

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

I.A. No. 27 of 2024

IN

C.P. (IB) No. 76/MB/2023

Under Section **30(6)** of the Insolvency
and Bankruptcy Code, 2016.

CS Anagha Anasingaraju, Resolution
Professional

... **Applicant**

In the matter of

C.P. (IB) No. 76/MB/2023

M/s. Hindustan Eco-Tech Pvt. Ltd.

...**Petitioner**

Order Pronounced on: 09.05.2024

Coram:

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

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant

:

Mr. Avinash R Khanolkar a/w.
Ms. Surekha Yadav, Ld. Counsel
for the Applicant.

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ORDER

1. The instant application has been filed on 18.04.2024 by **CS Anagha Anasingaraju**, the Applicant Resolution Professional (“RP”) of **M/s. Hindustan Eco-Tech Private Limited** (“Original Petitioner / Corporate Debtor”), under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “IBC, 2016”) on behalf of the Committee of Creditors seeking approval of the Resolution Plan submitted by **M/s. F and K Agro Private Limited** (the “SRA / Successful Resolution Applicant”) and approved by 100% (one-hundred percent) of the voting share of the members of the Committee of Creditors (hereinafter referred to as “CoC”) of the Corporate Debtor herein.
2. The brief facts of the Application are as follows:
 - 2.1 Pursuant to the captioned petition bearing C.P. (IB) No. 76/MB/2023 filed by **M/s. Hindustan Eco-Tech Private Limited** (“Corporate Debtor” therein) *u/s.* 10 of IBC, 2016; This Tribunal was pleased to initiate Corporate Insolvency Resolution Process (“CIRP”) of the Corporate Debtor therein *vide* Order *dated* 25.07.2023. In furtherance thereof, Ms. (CS) Anagha Anasingaraju (IBBI Reg. No.: IBBI/IPA-002/IP-N00247/2017-18/10732) was appointed as Interim Resolution Professional (“IRP”). The said IRP caused a public announcement to be made, informing the commencement of CIRP of the Corporate Debtor and thereby invited claims from creditors to enable the constitution of Committee of Creditors (“CoC”).
 - 2.2 The First Meeting of the CoC was conducted by the IRP on 22.08.2023, wherein the said IRP was confirmed as the Resolution Professional (“RP”). The said appointment was duly confirmed by this Bench *vide* Order *dated* 25.10.2023.

- 2.3** The Applicant RP submits that a total of seven CoC meetings were held during the CIRP period. During the intervening period, the Applicant RP published FORM-G *i.e.* Notice inviting Expression of Interest (“EOI”) for submission of Resolution Plan for the Corporate Debtor. Accordingly, the said FORM-G was published in two newspapers *viz.* ‘Indian Express’ (English) and ‘Loksatta’ (Marathi) *dated* 11.09.2023. Pursuant to the same, the last scheduled date of submission of EOIs was fixed as 26.11.2023.
- 2.4** In response to the publication of the said Form-G, five EOIs were received out of which only two applicants met the eligibility criteria. Consequently, the members of the CoC sought to opt for re-issuance of FORM-G. Pursuant to the publication of the revised FORM-G in the newspapers mentioned in Para (2.3) hereto on 14.10.2023, only one EOI was received but the final resolution plan could not be fructified. The CoC again sought to opt for re-issuance of FORM-G, pursuant to which a total of four EOIs were received. At the backdrop however, on account of the statutory period of 330 days as envisaged by the Code nearing expiration, the Applicant RP sought an extension of 90 days to the CIRP Period *w.e.f.* 22.01.2024 and this Bench was pleased to grant the same *vide* Order *dated* 07.02.2024.
- 2.5** With regards to the four EOIs received pursuant to the re-issuance of Form-G in the newspapers mentioned in Para (2.3) hereto on 15.01.2024; A provisional list of Prospective Resolution Applicant(s) (“PRA”) was prepared and upon finalisation, duly circulated among members of the CoC on 17.02.2024. Subsequently, the Request for Resolution Plan (“RFRP”) was circulated amongst the PRAs, for submission of their Final Resolution Plan for the Corporate Debtor. Following the requisite submission of an EMD of INR 1 Crore, only

one out of the four PRAs *viz.* M/s. F and K Agro Private Limited was declared eligible for submission of Resolution Plan and the same was duly effectuated with on its part.

2.6 The Applicant RP submits that the proposed Resolution Plan submitted by the said PRA was put for consideration in the Sixth Meeting of the CoC *dated 18.03.2024*. After a series of deliberations and negotiations in respect of the feasibility of the proposed Resolution Plan, the revised/ modified Resolution Plan was submitted by the said PRA on 21.03.2024. The revised/ modified Resolution Plan was taken up for consideration in Seventh Meeting of CoC *dated 23.03.2024*. However, the said meeting stood adjourned to 29.03.2024, and accordingly the Resolution Plan was put to voting before the CoC. The Resolution Plan *dated 19.03.2024* was thereby approved with a voting share of 100% in the Seventh Meeting of CoC, convened on *29.03.2024*. Resultantly, **M/s. F and K Agro Private Limited** was declared as the Successful Resolution Applicant (“SRA”) for the Original Petitioner herein.

