



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA No.31/2021 IN C.P. (IB)/325/ALD/2019

IN THE MATTER OF:

(An Application under Section 30 (6) and 31 of the Insolvency and Bankruptcy code, 2016 R/w Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

IN THE MATTER OF:

RATHI GRAPHIC TECHNOLOGIES LIMITED
THROUGH ANSHUL GUPTA
RESOLUTION PROFESSIONAL

.....Applicant

VERSUS

RAJ KUMAR RATHI AND OTHERS

.....Respondent

IN THE MATTER OF:

M/S EXIM SCRIPS DEALERS PVT LTD
4A CLIVE ROW 412 MUKTI CHAMBER 4TH FLOOR PS HARE
STREET KOLKATA WB 700001

....Financial Creditor

VERSUS

M/S RATHI GRAPHIC TECHNOLOGIES LIMITED
THROUGH ANSHUL GUPTA
RESOLUTION PROFESSIONAL
1501, TOWER 4, SPRING GROVE TOWERS,
LOKHANDWALA TOWNSHIP, KANDIVALI (E),
MUMBAI-400101

....Corporate Debtor

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Order pronounced on 27.07.2023

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

Appearances (via Video Conference)

Sh. Amitabh Agarwal, Adv.

: For the Applicant Sh. Anshul Gupta RP in person
in IA No.31/2021

Sh. Sumant Batra, Adv.

: For the CoC

Sh. Sumesh Dhawan alongwith Sh. Shaurya Shyam, Adv.

: For the SRA

ORDER

Preliminary

1. The present interlocutory application bearing IA. No. 31/2021 was moved on behalf of Mr. Anshul Gupta, Resolution Professional (“**RP**”) of the Corporate Debtor, M/s Rathi Graphic Technologies Limited under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as “**the Code**” or “**IBC**”] read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) for approval of the
IA No.31/2021 IN C.P. (IB)/325/ALD/2019



Resolution Plan in respect of M/s Rathi Graphic Technologies Limited. (**“Corporate Debtor”**).

2. The underlying Company Petition CP (IB) No.325/ALD/2019 filed by the Exim Scrips Dealers Private Limited under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**“CIRP”**) against the Corporate Debtor namely Rathi Graphic Technologies Limited, which was admitted by this Adjudicating Authority *vide* its order dated 03.02.2020 (**“Admission Order”**). On that date, *i.e.*, 03.02.2020 (**“Insolvency Commencement Date”**), Mr. Sunil Kumar Aggarwal (IBBI Reg. No. IBBI/IPA-002/IP-N00081/2017-18/10222) was appointed as IRP. Subsequently, this Adjudicating Authority appointed Mr. Anshul Gupta as the RP *vide* order dated 10.06.2020 of this Tribunal on the application filed by CoC *vide* IA No.129/2020.

3. It is stated in Resolution Plan that the public announcement was made on 03.02.2020 in *Financial Express, Jansatta, Indian Express and Prabhat Abhinandan* and he called for proof of claims from the creditors of the Corporate Debtor and informed lenders to submit their claims as envisaged under the Code.



4. Pursuant to the collation and verification of claims received, the COC was constituted on 26.02.2020 with 2 Financial Creditors. The list of Financial Creditors and the distribution of voting share among them is as under:

Financial Creditors	Voting Share
State Bank of India	90.68%
Exim Scrips Dealers Private Limited	9.32%
Total	100%

5. The details of status of claims as submitted by the Successful Resolution Applicant are as follows:

Particulars	Amount Claimed	Claim Admitted
Secured Financial Creditors	10,98,00,000	10,98,00,000
Unsecured Financial Creditors	2,32,38,95,998	2,32,38,95,998
Workmen & Employees	NIL	NIL



Government Dues	6,13,43,103	6,13,43,103
Other Operational Creditors	24,34,089	23,54,089
Unsecured Loans	11,86,43,787	11,86,43,787
Total	2,61,61,16,977	2,61,60,36,977

6. The RP submits that a total of 8 CoC meetings have been held during the whole CIRP period from 3rd March, 2020 to 20th November, 2020 and final decision was taken on 20th November, 2020 as regards the Successful Resolution Applicant (SRA).

