



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-23/2024

Under Section 60(5) & 30(6) of Insolvency &
Bankruptcy Code, 2016

Mr. Gaurang Shah

Resolution Professional/
...Applicant

In the matter of

CP (IB) No.96/MB/C-IV/2023

MYP Enterprises Limited

...Applicant/Corporate Applicant

Order Pronounced on: 16.10.2024

Coram:

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

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

For the Applicant/RP :

CA Sanat R. Jariwala a/w Adv.
Ami Jain.

ORDER

IA-23/2024

1. This Application has been filed on 08.02.2024 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 (hereinafter referred to as 'CoC') of the Corporate Applicant viz. MYP Enterprises Limited (hereinafter referred to as 'Corporate Applicant').

2. **The brief facts of the Application are as follows:**

- 2.1 Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated vide an order dated 09.05.2023 of this Court in C.P.(IB)-96(MB)/2023 on an application filed by MYP Enterprises Limited (Corporate Applicant) under Section 10 of the Insolvency and Bankruptcy Code 2016. Mr. Gaurang Shah (Reg. No.: IBBI/IPA-002/IP-N00947/2019-2020/13002) was appointed as Interim Resolution Professional (IRP). Subsequently, made a public announcement in the newspapers (in Mumbai) in Form-A on 12.05.2023 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 Interim Resolution Professional was confirmed as Resolution Professional of the Corporate Debtor on 08.06.2023.
- 2.2 Form G was published on 30.06.2023 and the last date for submission of the resolution plan was on 04.09.2023. In Response, the Resolution Professional received only one Resolution Plan from D.H Exports Private Limited which got approved in E-voting held pursuant to 7th CoC Meeting held on 24.01.2024.

- 2.3 The Applicant RP submits that 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
01	I.A. 5259/2023	RP	Extension of 90 days	Allowed vide Order dt. 21.11.2023

- 2.4 The Resolution Plan submitted by the Resolution Applicant viz. D.H Exports Private Limited was approved by the CoC in the 7th meeting held on 24.01.2024 through e-voting by 100% of the CoC member voting in favor of the Resolution Plan. The resolution is reproduced below -

“RESOLVED THAT pursuant to Section 30(4) of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in accordance with any other provisions, rules and regulations made thereunder, approval of the members of the Committee of Creditors of MYP Enterprises Limited be and is hereby accorded to the Resolution Plan dated 4th September, 2023 read with addendums and the annexures submitted by M/s D.H Exports Private Limited”.

- 2.5 The Applicant submits that the Successful Resolution Applicant has deposited the Performance Security of Rs.

4,00,000/- in the Bank account of the Corporate Debtor.

2.6 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;
- 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.

2.7 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



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- 2.8 The Resolution Applicant viz. D.H Exports Private Limited is a Company involved in the Principal business activities of Exporter and Manufacturer, having office at 6th Floor, 621, Arun Chamber, Tardeo Road, Mumbai- 400034, Maharashtra, India. The Resolution Applicant confirmed that it is eligible to submit Resolution Plan as per Section 29A of Insolvency and Bankruptcy Code.
- 2.9 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 wilful 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.
- 2.10 The Applicant submits that the Successful Resolution Applicant has tendered an Addendum on 09.11.2023 stating that:

- i. A scheme of amalgamation is proposed between MYP Enterprises Limited and D.H Exports Private Limited as a result of which MYP Enterprises Limited will merge with D.H Exports Private Limited. The Resolution Plan period will range from 01.04.2023 through 31.03.2028;
- ii. The proposal total shareholding in the amalgamated company shall be 33,005 shares, i.e. 5 shares for MYP Enterprises Limited shareholders and 35,000 for D.H. Exports Private Limited (SRA).

2.11 The Successful Resolution Applicant i.e. D.H Exports Private Limited herein submits and clarifies with reference to the Addendum to the Resolution Plan that *“Pursuant to the approval of the above referred merger of MYP Enterprises Limited with D.H Exports Private Limited, if and when accorded by Hon’ble Adjudicating Authority, the merged entity shall continue as a private limited company as also not avail any of the benefits, exemptions or concessions available to a public limited company and it would be complying with all the provisions of statute/law including those of Companies Act, 2013, in terms of the Scheme as a private limited company post-merger as a sequel to approval of the Resolution Plan”*.