2.7 The Applicant RP hereby submits that the Resolution Plan approved by the CoC is in compliance with the legal requirements mandated under IBC, 2016 as extracted hereinafter:

a. Compliance with S. 30 (2) (a): The SRA has provided that payment of CIRP Cost will be paid at Actuals as on effective date within 30 days from the Effective date. And therefore, the proposed Resolution Plan is in compliance of the said provision (Clause D Table 14 of the Proposed Plan).

b. Compliance with S. 30 (2) (b): The SRA has provided that towards the claims of the Operational Creditors in following manner:

i. Operational Creditors: The SRA has proposed a payment of 01.00% of the Admitted claim amount towards payment of the Government

Dues and other operational creditors within 30 days from the Effective Date (Clause 8.5 of the Proposed Plan)

ii. Dissenting Financial Creditor: *The Proposed Plan in clause 11.8 gives treatment about the dissenting Financial Creditor.*

In accordance herein-above it is stated and submitted that the proposed Resolution Plan is in compliance with the provisions of S. 30 (2)(b). However, in actual there is not Dissenting Financial Creditor and the proposed Plan has been approved by the 100% of the voting by the CoC the question of implementation of this clause will not arise.

iii. *Further, the SRA has proposed a payment of 33.38% of the admitted claim amount towards Secured Financial Creditors of the Corporate Debtor. It is stated and submitted that the said amount, qua the each Secured Financial Creditor, is higher than the Liquidation value attributable to such Secured Creditor and therefore the proposed Plan is in compliance with the said provision. (Clause 8 of the proposed Plan)*

c. Compliance with S. 30 (2) (c): *It is stated and submitted that the proposed Resolution Plan in clause 24.8.a. provides for the change in management and shareholding of the Corporate Debtor and therefore the proposed Resolution Plan is in compliance with the said provision.*

d. Compliance with S. 30 (2) (d): *It is stated and submitted that the proposed Resolution Plan in clause 11.2. provides for formation of 'Monitoring Committee' consisting of the Applicant, one member from the CoC and one nominee from the SRA to supervise the implementation of the Resolution Plan. Accordingly, it is stated and submitted that the proposed Resolution Plan is in conformity of the said provision.*

e. Compliances with S. 30 (2) (e) & (f): *It is stated and submitted that the SRA has not provided anything and/or sought approval to anything which is against/ contrary to any Law for time being in force. The SRA*

has asked certain reliefs and concessions from this Hon'ble Bench which would completely be at discretion of this Hon'ble Bench and therefore the proposed Resolution Plan is not contrary to any Law for time being in force.

- f. Further, the proposed Plan in Clause 11.6. and 24.8. provides for the terms of 'Addressing cause of default'. And therefore, the proposed Resolution Plan, in opinion of the Applicant, is in compliance with the provision of Regulation 38 (3) (a) of the CIRP Regulations.*
- g. Further, the SRA has proposed to infuse fund for implementation of the Plan through its Personal. It is stated and submitted that as on 31.03.2023 the SRA is having net-worth ₹ 33.46 Crores. Further, the SRA is in similar line of business since year 1989 and therefore the SRA is having relevant expertise to run the business of the Corporate Debtor. Therefore, in opinion of the Applicant as well as the CoC the proposed Plan is viable and feasible as per the provisions of Reg. 38(3)(b) and (e) of the CIRP Regulations.*
- h. Further, the proposed Resolution Plan in clauses 11.6. and 24.8 provides mechanism for the effective implementation and timelines for approvals required. Therefore, in opinion of the Applicant as well as the CoC the proposed Plan is viable and feasible as per the provisions of Reg. 38 (3) (c) and (d) of the CIRP Regulations.*

3. The Resolution Applicant viz. M/s. F and K Agro Private Limited is engaged in the business of Roller Flour Mills and has confirmed that it is eligible to submit the Resolution Plan as per Section 29A of Insolvency and Bankruptcy Code, 2016.
4. As per the Applicant RP, the Fair Value and Liquidation Value have been determined by three valuer(s). The averages of the said determination of the requisite Fair Value and Liquidation Value, as provided in FORM-H, are as hereunder:

Average Fair Value:

INR 19,59,57,828.00/-

(Indian Rupees Nineteen crores, fifty-nine lakhs, fifty-seven thousand, eight hundred and twenty-eight only)

Average Liquidation Value:

INR 15,19,12,350.00/-

(Indian rupees Fifteen crores, nineteen-lakhs,twelve thousand, three-hundred and fifty only)

5. The key features of the Resolution Plan for Corporate Debtor submitted by the Resolution Applicant viz. M/s. F and K Agro Private Limited is summarized below:

Sr. No.	Particulars	Amount admitted	Amount Offered (₹)	As a % of amount admitted
1	CIRP Costs	At Actuals	At Actuals i.e. 25,19,186/-	
2	Secured Financial Creditors	42,05,14,835.15/-	14,04,00,845	33.38%
3	Unsecured Financial Creditors	Nil	NA	0.00%
4	Workmen	Nil	NA	0.00%
5	Employees	Nil	NA	0.00%