Evaluation and voting

7. It is stated in the Resolution plan that the 2nd CoC was held on 25.06.2020 whereby the CoC Inter alia approved the publication of Form G, Request for Resolution plan, Evaluation Matrix, and eligibility criteria. Accordingly, invitations for Expression of Interest (EoIs) in Form-G were published on 24.08.2020.



8. In pursuance thereto, the resolution professional received EoIs for submission of the Resolution plan from 9 Prospective Resolution Applicants (PRAs). The PRAs who have submitted EoIs are given as under:-

- 1) Prudent ARC Ltd.
- 2) Giriraj Coated Fab Private Limited.
- 3) Jobby Engineers Private Limited
- 4) Nikunj Udhyog (unit of Surbhika Steels Private Limited)
- 5) Platinum Industries Pvt. Ltd.
- 6) Tavasya Venture Partners Pvt Ltd
- 7) Shree Balaji Refractories Company
- 8) Anupam Steel Center
- 9) Mr. Harsha Vardhan Reddy

9. Two Resolution Applicants *viz*, ***M/s Surbhika Steels Private Limited through one of its unit Nikunj Udhyog and Giriraj Coated Fab Private Limited through Mr. Sanjay Garg*** submitted their Resolution Plan which was put for consideration before CoC in the 5th CoC meeting held on 05.11.2020. In the 6th COC meeting held on 07.11.2020, both the Prospective Resolution Applicants were asked to submit revised Resolution Plan till 10.11.2020 before 6 pm.



10. During the 7th as well as 8th CoC Meetings, held on 12.11.2020 and 20.11.2020 respectively, Resolution Plan submitted by two PRAs viz M/S Surbhika Steels Pvt. Ltd. through one of its Unit Nikunj Udyog and M/s Giriraj Coated Fab Private Limited through Mr. Sanjay Garg, have been put for consideration and deliberation before the CoC. After exhaustive discussion, both the Resolution Plans were put for E-Voting.

11. The Voting lines were open on 15th November, 2020 for starting E-voting, which was supposed to close on 19th November, 2020 but, it was extended thrice, first till 2nd December, 2020, then till 10th December, 2020 and finally, upto 17th December, 2020.

12. As all the CoC members had completed voting till 15.12.2020, E-voting Lines were closed on 15.12.2020 with the permission of CoC members.

13. After due discussions and deliberations on various occasions, in the 7th and 8th COC meeting, final plan received from M/S Surbhika Steels Private Limited through one of its unit Nikunj Udyog was approved by COC on 16.12.2020. The CoC also deliberated in accordance with Section 30(2), 30(4) and 30(6) of the Code read along with CIRP Regulations, 2016.



14. The Resolution Plan submitted by the Successful Resolution Applicant i.e. **M/S Surbhika Steels Private Ltd. through one of its unit Nikunj Udhyog** was approved by a majority of 100% voting share by the CoC. The relevant portion of resolution passed in the 8th COC meeting dated 20.11.2020 is reproduced hereunder:-

“Resolution Term

To approve either of the following Resolution Plans in the case of the Corporate Debtor

To approve either of the following resolution plan received from the resolution applicants as per section:-

a. Approval for Resolution plan of Nikunj Udyog

Resolution Plan submitted by Nikunj Udyog (a unit of Surbhika Steels Pvt. Ltd.) amounting to Rs.775 lakhs (a unit of Surbhika Steels Pvts. Ltd.) amounting to Rs.775 lakhs (excluding the CIRP costs of estimated at 29 lakhs) payable within 50 working days.