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

Fair Value Rs. 17,59,600/-

Liquidation Value Rs. 17,59,465/-

2.13 Resolution Plan for the Corporate Debtor (the key features of the Resolution Plan submitted by for D.H. Exports Private Limited is summarized below):

3.1 The said Resolution Plan provides for the payments towards the CIRP cost, payment to Financial Creditors, Operational Creditor & Employees and the summary of payment is enumerated below:

Sr. No	Particulars	Amount (Rs. In Lakhs)	Payment date
1	Corporate Insolvency Resolution Process Cost	15.00	Immediate on approval of plan i.e. within 7 days from effective date of merger as per clarification approved by CoC on 27.09.2024
2	Financial Creditor	637.00	40% to be paid immediate on approval of plan i.e. within 7 days from effective date of merger as per clarification approved by CoC on 27.09.2024;

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			Balance 60% to be paid in four equal annual instalments, carrying interest @ 10% p.a.
3	Operational Creditors-Traders & Ors	3.58	Immediate on approval of plan i.e. within 7 days from effective date of merger as per clarification approved by CoC on 27.09.2024
4.	Payment to the Operational Creditor-Statutory dues	1.83	Immediate on approval of plan i.e. within 7 days from effective date of merger as per clarification approved by CoC on 27.09.2024
5	Payment to the Operational Creditor-Workers/Employees	11.46	Immediate on approval of plan i.e. within 7 days from effective date of merger as per clarification approved by CoC on 27.09.2024
	Total	668.87	

3. It is submitted by the Applicant in the Resolution Plan that a monitoring Committee shall be constituted on the approval of the Resolution Plan by the Adjudicating Authority. The new board of directors of the Corporate Debtor shall take over immediate charge of affairs of

Corporate Debtor from the Resolution Professional and form a Management Committee (MC) comprising: (a) one representative of leader of consortium of Financial Creditors; (b) one woman director, if required; (c) one representative of Key Managerial Personnel and (d) in order to facilitate the smooth implementation of the Resolution Plan, the financial lenders of the Corporate Debtor shall immediately constitute one or more creditor/s among them to act as monitoring agent.

4. 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

I, Gaurang C Shah, an insolvency professional enrolled with ICSI IPA and registered with the Board with registration number IBBI/IPA-002/IP-N00947/2019-2020/13002, am the Resolution Professional (RP) for the corporate insolvency resolution process (CIRP) of MYP Enterprises Limited (Corporate Debtor/CD/ MYP)

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	MYP Enterprises Limited

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2	Date of Initiation of CIRP	9 th May 2023
3	Date of Appointment of IRP	11 th May, 2023 (Date of receipt of Order)
4	Date of Publication of Public Announcement	12 th May, 2023
5	Date of Constitution of CoC	2nd June, 2023
6	Date of First Meeting of CoC	8 th June, 2023
7	Date of Appointment of RP	8 th June, 2023
8	Date of Appointment of Registered Valuers	9 th June, 2023
9	Date of Issue of Invitation for EoI	30 th June, 2023
10	Date of Final List of Eligible Prospective Resolution Applicants	10 th August, 2023
11	Date of Invitation of Resolution Plan	30 th June, 2023
12	Last Date of Submission of Resolution Plan	4 th September, 2023
13	Date of Approval of Resolution Plan by CoC	24 th January, 2024
14	Date of Filing of Resolution Plan with Adjudicating Authority	
15	Date of Expiry of 180 days of CIRP	7 th November, 2023
16	Date of Order extending the period of CIRP	90 days Extension vide Hon'ble NCLT's order dated 21 st November, 2023
17	Date of Expiry of Extended Period of CIRP	5 th February, 2024
18	Fair Value	Rs.17,59,600/-
19	Liquidation value	Rs.17,59,465/-

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20	Number of Meetings of CoC held	7 (Seven)
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3. I have examined the Resolution Plan received from Resolution Applicant – M/s.D.H.Exports Private Limited and approved by the Committee of Creditors (CoC) of M/s. MYP Enterprises 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. D.H. Exports 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) The voting was held by way of ballot after the meeting of the CoC on 24th January, 2024

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 MYP Enterprises Limited being members of the CoC and distribution of voting share among them is as under:

S. No.	Name of Creditor	Voting Share %	Voting for Resolution Plan)Voted for / Dissented / Abstained(
1	Steelage Overseas Private Limited	76	Voted for
2	Surjeet Kumar Singh	13	Voted for
3	Pratap Credit Co-operative Society Limited	11	Voted for
	TOTAL	100%	

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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.

