresses
 - a. The cause of the Default
 - b. It is feasible and viable



-
- c. Provision for effective implementation
 - d. Provisions for approvals required and the time lines for the same.
 - e. Capability to Implement the Resolution Plan

2.9. The Resolution Applicant viz. Sarvath Developers LLP is a company engaged in the business of Real estate development and leasing business, having office at 693 & 1211 Nana Peth Kudale Park, Nana Peth, Pune, Maharashtra, India, 411002.

2.10. The Resolution Applicant confirmed that it is eligible to submit Resolution Plan as per Section 29A of Insolvency and Bankruptcy Code.

2.11. The Resolution Applicant has confirmed that -

- i. its connected persons are not convicted for any offence during the preceding five years and no criminal proceedings are pending against any person.
- ii. not disqualified under Companies Act, 2013 to act as a Director.
- iii. not identified as a willful defaulter by any bank of financial institution or consortium thereof in accordance with the guidelines of the Reserve Bank of India.
- iv. not debarred from accessing to, or trading in securities markets under any order or directions of the Securities and Exchange Board of India.

2.12. As per the RP submission, the Fair Value and Liquidation Value determined by the registered Valuer are as follows:

Fair Value	Rs. 68,67,94,179/-
Liquidation Value	Rs. 46,98,16,548/-



2.13. Resolution Plan for the Corporate Debtor (the key features of the Resolution Plan submitted by Sarvath Developers LLP is summarized below):

Particulars	Amount (in Rs.)	Time Frame
A) Payment towards CIRP Cost	25,00,000	Payment of the Unpaid CIRP Cost will be done within 3 days from the effective date i.e. date of approval of the Resolution Plan by Hon'ble NCLT."
B) Payment towards IBBI Regulatory fees: <i>0.25% of payments allocated to SFC</i>	1,344,389.03	Payment of the Unpaid CIRP Cost will be done within 3 days from the effective date i.e. date of approval of the Resolution Plan by Hon'ble NCLT."
C) Payments towards remaining Operational Creditors: <ul style="list-style-type: none">• Government dues• Other than Government dues	30,00,000 20,00,000	Payment to Operational Creditors will be done within 5 days from the effective date i.e. date of approval of the Resolution Plan by Hon'ble NCLT.

D) Payment towards Financial Creditors by Resolution Applicant:	531,755,610.97	25% within 7 days from the Effective date. Balance as upfront payment.
E) Payment to shareholders, Related party dues, Contingency liability	10,00,000	Upfront Payment
Total	54,16,00,000/-	

* *Effective date* means the date of approval of the Resolution Plan by the Adjudicating Authority u/s 31(1) of the Code.

* *Upfront payment* shall mean payment received within 90 days from the date of approval of resolution plan by Hon'ble NCLT.

2.14. The Applicant herein submits that after approval of the Resolution Plan and as stated in the Resolution Plan the Financial Creditors shall pursue all the pending avoidance applications, filed before the Adjudicating Authority. In this regard, Resolution Applicant hereby confirms that the secured financial Creditors of the Corporate Debtor shall have exclusive right over any such realization/recovery from transactions sated above. For the said matter, any cost to recover such amounts shall be borne by the secured financial creditors of the Corporate Debtor and Resolution Applicant shall not be liable to incur any such cost related to recovery/realization of any amounts pertaining to fraudulent and other transactions highlighted in this point.

2.15. It is submitted by the Applicant that the Resolution professional shall continue to manage the operations of the Corporate Debtor until the

effective date. From the effective date and until the Closing date, the monitoring committee shall be constituted which shall comprise of a representative of Resolution Applicant, Resolution Professional and a representative of the Financial Creditors, and shall be appointed for the operations of the Corporate Debtor till closing date i.e. *for a maximum period of 90 days*. The Resolution Professional shall be appointed as the Chairperson of the Committee for effective implementation of the Resolution Plan.

2.16.Ld. Counsel for the Resolution Professional has annexed a certificate of the Form-H to the Application under Regulation 39(4) In Form-H of the CIRP Regulations, 2016 to certify that the Resolution Plan has approved by the CoC meets all the requirements of the IBC and its Regulations:

**FORM H
COMPLIANCE CERTIFICATE**

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

M/s ARCK Resolution Professionals LLP, IPE registered as IP enrolled with **Indian Institute of Insolvency Professionals of ICAI** and registered with the Board with registration number IBBI/IPE-0030/IPA-1/2022-23/50013, is the resolution professional for the corporate insolvency resolution process (CIRP) of Perfect Engineering Products Limited.