b. Approval for Resolution plan of Giriraj Coated Fab Private Limited

Resolution Plan submitted by Giriraj Coated Fab Private Limited and Mr. Sanjay Garg amounting to Rs. 650 lakhs inclusive of all the payments payable within a year



Sr. No.	Name of Member	Percentage	E-Voting		
			For	Against	Abstain
1	State Bank of India	58.00%	58.00%	-	-
2	Exim Scrip Dealers Pvt. Ltd.	0.46%	0.46%	-	-
3	Bank of Maharashtra	32.20%	32.20%	-	-
4	Bank of Baroda	9.23%	9.23%	-	-
5	Rathi Powertech Global Tech Pvt. Ltd.	0.03%	0.03%	-	-
6	EIK Investment and trading limited	0.07%	0.07%	-	-
7	DBG Leasing and Housing Ltd.	0.15%	0.15%	-	-
	Total	100.00%	100.00%	0.00%	0.00%

15. After the E-voting, following result has been declared by the RP on 16.12.2020 in respect of resolution passed in 8th CoC meeting held on 20.11.2020 as reproduced in para No.14 of this order.

“Result: Based on the aforesaid results, I report that this Resolution as contained in the Item No.1(a) has been considered with 100% Positive voting, and 0.00% Negative Voting and 0.00% abstain from voting hence it is Passed.”

Thus, after voting, **CoC approved Resolution Plan of M/S Surbhika Steels Pvt. Ltd. through its unit Nikunj Udyog, declaring it to be SRA.**

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-Sd-



16. This Adjudicating Authority has granted extensions/exclusion once, after expiry of 180 days of CIRP on 07.12.2020 in the whole CIR Process and accordingly, CIRP period is extend upto 06.01.2021 vide order dated 04.12.2020 of this Adjudicating Authority in IA 306/2020(extension of 30 days + exclusion of 128 days of time period due to Covid-19 lockdown as per Central Government order since 25.03.2020 till 31.07.2020)

17. Finally, RP filed instant IA No.31/ALD/2020 on 22.12.2020 within the extended CIRP period of 06.01.2021. A compliance Certificate in terms of prescribed “Form H” under regulation 39 (4) of the CIRP Regulations was also filed before this Tribunal as per Annexure-1 at page 44 of the instant application.

18. While considering the said IA, this Tribunal vide an order dated 14.12.2021, directed that all the Operational Creditors should be given an equitable treatment. Thereafter, the Resolution Professional has filed a revised Resolution Plan on 09.01.2022 and further, revised Form H was filed on 16.01.2022.

However, eventually, the instant IA No.31/2021 was dismissed by this Tribunal in terms of an order dated 13.06.2022 against which the RP as well as SRA, both have filed an appeal



before the Hon'ble NCLAT. The said appeal was finally considered by the Hon'ble NCLAT and in terms of an order dated 02.02.2023, the appeal was allowed and the IA No.31/2021 was revived.

In view of this background, the IA No.31/2021 has been considered by this Tribunal, and since by then, the revised Plan was already filed on 09.01.2022 and a revised "Form H" was filed on 16.01.2022, as stated earlier, the details of the revised Plan have been discussed in the present order.

19. As per the revised "FORM H", the fair value of the corporate debtor is **Rs. 11.11 Crores** and the liquidation value is **Rs. 8.11 Crores** as per the registered valuers report.

Details of Resolution Plan/Payment Schedule

20. The successful Resolution Applicant i.e. M/s Surbhika Steels Private Ltd. through its unit Nikunj Udyog, belongs to Daga group of Companies run by Mr. Akshaya Daga and Mr. Raj Kumar Daga, which has been involved in the trade of construction material for more than 30 years. Directors of M/S Surabhika Steels Pvt. Ltd. are Mr. Akshay Daga and Mr. Daga Nikunj Details of Profile of SRA is provided from pg 16 to 18 of the Resolution Plan.