6A. Minutes of the Committee Meeting relating to discussion and decisions about resolution plan are attached with this certificate.

7. The amount 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#	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	-	-	-	-
			-	-	-	-

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		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	-	-	-	-
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	-	-	-	-
		(ii) who voted in favour of the resolution plan	637	637	637	100%
		Total[(a) + (b)]	637	637	637	100.00%
3	Operational Creditors	(a) Related Party of Corporate Debtor	356.11	356.11	3.56	1%
		(b) Other than (a) above:	183.36	183.36	1.83	1%

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		(i)Government (ii)Workmen	11.45	11.45	11.45	100%
		(iii)Employees	1.59	1.59	0.02	1%
		(iv)Other Operational Creditors				
		Total[(a) + (b)]	552.51	552.51	16.86	3.05%
4	Other debts and dues	Other Creditors	-	-	-	-
Grand Total			1189.51	1189.51	653.86	54.97%

*If there are sub-categories in a category, please add row for each sub-category.

#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	5,06,100	5	100	0.02
2	Preference	NA	NA	NA	NA

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

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance)Yes / No(
Section 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?	Page 11 – Point 2.4 Annexure 2 – Page No.53	Yes
Section 29A	Whether the Resolution Applicant is eligible to	Received	Yes

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	(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?]	Chapter III, Point 5.0, Page No.24 Chapter III, Point 6.0, Page No.24 Chapter IV, Point 9.1, Page No. 34	
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?	As per the voting results of Seventh CoC Meeting	Yes Yes
Section 31)1(	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Chapter III, Point 5.1, Page 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?	Chapter IV, Point 9.2, Page No.35	Yes
Regulation 38)1A(	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Chapter IV, Point 9.2, Page No.34	Yes
Regulation 38)1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	Page 1 of Addendum received on 09.11.2023 -	Yes

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<p>Regulation 38)2(</p>	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p> <p>(b) for the management and control of the business of the corporate debtor during its term?</p> <p>(c) adequate means for supervising its implementation?</p>	<p>Chapter V, Point 11.1, Page 40</p> <p>Chapter V, Point 12.0, Page 40</p> <p>Chapter V, Point 13.0, Page 41</p> <p>Chapter V, Point 9.1, Page 34</p>	<p>Yes</p>
<p>Regulation 38)3(</p>	<p>Whether the resolution plan demonstrates that –</p>	<p>Chapter III, Point 4.1, Page 24</p> <p>Chapter III, Point 4.1, Page 24</p> <p>Chapter III, Point 5.1, Page 24</p> <p>Page 2 of Addendum received on</p>	<p>Yes</p>

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	<p>)a(it addresses the cause of default?</p> <p>)b(it is feasible and viable?</p> <p>)c(it has provisions for its effective implementation?</p> <p>)d(it has provisions for approvals required and the timeline for the same?</p> <p>)e(the resolution applicant has the capability to implement the resolution plan?</p>	<p>09.11.2023</p> <p>Chapter III, Point 3.11, Page 19</p>	
Regulation 39)2(	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		No
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]		Yes (The Resolution Applicant has deposited the Performance Security of Rs.4,00,000 in the bank account of the Corporate Debtor)

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

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Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16)1(	Commencement of CIRP and Appointment of IRP	T	T
Regulation 6)1(	Publication of Public Announcement	T+3	12-05-2023
Section 15)1(c) / Regulation 12)1(	Submission of Claims	T+14	25-05-2023
Regulation 13)1(	Verification of Claims	T+21	01-06-2023
Section 26)6A(/ Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	NA
Regulation 17)1(	Filing of Report Certifying Constitution of CoC	T+23	02-06-2023
Section 22)1(and regulation 17)2(	First Meeting of the CoC	T+30	08-06-2023
Regulation 35A	Determination of fraudulent and other transactions	T+115	
Regulation 27	Appointment of two Registered Valuers	T+47	09-06-2023
Regulation 36)1(	Submission of Information Memorandum to CoC	T+95	30-06-2023
Regulation 36A	Invitation of EoI	T+60	30-06-2023
	Publication of Form G	T+60	30-06-2023
	Provisional List of Resolution Applicants	T+85	29-07-2023
	Final List of Resolution Applicants	T+100	10-08-2023
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+90	03-08-2023
Section 30)6(/ Regulation 39)4(	Submission of CoC approved Resolution Plan	T+165*	
Section 31)1(	Approval of Resolution Plan	T=180*	

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

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who	When to be obtained

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			will grant Approval	
1	Resolution Applicant has mentioned that the approvals required will be arranged within 365 days from the order passed by Hon'ble NCLT.			