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	PERFECT ENGINEERING PRODUCTS LIMITED
2	Date of Initiation of CIRP	06.06.2023
3	Date of Appointment of IRP	05.07.2023
4	Date of Publication of Public Announcement	08.06.2023
5	Date of Constitution of CoC	29.06.2023
6	Date of First Meeting of CoC	05.07.2023

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7	Date of Appointment of RP	05.07.2023
8	Date of Appointment of Registered Valuers	12.07.2023
9	Date of Issue of Invitation for EoI	FORM G I- 08.07.2023 FORM G II- 20.10.2023
10	Date of Final List of Eligible Prospective Resolution Applicants	FORM G I- 05.08.2023 FORM G II- 01.12.2023
11	Date of Invitation of Resolution Plan	FORM G I- 08.07.2023 FORM G II- 20.10.2023
12	Last Date of Submission of Resolution Plan	FORM G I- 02.09.2023 FORM G II- 05.01.2024
13	Date of Approval of Resolution Plan by CoC	03.08.2024
14	Date of Filing of Resolution Plan with Adjudicating Authority	.08.2024
15	Date of Expiry of 180 days of CIRP	03.12.2023
16	Date of Order extending the period of CIRP	25.01.2024
17	Date of Expiry of Extended Period of CIRP	03.03.2024
18	Fair Value	68,67,94,179
19	Liquidation value	46,98,16,548
20	Number of Meetings of CoC held	17

3. I have examined the Resolution Plan received from Resolution Applicant **M/s Sarvarth Developers LLP** and approved by Committee of Creditors (CoC) of Perfect Engineering Products 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 (**M/s Sarvarth Developers LLP**) 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

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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 03.08.2024 where sole COC member was present.

or

~~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 CD, Perfect Engineering Products 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.	Edelweiss Asset Reconstruction Company Limited	100	Voted For

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

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. lakh)

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	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	62,543.82	62,543.82	5,317.56	8.50
		Total[(a) + (b)]	62,543.82	62,543.82	5,317.56	8.50

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2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	1,700.00	1,700.00	10	0.59
		(b) Other than (a) above:	NA	NA	NA	NA
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	NA	NA	NA	NA
		Total[(a) + (b)]	1,700.00	1,700.00	10	0.59
3	Operational Creditors	(a) Related Party of Corporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i)Government	538.52	526.16	30	5.57
		(ii)Workmen	NA	NA	NA	NA
		(iii)Employees	NA	NA	NA	NA
(iv) Operational Creditors other than Government Dues*	111.57	94.53	20	17.92		
		Total[(a) + (b)]	650.09	620.11	50	7.69
4	Other debts and dues	NA	NA	NA	NA	
Grand Total			64893.91	64863.93	5377.56	8.29

*Application for condonation of delay in filing of claim of one Operational Creditor under regulation 13 amounting to Rs. 58,950/- was allowed filed before Hon'ble NCLT.

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	3,62,13,641	NIL	100	NIL
2	Preference	NIL	NIL	NIL	NIL

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

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Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance)Yes / No(
25)2)h(	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		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?		YES
Section 30)1(	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	APPENDIX 10	YES
Section 30)2(	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?]	Pt 4.2, Pg 13 Pt 9.1, Pg 26 Pt 9.2, Pg 26 Pt 5, Pg 18 Pt 8 Pg 24 Pt 10, Pg 30	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?	Pt 9.8, Pg 29	YES
Section 31)1(	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Pt 8.1 Pg 24	YES
Regulation 38)1(	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Pt 9.1, Pg 26	YES
Regulation 38)1A(	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Pt 9.1(3) Pg 26	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?]	Pt 10, Pg 30	YES
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 its implementation?	Pt 6 Pg 20 Pt 5, Pg 18 Pt 8.1 Pg 24	YES