21. The Resolution Plan states the cause of the default of Corporate Debtor being due to wide fluctuations in cross currencies, imports became costlier, corresponding increase in finished goods were still cheaper and subsequent liquidity crunch. The resolution applicant states that through better management control, infusion of additional funds for working capital and bringing down the total debt to a sustainable level, it endeavours to turn around the company for which a viable and workable resolution plan has accordingly been prepared and the successful Resolution Applicant has the capability for effective implementation of the Plan. Overview of the Corporate Debtor and details of the proposed resolution transaction structure are provided from pg 19 to 21 and pg 32 to 34 respectively of the Resolution Plan.

22. Initially, the SRA proposed to make a payment of a Total Amount of Rs.7,75,00,000/- (Rupees Seven Crore Seventy five lacs only) plus unpaid CIRP costs under Resolution Plan but the same was further revised on 09.01.2022 and then on 28.02.2023. The details of proposed plan are as under:-



(a) Financial proposal of the Resolution Plan for “Total Resolution Amount’ as proposed by the SRA in IA No.31/2020 and further amended on 01.01.2022 and 28.03.2023 is as under-

Sl. No.	Types of debts	Claim Admitted in Cr. Rupees	Resolution Amount	Payment Term
1.	CIRP Cost	NA	The actual amount	The actual amount proposed to be paid over and above the resolution amount
2.	Secured Financial Creditors	10,98,00,000	5,78,70,054	The amount to be paid within 50 working days from effective date
3.	Unsecured Financial Creditors	2,32,38,95,998	1,87,81,106	The amount to be paid within 50 working days from effective date
4.	Operational Creditors (Trade payables)	23,54,089	2,35,409	The amount to be paid within 50 working days from effective date
5.	Workmen/ Employees	NIL	1,38,161*	-



6.	Contingent Liabilities (Non Statutory)	NIL	NIL	NIL
7.	Statutory Dues as per Information Memorandum	6,13,43,103	8,48,840**	The amount to be paid within 50 working days from effective date
Total Resolution Amount (except the unpaid CIRP)			7,78,73,570	

**The RP has filed affidavit vide Diary No.833 dated 28.02.2023 annexing the e-mail sent by the Successful Resolution Applicant in which he has given an undertaking to pay the EPF and gratuity dues over and above the amount in the Resolution Plan itself.*

***Payment towards statutory dues was changed to Rs.8,48,840/- by an additional affidavit filed by RP vide filing no. 0902109004352020 dated 09.01.2022*

(b) Apart from above proposed “Resolution Plan Amount” of Rs.7,78,73,570/- (Rupees Seven Crore, Seventy Eight lacs, Seventy Three Thousand and Five Seventy only), the SRA has



also proposed to induct, Rs.6,00,00,000/- (Rupees Six Crore only) for improvement in operations, capex as well as to meet the working capital requirements by way of equity/quasi equity.

(c) Estimated Total Amount Proposed to be brought in the Corporate Debtor for the turnaround of the Corporate Debtor:-

S. No	Particulars	Amount
A	CIRP Cost	The actual amount
B	Upfront cash payment to the Secured Financial Creditors to be paid within 50 working days from effective date	5,78,70,054
C	Upfront cash payment to the Unsecured Financial Creditors to be paid within 50 working days from effective date	1,87,81,106
C	Total Upfront Cash Payment as part of Resolution Plan (A+B+C)	7,66,51,160
D	Operational Creditor	2,35,409
E	Statutory Dues	8,48,840*
F	Workmen/Employees	1,38,161**
G	Total Fund Required(D+E+F)	7,78,73,570

* Payment towards statutory dues was changed to Rs.8,48,840/- by an additional affidavit filed by RP vide filing no. 0902109004352020 dated 09.01.2022



***The RP has filed affidavit dated 24.02.2023 vide Diary No.833 dated 28.02.2023 annexing the e-mail sent by the Successful Resolution Applicant in which he has given an undertaking to pay the EPF and gratuity dues over and above the amount in the Resolution Plan itself.*