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): NA

14. The Resolution Plan is being filed before the expiry the period of CIRP provided in section 12 of the Code. An Application for extension of 90 days beyond the CIRP period was filed with Hon'ble National Company Law Tribunal, Mumbai (NCLT) on 07.11.2023. The NCLT on 21.11.2023 approved the extension of CIRP period by 90 days starting form 07.11.2023 vide order dated 21.11.2023.

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	-	-	-
2	Undervalued transactions under section 45	-	-	-

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3	Extortionate credit transactions under section 50	-	-	-
4	Fraudulent transactions under section 66	-	-	-

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

(Contribution for Liquidation is for liquidation of Company as a whole)

- a. Estimated liquidation cost: Rs. 19.05 Lakhs
- b. Estimated liquid assets available: NIL
- c. Contributions required to be made: Rs.19.05 Lakhs
- d. Financial creditor wise contribution is as under:

Sl. No.	Name of financial creditor	Amount to be contributed (Rs. In lakhs)
1	Steelage Overseas Private Limited	14.478
2	Surjeet Kumar Singh	2.4765
3	Pratap Credit Co-operative Society Limited	2.0955
	TOTAL	19.05

15B. The committee has recommended under regulation 39C as under:

- a. Sale of corporate debtor as a going concern: Yes / ~~No~~
- b. Sale of business of corporate debtor as a going concern: Yes / ~~No~~

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.]

The CoC in the 9th CoC meeting had decided that the Liquidator's fee shall be decided in consultation with the Liquidator proposed to be appointed in case the Resolution Plan is not approved by the Adjudicating Authority.

16. I, Gaurang Chhotalal Shah, 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: Gaurang Chhotalal Shah
IP Registration No: IBBI/IPA-002/IP-N00947/2019-2020/13002
Address as registered with the Board: Flat 204 A Wing Raj Vaibhav 1 CHS, Dahanukar Wadi, Mahavir Nagar, Kandivali (W), Mumbai - 400067
Email id as registered with the Board:fcsgaurang.shah@gmail.com

5. 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. D. H. Exports Private Limited stating that the plan is in accordance with the Section 30(2) and other provisions laid down under the code.
6. 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.
7. 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.

8. 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 7th meeting held on 24.01.2024 with 100% (Hundred Percent).
9. There is no such pending proceedings u/s 66(1) r/w 43(1) and 44(1) of the Code.
10. The Bench takes notes of the submissions of the Successful Resolution Applicant i.e. D.H Exports Private Limited that pursuant to merger of the Corporate Debtor with D.H Exports Private Limited, the merged entity shall not avail any of the benefits, exemptions or concessions available to a public limited company and it would be complying with all the provisions of statute/law including those of Companies Act, 2013, in terms of the Scheme as a private limited company post-merger as a sequel to approval of the Resolution Plan. In consonance with the same, we make it expressly clear that all requisite processes and/or procedural rigors, as laid down by Registrar of companies (RoC), and more specifically so, with reference to the payment(s) of any fee/ expenses etc. shall be borne by the Successful Resolution Applicant, as per the extant provisions of law.

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11. 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.
12. In the case of “**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.

13. 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).”*

14. 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.

ORDER

15. The Application **IA-23/2024** in CP(IB)/96/(MB-IV)/2023 is **allowed**. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

15.1 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.

15.2 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. 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.

- 15.3 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.
- 15.4 The moratorium under Section 14 of the Code shall cease to have effect from this date.
- 15.5 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.
- 15.6 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.
- 15.7 The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV



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IN
CP (IB)/96/MB-IV/2023

16. The Interlocutory Application i.e. **IA-23/2024** in
CP(IB)/96(MB)/2023 is allowed accordingly disposed of.

Sd/-

Anu Jagmohan Singh
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)