



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
BENCH- I

IA(Plan) No. 5 of 2025

IN

CP(IB) No. 849 of 2023

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“Code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the Resolution Plan under the provisions of Section 31(1) of the Code.

IA No. 5 of 2025

In the Application of

Mrs. Neha Jain Nemani

.....Applicant/Resolution Professional

In the matter of

Ashok Investors Trust Limited

**.....Financial Creditor/
Petitioner**

Versus

Om Shree Ganesh Containers Pvt. Ltd.

**.....Corporate Debtor/
Respondent**

Order Delivered on : 03.03.2025

Coram:

Prabhat Kumar
Hon'ble Member (Technical)

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



Appearances:

For the Applicant : Mr.Manish Jha,Advocate.

ORDER

IA No. 5 of 2025


1. The present Application is filed by Resolution Professional Mrs. Neha Jain Nemani (“**Applicant**”) under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the Resolution Plan of **Hargo Enterprise Private Limited** (“**Successful Resolution Applicant/SRA**”) in terms of the provisions of Section 31(1) of the Code, in the matter of **Om Shree Ganesh Containers Pvt. Ltd** (“**Corporate Debtor**”).

Brief Facts

2. The CIRP was initiated against the Corporate Debtor vide Order dated 05.12.2023 and Mrs. Neha Jain Nemani was appointed as the Interim Resolution Professional (“**IRP**”), who was later on confirmed as Resolution Professional.
3. The IRP published a Public Announcement in Form-A on 07.12.2023, inviting claims from the creditors of the Corporate Debtor. A Committee of Creditors was constituted comprising Axis Bank Ltd, Ashok Investors Trust Limited, and Aditya Birla Finance Limited as its members.
4. The Applicant submits that till the date of filing of the present Application, a total of 10 (Ten) CoC meetings of the Corporate Debtor have been held from time to time.
5. The following Claims were filed and admitted, however, no claim was filed in class of Operational Creditors :

Sr. No.	Financial Creditor	Amount Claimed	Amount Admitted	Voting %
1.	Axis bank Ltd	15,54,57,170	15,54,57,170	60.12
2.	Aditya Birla Finance Limited	9,23,21,074	9,23,31,974	35.71
3.	Ashok Investors Trust Limited	1,07,79,178	1,07,79,178	4.17
	Total	25,85,58,322	25,85,58,322	100

6. The Applicant submits that, in accordance with Regulation 27 and 35 of the IBBI (CIRP) Regulations, 2016, two registered valuers were appointed for each category of assets, namely Land and Building and Financial Assets, who have determined the Fair Value and Liquidation Value in compliance with Regulation 35 of the CIRP Regulations. The average Liquidation Value of the Corporate Debtor was determined to be Rs. 1,14,02,309, while the average Fair Value was determined to be Rs. 1,47,78,809.
7. Thereafter, the RP invited Expression of Interest (“EOI”) in Form G under Regulation 36A (1) of the CIRP Regulations from the general public on 06.02.2024.
8. At the 5th CoC meeting held on 31.05.2024, the Applicant presented 2 Resolution Plan from shortlisted Prospective Resolution Applicant namely Real Value Infotech Projects Private Limited and Hargo Enterprise Private Limited, and were subsequently discussed in the 6th and 7th CoC meeting held on 13.06.2024 and 21.06.2024.
9. At the 8th CoC meeting held on 28.08.2024, the Applicant presented the final plans received from the Prospective Resolution Applicants to the CoC. The Resolution Plan submitted by M/s. Hitesh Kothari in partnership with M/s. Hargo Enterprises Private Limited was found to be



feasible and viable, and stood rejected at the 9th CoC meeting held on 23.09.2024, as only 64.29% of the votes were in favour, while 35.71% voted against it, thereby falling short of required threshold of a 66% vote. The other Resolution Plan submitted by Real Value Infotech Private Limited was unanimously rejected by 100% of the voting members of the CoC.