Compliance of the successful Resolution Plan with various provisions:

23. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to as follows:

(a) Compliance with Section 30(2) of the Code:

Section 30(2) of Insolvency and Bankruptcy Code, 2016	Compliance under Resolution Plan	Relevant Number Section Application	Page of 30
(a) Plan must provide for payment of CIRP cost in priority to repayment of other debts of the CD in the manner specified by the Board.	Provided in Clause 2(a)(i) of the Resolution Plan	Clause 2 (a)(i) of Resolution Plan)	- Page 604 (Page 7 of Resolution Plan)



<p>(b) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than</p>		
<p>(b)(i) the amount payable to them in the event of liquidation u/s 53; or</p>	<p>Provided in Clause 3 of the Resolution Plan</p>	<p>Clause 3- Page 608 (Page 11 of Resolution Plan)</p>
<p>(b)(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been</p>	<p>Provided in Clause 3 of the Resolution Plan</p>	<p>Clause 3- Page 608 (Page 11 of Resolution Plan)</p>



distributed in accordance with the order of priority in subsection (1) of section 53, whichever is higher and		
b (iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	Provided under Mandatory Contents of Resolution Plan	Page 640 (Page 43 of Resolution Plan)
(c) Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Provided in Chapter IX of Resolution Plan	Page 638 (Page 41 of Resolution Plan)
(d) Implementation and Supervision.	Provided in Chapter IX of Resolution Plan	Page 637 (Page 40 of Resolution Plan)



(e) Plan does not contravene any of the provisions of the law for the time being in force.	Provided in Chapter IX of Resolution Plan	Page 641 (Page 44 of Resolution Plan)
(f) Conforms to such other requirements as may be specified by the Board.	Provided under Mandatory Contents of Resolution Plan	Page 641 (Page 44 of Resolution Plan)

(b) Measures provided in Resolution Plan in terms of Regulation 37 of CIRP Regulations.

Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Compliance under Resolution Plan	Relevant Page Number of Application
a) transfer of all or part	The Resolution	Page 642



of the assets of the corporate debtor to one or more persons;	Applicant declares that the present provision is not applicable to this Resolution Plan.	
b) sale of all or part of the assets whether subject to any security interest or not;	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 642
ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 642
c) the substantial acquisition of shares of the corporate debtor, or the merger or the consolidation of the corporate debtor with	The Resolution Applicant proposes to acquire shareholding of the corporate debtor post approval of Resolution Plan as	Page 654



one or more persons;	specified under Annexure I of Resolution Plan	
ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Not proposed by the Resolution Applicant.	Page 642
d) satisfaction or modification of any security interest;	Provided in mandatory contents of Resolution Plan	Page 642
e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Provided in mandatory contents of Resolution Plan	Page 643
f) reduction in the amount payable to the creditors;	Provided in mandatory contents of Resolution Plan	Page 643
g) extension of a maturity date or a change in interest rate or other	The Resolution Applicant declares that the present provision	Page 643



terms of a debt due from the corporate debtor;	is not applicable to this Resolution Plan.	
h) amendment of the constitutional documents of the corporate debtor	Provided in mandatory contents of Resolution Plan	Page 643
i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 643
j) change in portfolio of goods or services produced or rendered by the corporate debtor;	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 644



k) change in technology used by the corporate debtor; and	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 644
l) Obtaining necessary approvals from Central and State Governments and other authorities	Provided in mandatory contents of Resolution Plan	Page 644

(c) Mandatory contents of Resolution Plan in terms of

Regulation 38(1) of CIRP Regulations:

Regulation 38(1) and (2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Compliance under Resolution Plan	Relevant Page Number of Application