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38)3(Whether the resolution plan demonstrates that –)a(it addresses the cause of default?)b(it is feasible and viable?)c(it has provisions for its effective implementation?)d(it has provisions for approvals required and the timeline for the same?)e(the resolution applicant has the capability to implement the resolution plan?	Pt 9.8, Pg 28 Pt 9.8, Pg 29 Pt 8.1 Pg 24 Pt 9.8, Pg 29 Pt 9.8, Pg 29	YES
39)2(	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Pt 9.9, Pg 29	YES
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]		YES

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

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	06.06.2023	06.06.2023
Regulation 6(1)	Publication of Public Announcement	08.06.2023	08.06.2023
Section 15(1)(c) /Regulation 12 (1)	Submission of Claims	20.06.2023	20.06.2023
Regulation 13(1)	Verification of Claims	27.06.2023	27.06.2023
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	-	-
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	29.06.2023
Section 22(1) and regulation 17(2)	First Meeting of the CoC	06.07.2023	05.07.2023
Regulation 35A	Determination of fraudulent and other transactions	29.09.2023	29.09.2023`
Regulation 27	Appointment of two Registered Valuers	12.07.2023	12.07.2023
Regulation 36 (1)	Submission of Information Memorandum to CoC	09.09.2023	01.08.2023
Regulation 36A	Invitation of EoI	05.08.2023	FORM G I-08.07.2023 FORM G II-20.10.2023
	Publication of Form G	05.08.2023	FORM G I-08.07.2023 FORM G II-20.10.2023
	Provisional List of Resolution Applicants	30.08.2023	FORM G I-27.07.2023 FORM G II-16.11.2023
	Final List of Resolution Applicants	14.09.2023	FORM G I-05.08.2023

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			FORM G II-01.12.2023
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	04.09.2023	FORM G I - 01.08.2023 FORM G II-06.12.2023
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	18.11.2023	FORM G I-02.03.2024 FORM G II-05.01.2024
Section 31(1)	Approval of Resolution Plan along with Addendum dated 03.08.2024	03.12.2023	03.08.2024

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
1	Approval of Resolution Plan	IBC 2016	Hon'ble NCLT, Mumbai Bench	As per Adjudicating Authority
2	Necessary Statutory Approvals	As applicable	As applicable	The RA has mentioned that considering the going concern status of the Corporate Debtor and noting its current operating capabilities, the Resolution Applicant do not foresee any notable approvals which may be required before Closing date.

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

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

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

14. The Resolution Plan was filed before the expiry of the period of CIRP provided in section 12 of the Code. However, Hon'ble NCLT vide its order dated 02.08.2024 remanded back the Resolution Plan to the CoC for making necessary clarifications and accordingly disposed of I.A. No. 18 of 2024.

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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**
(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.

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	02.03.2024	Pending adjudication	NA
2	Fraudulent transactions under section 66	02.03.2024	Pending adjudication	NA

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

- a. Estimated liquidation cost: **CD has adequate funds available from Operations to meet Liquidation Cost**
b. Estimated liquid assets available: **Rs. 14,29,60,963.69/-**
c. Contributions required to be made: **NIL**
d. Financial creditor wise contribution is as under:

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1	NIL	NIL
2		
..		
Total	NIL	NIL

15B. 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.

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

16. The SRA vide Addendum dated 03.08.2024 has provided following clarifications-

- (I) The SRA has already provided for payment of entire admitted claims of EPFO in the plan, however, it is hereby clarified that the finally assessed liabilities, if any of ESIC and EPFO regarding period prior to ICD will be duly paid in full by the SRA i.e the entire dues of EPFO and ESIC will be paid.
- (II) That the SRA further submits that the provisions regarding payment towards CIRP cost (including regulatory fees payable to IBBI) and to OCs in the table as mentioned under Clause 4.1 (A) may now be read as under-

Description of Total Cash Outlay to all the Creditors		
Particulars	Amount (in Rs.)	Time Frame

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – IV

IA/82/2024
In
C.P.(IB)/1164(MB)2020



A) Payment towards CIRP Cost*	25,00,000	<i>Payment of the Unpaid CIRP Cost will be done within 3 days from the effective date i.e. date of approval of the Resolution Plan by Hon'ble NCLT."</i>
B) Payment towards IBBI Regulatory Fees: 0.25% of payment allocated to SFC	13,44,389.03	<i>The same shall form part of the CIRP Cost and hence will be done within 3 days from the effective date i.e. date of approval of the Resolution Plan by Hon'ble NCLT.</i>
D) Payments towards remaining Operational Creditors: <ul style="list-style-type: none">• Government dues• Other than Government dues	30,00,000 20,00,000	<i>Payment to Operational Creditors will be done within 5 days from the effective date i.e. date of approval of the Resolution Plan by Hon'ble NCLT.</i>