10. After the voting results, a representative from Axis Bank commented that the Resolution Plan submitted by Hitesh Kothari in consortium with Hargo Enterprises appeared feasible, considering the liquidation value of the Corporate Debtor determined during the CIRP period. Additionally, Aditya Birla Finance Limited (“**ABFL**”) provided the rationale for rejecting the plan, stating that the amount offered to ABFL, as an unsecured financial creditor, was insufficient given the total outstanding claim. In response, the representative of ABFL was encouraged to reconsider the Resolution Plan, as under the waterfall mechanism outlined in Section 53 of the IBC, 2016, unsecured financial creditors would face significant losses with no value to be realized in the event of liquidation. Accordingly, subsequent to the CoC meeting, an email was received from ABFL stating that “Post last CoC and discussion held ABFL is reconsidering the resolution plan of Hitesh Kothari. In view the same request you to kindly seek extension of 30 days in CIRP period. Accordingly, the agenda for considering liquation of the CD is kept on hold.
11. At the 10th CoC meeting held on 01.10.2024, the Resolution Plan submitted by Hitesh Kothari in consortium with Hargo Enterprises was reconsidered and put to vote again. Thus, e-voting commenced on 07.10.2024 at 11:00 am and after conclusion of the voting by the CoC members the results were announced on 30.10.2024, approving the plan by 100% vote.

12. Pursuant to the approval of the Resolution Plan by the Committee of Creditors (CoC), the Applicant submits that, in compliance with the RFRP, a letter of intent dated 05.11.2024 was issued to Mr. Hitesh Kothari, acting in consortium with M/s. Hargo Enterprises Pvt. Ltd., the Resolution Applicant. Furthermore, the Applicant submits that the Successful Resolution Applicant was required to deposit an additional performance guarantee of 10% of the total plan value, amounting to Rs. 16 Lakhs (Rupees Sixteen Lakhs only), in accordance with the terms of the RFRP. The Applicant further submits that the resolution applicant paid the remaining balance of Rs. 16 Lakhs (after adjusting the Bid Bond Guarantee (BBG) of Rs. 10 Lakhs) towards the performance guarantee on 07.11.2024.

Salient Features of the Resolution Plan

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

Financial Proposal as per the Resolution Plan:

Sr. No.	Parameters	Claim Amount Admitted (INR Rs.)	Resolution Plan amount proposed (INR Rs.)	% paid under Plan	Timelines proposed from Effective date
1.	Payment towards unpaid CIRP cost*		25,00,000	NA	Within 90 days
2.	Operational creditors (Government Dues)	Nil			
3.	Operational Creditors -	Nil			





	Employees and Workmen				
4.	Secured Financial creditors	15,54,57,170	1,25,00,000		Within 90 days
5.	Unsecured Financial creditors	10,31,01,152	10,00,000		Within 90 days
6.	Operational Creditors	0	0		
7.	Related Party	0	0		
8.	Equity shareholders				
9.	Fresh Capital Infusion		0		
10.	Contingency		0		
	Total (A)	25,85,58,322	1,60,00,000		

Source of Funding

14. The submitted Resolution Plan indicates that the Resolution Applicant has sufficient net worth and may make upfront payments using proceeds from friends/relatives, internal accruals, or by arranging short-term financing through banks or other legitimate sources.

Statutory Compliance



15. 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;
- b) Provides for payment of debts of operational creditor in such manner as may be specified by the board which shall not be less than
 - (i) the amount to be paid to such creditors in the event of liquidation of the corporate debtor under Section 53; or
 - (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distribute in accordance with sub-section (1) of Section 53 in the event of liquidation of the corporate debtor.
- c) Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;
- d) The implementation and supervision of Resolution Plan;
- e) Does not prima facie contravene any of the provisions of the law for time being in force,
- f) Confirms to such other requirements as may be specified by the Board.
- g) As per the Affidavit, the Resolution Applicant is not covered under 29A.

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

- a) The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.



- b) It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the Corporate Debtor.
- c) 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.
- d) The terms of the plan and its implementation schedule.
- e) The management and control of the business of the Corporate Debtor during its term.
- f) Adequate means of Supervising its implementation.
- g) The Resolution Plan Demonstrate that it addresses
 - i. The cause of the Default
 - ii. It is feasible and viable
 - iii. Provision for effective implementation
 - iv. Provisions for approvals required and the time lines for the same.
 - v. Capability to Implement the Resolution Plan

Reliefs and Concessions

17. The submitted Resolution Plan outlines the reliefs and concessions, which includes:

1(i) Dispensation of Shareholder's approval for the alteration of the name and object clause of the Memorandum and Articles of Association, (ii) Extinguishment of existing share capital of the Corporate Debtor Om Shree Ganesh Containers Private Limited. The cancellation/extinguishment and re-issue of equity to all the shareholders shall be pursuant to the order of the NCLT and shall not require any other procedure as required under the Companies Act, including Companies Act or regulations of the SEBI.