<p>38(1)(a) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors</p>	<p>The Resolution Applicant declares that any payment made to the Operational Creditors to the Corporate Debtor shall be in priority to the payments to all other creditors of the Corporate Debtor, save and except the CIRP Cost.</p>	<p>Page 644</p>
<p>38 (1) (b)The amount payable under a resolution plan - (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall</p>	<p>The Resolution Applicant declares that any payment made to the dissenting financial Creditor under the resolution plan shall be given in priority in payment to assenting financial creditors.</p>	<p>Page 644</p>



<p>be paid in priority over financial creditors who voted in favour of the plan.</p>		
<p>38 (1A) Shall include a statement as to how it has dealt with the interests of all the stakeholder, including financial creditors and operational creditors of the Corporate Debtor</p>	<p>The Resolution Applicant declares that the Applicant has endeavored to keep all claims, including the claims of statutory authority, in mind while proposing the present Resolution Plan and has dealt with the interests of all stakeholders, including Financial Creditors and Operational Creditors, of the Corporate Debtor.</p>	<p>Page 645</p>



<p>38 (1B) Shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past;</p>	<p>The Resolution Applicant declares that neither the Resolution Applicant nor any of its Related Parties have failed to implement or contributed to the failure of implementation of any plan approved by the Adjudicating Authority at any time in the past.</p>	<p>Page 645</p>
<p>38 (2)(a) shall provide for the term of the plan and its implementation schedule</p>	<p>Term of Plan is provided in Chapter IX</p>	<p>Page No. 637</p>



38 (2)(b) shall provide for the management and control of the business of the Corporate Debtor during its term	The implementation provisions are mentioned in the Chapter IX of the Resolution Plan	Page No.638
38 (2)(c) Shall provide for the adequate means for supervising its implementation.	Provided in Chapter IX of the Resolution Plan	Page No. 637
38 (3) A resolution plan shall demonstrate that-		
(a) it addresses the cause of default;	(a) Provided in Chapter V of Resolution Plan	Page 616
(b) it is feasible and viable;	(b) The Resolution Applicant confirms that the present Plan is feasible and viable,	Page 645



	<p>considering the payments being made to each category of creditors of the Corporate Debtor.</p>	
<p>(c) it has provisions for its effective implementation;</p>	<p>(c) The Resolution Applicant has provided for the effective implementation under Chapter IX of the Resolution Plan.</p>	<p>Page No. 637</p>
<p>(d) it has provisions for approvals required and the timeline for the same; and</p>	<p>(d) The Resolution Applicant has provided for approvals required and their timeline Chapter IX of the Resolution Plan.</p>	<p>Page 638</p>
<p>(e) the resolution</p>	<p>(e) Provided in Chapter IV of the Resolution</p>	<p>Page 613</p>



applicant has the capability to implement the resolution plan.	Plan.	
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24. The Applicant submits that the SRA has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1) (a) of the CIRP Regulations. An undertaking has also been submitted by the SRA, as mandated in terms of regulation 39(1) (c) of the CIRP Regulations. The affidavit under section 29 A is reproduced here under:-

- “2. *That we are the resolution applicant of Rathi Graphic Technologies Limited.*
3. *That we propose to submit a Resolution Plan under The Insolvency and Bankruptcy Code, 2016 with respect to Rathi Graphic Technologies Limited, a company undergoing Corporate Insolvency Resolution Process under The Insolvency and Bankruptcy Code, 2016.*
4. *That I have understood the provisions of section 29-A of The Insolvency and Bankruptcy Code, 2016. I confirm that neither the applicant nor any person*



acting jointly with the applicant or any person who is a promoter or in the management or control of the applicant or any person acting jointly with applicant or their relatives falling under the definition of the Relative under The Insolvency and Bankruptcy Code, 2016, :-

- a) Is an un-discharged insolvent;*
- b) Is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;*
- c) Has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the Corporate Insolvency Resolution Process of the corporate debtor;*
- d) Has been convicted for any offence punishable with imprisonment for two years or more;*
- e) Is qualified to act as a director under the Companies Act, 2013;*