**In case, the Unpaid CIRP Cost is more than Rs. 25,00,000/-, the same will be paid as per actuals.*

(III) That the SRA further submits that Clauses 4.2.2 pertaining to Payment of CIRP Cost as envisaged in the Resolution Plan may now be read as under-
Clause 4.2.2-

"As per the information provided by the office of the Resolution Professional, all the CIRP cost incurred till date has been met by the cash flows generated from the business and hence there is no outstanding and payable CIRP cost as on the date of submission of this the Resolution Plan. However, unpaid CIRP cost, if any, which remains payable till the Resolution Plan is approved by COC & Hon'ble NCLT i.e. till the effective date, shall be paid in priority by the Resolution Applicant i.e. within 3 days from the effective date which is date of approval of the Resolution Plan by Hon'ble NCLT. "

17. I, **ARCK Resolution Professionals LLP**, hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

Name of the Resolution Professional: **ARCK Resolution Professionals LLP**
IP Registration No: **IBBI/IPE-0030/IPA-1/2022-23/50013**
Address as registered with the Board: Flat No 409, 4th Floor Ansal Bhawan, 16, K G Marg, Connaught Place, New Delhi-110001
Email id as registered with the Board: insolvency@arck.in

Date: 07.08.2024

Place : New Delhi



FINDINGS OF THIS TRIBUNAL

2.17. In the circumstances mentioned hereinabove, the Applicant has filed Application seeking approval of this Tribunal on the Resolution Plan, submitted by the Resolution Applicant i.e. Sarvath Developers LLP stating that the plan is in accordance with the Section 30(2) and other provisions laid down under the code. We take on record the addendum dated 03.08.2024 which is duly approved by the CoC in the 17th meeting held on 03.08.2024 with 100% vote regarding payment towards the CIRP cost, Operational Creditors dues and necessary clarification which is filed by the RP consequent upon objections raised by this bench on 02.08.2024 with reference to the compliance of section 30(2) of the code. In view of the above, this bench is satisfied with the clarification as per section 30(2) of the code.

2.18. On perusal of the Resolution Plan, it is observed that the Resolution Plan 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 Debtor, 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.




2.19. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.

2.20. The RP has filed Compliance Certificate in Form-H along with the plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the CoC in the 17th meeting held on 03.08.2024 with 100% vote read with clarificatory addendum dated 03.08.2024.

2.21. We make it categorically clear that approval of this Resolution Plan does not tantamount to allowance of any relief(s), concession(s) or dispensation(s) that fall within the domain of any government department(s) and/or authorities thereto. The reliefs, concessions and dispensations that pertain to other governmental authorities and/or departments shall be dealt with by the respective competent authorities/fora/offices, Government (State or Central) with regard to the respective reliefs, if any.

2.22. In *K Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No.10673/2018 decided on 05.02.2019)* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial



creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

2.23. *In CoC of Essar Steel (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019)* the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar(supra).”

2.24. 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.

2.25. The **Interlocutory Application No.82/2024** in **C.P.(IB)/1164(MB)2020** is *allowed*. The Resolution Plan submitted by *Sarvath Developers LLP* is

hereby **approved**. It shall become effective from this date and shall form part of this order.

- i. 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 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 of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law.
- iii. We make it expressly clear that **no** reliefs, concessions and dispensations that fall within the domain of other government department/authorities are granted hereto, and the same shall be dealt with by the respective competent authorities/fora/offices, Government (State or Central) with regard to the respective reliefs, if any.
- iv. Further in terms of the Judgment of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited v/s Edelweiss Asset Reconstruction Company Limited*, 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 a part of the Resolution Plan.



- v. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, 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.
- vi. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vii. 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.
- viii. 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.
- ix. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

2.26. The **Interlocutory Application No.82/2024** in **C.P.(IB)/1164(MB)2020** is accordingly *allowed* and *disposed of*.

Sd/-

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
Shiwangi Chaurasia, LRA

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)