2. “Reliefs and concessions under Income Tax Act- (a) Waivers from the levy of stamp duty and fees by the stamp authorities and Ministry of Corporate Affairs, applicable in relation to this Resolution Plan and its implementation including particularly for increase in the authorised capital and cancellation / reduction in the paid-up share capital as envisaged under the Resolution Plan,(b) Waivers from the levy of stamp duty and fees by the stamp authorities and Ministry of Corporate Affairs, applicable in relation to this Resolution Plan and its implementation including particularly for increase in the authorised capital and cancellation / reduction in the paid-up share capital as envisaged under the Resolution Plan, b(i) Waiver of any Tax or MAT liability to the Resolution Applicant on account of purchase of Equity Shares of the Company; (ii) Waiver of MAT and income tax Implication arising due to write back/write off of liabilities in the books of account of the Company without any impact on brought forward tax and books loss/ depreciation, pursuant to this Resolution Plan,(iii) The Resolution Applicant shall be entitled to carry forward unabsorbed depreciation and all old business losses / capital losses irrespective of change in shareholding pattern whether caused in past or pursuant to this resolution plan.(C) Any requirements to obtain waivers from any Tax Authorities including in terms of Section 79 of the Income Tax Act is deemed to have granted upon approval of this Resolution Plan on this Effective Date”.

Other Relief and Concessions Sought

(a) “The relevant Governmental Authorities shall not initiate any investigations, actions or proceeding in relation to any non-compliances with Applicable Law by the Company during the period prior to the Effective Date, Neither shall the Resolution Applicant nor the Company nor their respective directors, officers and employees appointed on and as of the Effective Date be liable: for any violations, liabilities, Penalties or fines with respects to or pursuant to the Company not having in place requisite licenses and



approvals required to undertake its business as per Applicable Law, or any non-compliances of Applicable Law by the Company.

Further, the relevant Governmental Authorities will provide a reasonable period of time after the Effective Date, for the Applicable Law and to regularizes such non-compliances under the Applicable Laws existing prior to Effective Date.

- (b) The Company shall be granted waiver/exemption from compliance of provisions of Companies Act and other Applicable Laws for removal of both statutory and internal auditors of the Company and appointment of new auditors.
- (c) Upon approval of the Resolution Plan by the Adjudicating Authority, all non-compliances, breaches and defaults of the Company for the period prior to the Effective Date (including but not limited to those relating to tax), shall be deemed to be waived by the concerned Governmental Authorities, Immunity shall be deemed to have been granted to the Company from all proceedings and penalties under all Applicable Laws for any non-compliance for the period prior to the Effective Date and no interest/penal implications shall arise due to such non-compliance/default/breach prior to the Effective Date. This Includes, without limitation, waiver/extinguishment of:
- i.) Any liability, fees, penalties of any kind payable to Regulators by the Company for any non-compliance or default, breach, violation prior to the Effective Date, under Foreign Exchange Management Act, 1999, Foreign Trade Policy of the Government of India, 100% Export Oriented Unit Related Regulations, Companies Act, 1956;
 - ii.) Liability in respect Payment of any statutory dues or amount payable to the employees of the Company under laws relating to payment of gratuity, bonus, provident fund, leave encashment and any similar amounts



- iii.) Any charge, interest, penalty, or dues pertaining to Governmental Authority, statutory/ local administrative Authorities such as Income Tax, Service Tax/ Goods and Service Tax, Luxury Tax, Entertainment Tax, VAT, or Sales Tax, property tax, Companies Act. or like nature or any 6th statutory dues of any nature whatsoever, which remain outstanding even after payments proposed in this Resolution Plan prior to CIRP Commencement date shall stand extinguished and be waived by the respective authorities. Ministry of Corporate Affairs, Government of India, Provident Fund Authorities, Sales Tax Authorities/Service Tax Authorities/GST Council to waive penal charges for past non-compliances of filing/secretarial obligations, Necessary NOC by such government authorities shall be provided to Resolution applicant as and when required
- (d) From the Effective Date, all inquiries, investigations and proceedings, whether civil or criminal suits, claims, disputes, proceedings in connection with Company or affairs of the Company, including proceedings before any courts, tribunals, authorities, pending or threatened, present or future in relation to any period prior to the Effective Date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed and all liabilities and obligations therefore, whether or not set out in the balance sheet of the Company or the profit and loss account statement of the Company will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to the Company or the Resolution Applicant, Upon approval of this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory or administrative proceedings will be deemed to be



barred and will not be initiated or admitted against the Company in relation to any period prior to the Effective Date.

- (e) No Governmental Authority (including regulatory, judicial and quasi-judicial authority) shall issue any order, directions, decrees, judgement etc., that will be in contravention of the provisions of the Resolution Plan”.