- f) *Is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;*
 - g) *Has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under the code:*
 - h) *Has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code;*
 - i) *Has been subject to any disability, corresponding to clause (a) to (h) of Section 29A, under any law in a jurisdiction outside India; or*
 - j) *Has a connected person (as defined in Explanation to Section 29A) who is ineligible under clauses (a) to (i) of Section 29A.*
5. *That I therefore, confirm that the applicant is eligible under Section 29A of the Insolvency and Bankruptcy Code, 2016 (“Code”) as inserted by the Insolvency and*



Bankruptcy Code (Amendment) Act, 2018 to submit a resolution plan for Rathi Graphic Technologies Limited.

6. *That on behalf of the applicant, I state that during the implementation of resolution plan, no person who would be considered as Connected Person and is not eligible to submit resolution plan under section 29A of Insolvency and Bankruptcy Code, 2016 and the regulation 38 of IBBI (Insolvency Resolution Process of Corporate Persons) regulations, 2016 shall be engaged in the management and control of corporate debtor.*
7. *That, I declare and undertake that in case the Resolution Applicant becomes ineligible at any stage during implementation of Resolution Plan, it would inform Resolution Professional forthwith on becoming ineligible.”*

25. The Applicant has filed a Compliance Certificate in prescribed Form, i.e. Revised “Form H” in compliance with Regulation 39(4) of the CIRP Regulations. The RP has issued the Letter of Intent to the Successful Resolution Applicant and the Successful Resolution Applicant provided the Performance Bank Guarantee of Rs. 80,40,000/- (Rupees Eighty lakh Forty thousand Only) through RTGS dated 24.12.2020 which is annexed as Annexure-I (at pg no 9 to



13) of Supplementary Affidavit dated 24.02.2023 filed on 28.02.2023, which is required under Regulation 36B (4A) of CIRP Regulations, 2016.

Details of Resolution Plan/ Payment Schedule

26. The Applicant submits the relevant information about the amount claimed, the amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant, i.e., M/S Surbhika Steels Private Ltd. through one of its unit Nikunj Udhyog under the said Resolution Plan which is tabulated as under:

Sl. No.	Types of debts	Claim Admitted in Cr. Rupees	Resolution Amount	Payment Term
1.	CIRP Cost	NA	The actual amount	The actual amount proposed to be paid over and above the resolution amount
2.	Secured Financial Creditors	10,98,00,000	5,78,70,054	The amount to be paid within 50 working days from effective date
3.	Unsecured Financial	2,32,38,95,998	1,87,81,106	The amount to be paid within 50 working days from

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	Creditors			effective date
3.	Operational Creditors (Trade payables)	23,54,089	2,35,409	The amount to be paid within 50 working days from effective date
4.	Workmen/ Employees	NIL	1,38,161	-
5.	Contingent Liabilities (Non Statutory)	NIL	NIL	NIL
6.	Statutory Dues as per Information Memorandum	6,13,43,103	8,84,840	The amount to be paid within 50 working days from effective date
7.	Infusion of funds for Capex/ Working Capital	6,00,00,000	6,00,00,000	To be infused progressively as and when required



27. The Resolution plan size is of **Rs 7,78,73,570/-** (Rupees Seven crores, Seventy Eight Lakhs, Seventy three thousand and five hundred seventy only) plus CIRP cost. The additional amount of **Rs.6 Cr.** as included in the plan, is by way of raising equity in future by the Successful Resolution Applicant. The **“Effective Date”** will be the date on which the Adjudicating Authority approves the Resolution Plan.

Details on Management and Implementation as per the Resolution Plan

28. The Resolution Plan also provides for details of management and control, implementation and supervision of the Resolution Plan and term of plan as discussed in the Resolution Plan submitted in the instant IA under consideration from pg No.40 to 42.