18. The Resolution Professional has annexed Form H under Regulation 39(4) of the CIRP Regulations to certify that the Resolution Plan as approved by the CoC meets all the requirements of the Code and its Regulations. The relevant extracts, as otherwise stated elsewhere in the order, are as follows -

FORM H
COMPLIANCE CERTIFICATE

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

I, Neha Jain Nemani, an insolvency professional enrolled with Indian Institute of Insolvency Professional of ICAI and registered with the Board with registration number IBBI/IPA-001/IP-P-02465/2021-2022/13927, am the resolution professional for the corporate insolvency resolution process (CIRP) of Om Shree Ganesh Private Limited (CD).

2. The details of the CIRP are as under:

Sr. No.	Particulars	Description
1	<i>Name of the CD</i>	<i>Om Shree Ganesh Containers Private Limited</i>
2	<i>Date of Initiation of CIRP</i>	<i>5th December, 2023</i>
3	<i>Date of Appointment of IRP</i>	<i>5th December, 2023</i>
4	<i>Date of Publication of Public Announcement</i>	<i>7th December, 2023</i>
5	<i>Date of Constitution of CoC</i>	<i>29th December, 2023</i>
6	<i>Date of First Meeting of CoC</i>	<i>5th January, 2024</i>



7	<i>Date of Appointment of RP</i>	<i>12th January, 2024</i>
8	<i>Date of Appointment of Registered Valuers</i>	<i>2nd February, 2024</i>
9	<i>Date of Issue of Invitation for EoI</i>	<i>6th February, 2024 (1st issue) 13th March, 2024 (2nd issue)</i>
10	<i>Date of Final List of Eligible Prospective Resolution Applicants</i>	<i>18th April, 2024 and revised Final List on 23rd April, 2024</i>
11	<i>Date of Invitation of Resolution Plan</i>	<i>24th April, 2024</i>
12	<i>Last Date of Submission of Resolution Plan</i>	<i>24th May, 2024.</i>
13	<i>Date of Approval of Resolution Plan by CoC</i>	<i>30th October, 2024</i>
14	<i>Date of Filing of Resolution Plan with Adjudicating Authority</i>	<i>12th November, 2024</i>
15	<i>Date of Expiry of 180 days of CIRP</i>	<i>2nd June, 2024</i>
16	<i>Date of Order extending the period of CIRP</i>	<i>8th July, 2024 wherein extension of 90 days was allowed by NCLT upto 31st August, 2024.</i>
17	<i>Date of Expiry of Extended Period of CIRP</i>	<i>30th August, 2024 Further 30 days' extension i.e. upto 30th September, 2024 was applied which was allowed on 15th October, 2024 Further 30 days' extension i.e. upto 30th October, 2024 was applied which was allowed on 30th October, 2024 As the Resolution Plan was still under voting an application for extension of 15 days has been filed before NCLT. Accordingly, the date of expiry of extended period of CIRP is 15th November, 2024</i>
18	<i>Fair Value</i>	<i>Rs. 1,47,73,809</i>
19	<i>Liquidation value</i>	<i>Rs. 1,14,02,309</i>
20	<i>Number of Meetings of CoC held</i>	<i>10</i>

3. I have examined the Resolution Plan received from Resolution Applicant, Mr. Hitesh Kothari in consortium with M/s. Hargo Enterprises Private Limited and

approved by Committee of Creditors (CoC) of Om Shree Ganesh Containers 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, Mr. Hitesh Kothari in consortium with M/s. Hargo Enterprises Private 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.

100% of the CoC unanimously approved the Resolution Plan submitted by Mr. Hitesh Kothari in consortium with M/s. Hargo Enterprises Private Limited.

5. The list of financial creditors of Om Shree Ganesh Containers Limited being members of the CoC and distribution of voting share among them is as under:

Sr.No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Axis Bank Limited	60.12	Voted For
2	Aditya Birla Finance Limited	35.71	Voted For
3	Ashok Investors Trust Limited	4.17	Voted For

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



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

Sr. No.	Category of Stakeholder *	Sub-Category of Stakeholder	Amount Claimed (Amount in Rs.)	Amount Admitted (Amount in Rs.)	Amount Provided under the Plan# (Amount in Rs.)	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above: (i) who did not vote in favour of the Resolution Plan	15,54,57,170	15,54,57,170	1,25,00,000	8.04
		(ii) who voted in favour of the resolution plan	15,54,57,170	15,54,57,170	1,25,00,000	8.04
		Total[(a) + (b)]	15,54,57,170	15,54,57,170	1,25,00,000	8.04
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan	-	-	-	-



		<i>(ii) who voted in favour of the resolution plan</i>	<i>10,31,01,152</i>	<i>10,31,01,152</i>	<i>10,00,000</i>	<i>1</i>
		<i>Total[(a) + (b)]</i>	<i>10,31,01,152</i>	<i>10,31,01,152</i>	<i>10,00,000</i>	<i>1</i>
3	<i>Operational Creditors</i>	<i>(a) Related Party of Corporate Debtor</i>	-	-	-	-
		<i>(b) Other than (a) above:</i>				
		<i>(i)Government</i>				
		<i>(ii)Workmen</i>				
		<i>(iii)Employees and Other Operational Creditor</i>				
		<i>Total[(a) + (b)]</i>				
5	<i>Other debts and dues</i>	<i>(a) Claims of Litigations</i>				
		<i>(b) Mortgage given by</i>				
		<i>CD to bank</i>				
		<i>Total[(a) + (b)]</i>				
Grand Total			25,85,58,322	25,85,58,322	1,35,00,000	9.04

**If there are sub-categories in a 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.]



19. On perusal of the Resolution Plan, we find 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.
20. 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.
21. 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 by majority of 100%.
22. We find that the plan was approved on 30.10.2024 and the plan filed before this Tribunal is on 12.11.2024. The Applicant Resolution professional has filed an affidavit placing on record the approval of CoC for the resolution plan in its 10th meeting held on 30.10.2024 by 100% vote.
23. The reliefs & concessions as prayed in the Resolution Plan shall be available in accordance with the principle laid down by Hon'ble Supreme Court in case of *Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited Civil Appeal No. 8129 of 2019* and subject to the observations in the following para.
- a. Any increase in the authorized capital shall be subject to payment of



- prescribed fee, if any applicable, and filing of prescribed forms with the Registrar of Companies.
- b. The Applicant shall file necessary forms and pay prescribed fees, if any, in terms of provisions of the Companies Act, 2013 in relation to reduction in capital and issuance of fresh capital, however, the Registrar of Companies shall waive the additional fees, if any, payable on such filing.
 - c. The SRA may approach prescribed authorities for waiver/reduction in fees, charges, stamp duty, and registration fees, if any arising from actions contemplated under the Resolution Plan and such request shall be subject to the relevant law/statute and adherence to the procedure prescribed thereunder.
 - d. The SRA may file appropriate application, if required, for renewal of all Business Permits, rights, entitlements, benefits, subsidies and privileges whether under applicable Law, contract, lease or license granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to or accustomed to, which have expired on the Effective Date, and follow the dues procedure prescribed for the purpose upon payment of prescribed fees. The contract with third parties shall be subject to consent of such parties. It is clarified that continuance of approvals shall not be refused on account of extinguishment of any dues under IBC and extension or renewal thereof shall not be denied on account of past insolvency of the Corporate Debtor. No action shall lie against the Corporate Debtor for any non-compliances arising prior to the date of approval of Resolution Plan, however, such non-compliances shall be cured, if necessitated to keep the approval in force, after acquisition by the Corporate Debtor within period stipulated in the Resolution Plan.
 - e. No orders levying any tax, demand or penalty from the Corporate Debtor in relation to period upto approval of the Resolution Plan shall be passed by any authority and such demand, if created, shall not enforceable as having extinguished in terms of approved



Resolution Plan.

- f. The carry forward of losses and unabsorbed depreciation shall be available in accordance with the provisions of Income Tax Act, and the Income Tax Department shall be at liberty to examine the same. Further, the concerned tax authorities shall be at liberty to examine the carry forward of input tax credit available under Indirect Tax for its further carry forward.
- g. An application for compounding/condoning shall be filed in accordance with the procedure specified in respective law or concerned authority, however, no fine or penalty shall be imposed for non-compliances till the date of approval of this Plan or such further period as is permitted in terms of this Order.
- h. ROC shall update the records and reflect the Corporate Debtor as 'Active' upon filing of pending returns/forms after payment of normal fees (not additional fee). In case such filing is not permitted by the e-filing portal, the ROC shall accept such forms/returns in physical format and manage to upload the same by back-end. The Corporate Debtor shall be exempted from using the words "and reduced".

24. 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 Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex 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.

25. 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.
26. The Resolution Plan along with the Addendum thereto annexed to the Application is hereby **approved**. It shall become effective from this date and shall form part of this order with the following directions:
- i. It shall be binding on the Corporate 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/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned in light of the Judgment of Supreme Court in *Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited*, the relevant paras of which are extracted herein below:

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



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

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

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

- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Pune, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.



- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

27. Accordingly, IA No. 5 is allowed.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)