Details on fraudulent and avoidance transaction

29. The RP has filed affidavit vide Diary No.833 dated 28.02.2023 annexing the e-mail dated 23.02.2023 sent by Successful Resolution Applicant to RP in which Resolution Applicant has confirmed that he will continue to pursue the avoidance application filed by RP and the amount received/recovered



pursuant to such filing of Application shall be distributed to Financial Creditors after deducting costs, if any.

Waivers, Reliefs and Exemptions

30. The SRA has sought/prayed for the reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC , namely, that from the plan approval date all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn, satisfied and discharged.

Analysis & Findings

31. After considering the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC with 100% of the members voting in favour of the Resolution Plan submitted by M/S Surbhika Steels Pvt. Ltd. through one of its unit M/S Nikunj Udyog. As per the CoC, the said Plan meets



the requirement of being a viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

- 32.** On perusal of the documents on record, we are satisfied that the above Resolution Plan as approved by the CoC under sub-section (4) of Section 30 meets the requirements as referred in sub-section (2) of Section 30 of the IBC and also complies with regulations 37, 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 33.** The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws.
- 34.** From the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorized to seek appropriate orders from respective authorities/courts/tribunals for renewal of licenses/withdrawal/dismissal or abetment of the proceedings as the case may be.
- 35.** We also noted that the RP has filed affidavit vide Diary No.833 dated 28.02.2023 annexing the e-mail sent by the Successful Resolution Applicant in which he has given an undertaking to



pay the EPF and gratuity dues over and above the amount in the Resolution Plan itself.

Orders

36. Subject to the observations made in this Order, the Resolution Plan of **Rs 7,78,73,570/-** (Rupees Seven crores, Seventy Eight Lakhs, Seventy three thousand and five hundred seventy only) (containing the mandatory contents of Resolution Plan in terms of Regulation 38(1), is hereby approved as per Section 31(1), against the original resolution plan amount of Rs.7.75 Crores, after considering the affidavit and additional affidavit filed subsequently as discussed in para 22. We have satisfied ourselves that the resolution plan as approved by the COC under sub-section (4) of Section 30 on 22.12.2020 meets the requirements as referred to in sub-section (2) of Section 30. The additional amount of Rs. 6 Cr. as included in the plan, by way of raising equity in future by the Successful Resolution Applicant, is also hereby allowed. Thus, entire Resolution Plan as presented before us by the RP is approved. The Resolution Plan/Revised Resolution Plan shall form part of this Order.



- 37.** We also order that litigations wherever pending against the corporate debtor would be governed by Section 32A of the Code.
- 38.** The reliefs, concessions and waivers sought/prayed by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws including Companies Act, 2013 and Income Tax Act, 1961, etc.
- 39.** As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
- 40.** In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount of Rs.10 Lakh already paid by the Resolution Applicant as well as the Performance Bank Guarantee of Rs. 80,40,000/-
- 41.** As per the affidavit filed by the Resolution Professional vide Diary No.833 dated 28.02.2023 annexing the e-mail dated 23.02.2023, the avoidable transaction application, IA



No.30/2021 shall be continued to be pursued by the Successful Resolution Applicant after approval of this Resolution Plan and the benefits accruing, if any from avoidance transaction application shall be distributed on pro-rata basis as contained in the previous part of this order.

- 42.** The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 43.** The Resolution Professional is further directed to hand over all records, premises/ factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalise the further course of action required for starting of operations of the Corporate Debtor.
- 44.** The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- 45.** The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.



46. Liberty is hereby granted for moving appropriate application if required in connection with implementation of this Resolution Plan.
47. A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies
48. The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
49. The registry is further directed to send the copy of the order to the IBBI also for their record.
50. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
51. **IA No. 31/2021** shall stand ***disposed of*** accordingly.
52. File be consigned to the record.

-Sd-

(ASHISH VERMA)
MEMBER (TECHNICAL)

Aditi Kharbanda
(LRA)

-Sd-

(PRAVEEN GUPTA)
MEMBER (JUDICIAL)