6	Operational Creditors	8,62,12,080/-	8,62,120.80/-	01.00%
	Total	₹ 50,67,26,915.15/-	₹ 14,37,82,151.80/-	27.88%

6. Furthermore, the Resolution Applicant has proposed to implement the Resolution Plan in full as per the timelines provided hereinafter:

Type of creditors	Amt offered (₹)	Timeline (From Effective Date)
CIRP Cost – at actuals	25,19,186/-	0-30 days (within 30 working days of certified copy of order of approval of Resolution Plan by AA)
Financial Creditors	14,04,00,845/-	0-30 days (within 30 working days of certified copy of order of approval of Resolution Plan by AA)
Operational Creditors	8,62,120.80/-	0-30 days (within 30 working days of certified copy of order of approval of Resolution Plan by AA)
Total:	14,37,82,151.80/-	

7. The Applicant RP submits that the SRA viz. M/s. F and K Agro Private Limited has chosen to pay the Performance Guarantee amount directly in the CIRP account of the Corporate Debtor and that accordingly, an amount of INR 2,60,00,000/- (Indian Rupees Two crores, sixty-lakh only) has been deposited in the Bank Account of the Corporate Debtor (Original Petitioner herein) on 30.03.2024.

8. The Learned Counsel for the Applicant Resolution Professional has annexed a certificate of the Form-H to the Application, under Regulation 39(4) 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, as extracted hereto:

**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, Anagha Anasingaraju, an insolvency professional enrolled with ICSI Institute of Insolvency Professionals and registered with the Board with registration number IBBI/IPA-002/IP-N00247/2017-18/10732, am the resolution professional for the corporate insolvency resolution process (CIRP) of Hindustan Eco-Tech Private Limited.

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	Hindustan Eco-Tech Private Limited
2	Date of Initiation of CIRP	25 July 2023
3	Date of Appointment of IRP	25 July 2023
4	Date of Publication of Public Announcement	28 July 2023
5	Date of Constitution of CoC	16 August 2023
6	Date of First Meeting of CoC	22 August 2023
7	Date of Appointment of RP	22 August 2023
8	Date of Appointment of Registered Valuers	RV Purva Bhise (L&B) – 29 Aug 2023 RV Abhishek Joshi (L&B) – 05 Sept 2023 RV Ruchita Bhonge (P&M) – 29 Aug 2023 RV Mangesh Ketkar (P&M) – 01 Sept 2023

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		RV Sanket Deshpande (SFA) – 31 Aug 2023 Experity Advisors LLP (SFA) – 31 Aug 2023
9	Date of Issue of Invitation for EoI	1. 11 September 2023 (original) 2. 14 October 2023 (reissue) 3. 15 January 2024 (reissue)
10	Date of Final List of Eligible Prospective Resolution Applicants	1. 24 November 2023 2. 17 February 2024
11	Date of Invitation of Resolution Plan	1. 29 November 2023 2. 17 February 2024
12	Last Date of Submission of Resolution Plan	1. 29 December 2023 2. 18 March 2024
13	Date of Approval of Resolution Plan by CoC	29 March 2024
14	Date of Filing of Resolution Plan with Adjudicating Authority	To be submitted
15	Date of Expiry of 180 days of CIRP	21 January 2024
16	Date of Order extending the period of CIRP	07 February 2024
17	Date of Expiry of Extended Period of CIRP	20 April 2024
18	Fair Value	Avg fair value – INR 19,59,57,828.00/-
19	Liquidation value	Avg liquidation value – INR 15,19,12,350.00
20	Number of Meetings of CoC held	Seven

3. I have examined the Resolution Plan received from Resolution Applicant 'M/s F and K Agro Private Limited' and approved by Committee of Creditors (CoC) of Hindustan Eco-Tech 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

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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 F and K Agro 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 in the meeting of the CoC held on 23 March 2024 and which was adjourned to 29 March 2024 where all the members of the CoC were present.

or

~~I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.~~

~~[strike off the part that is not relevant]~~

5. The list of financial creditors of the CD Hindustan Eco-Tech Private Limited being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	The Vishweshwar Sahakari Bank Limited	42.28%	Voted in favour of Resolution Plan
2.	The Maharashtra State Co-Op Bank Ltd. Limited	22.09%	Voted in favour of Resolution Plan
3.	Rajarambapu Sahakari Bank Ltd., Peth	35.63%	Voted in favour of Resolution Plan

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

(Amount in Rs.

lakh)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)

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(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	0	0	0	0
		(ii) who voted in favour of the resolution plan	42,05,14,8 35.15	42,05,14,8 35.15	14,04,0 0,845	33.38 %
		Total[(a) + (b)]	42,05,14,8 35.15	42,05,14,8 35.15	14,04,0 0,845	33.38%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	0	0	0	0

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		(ii) who voted in favour of the resolution plan	0	0	0	0
		Total[(a) + (b)]	0	0	0	0
3	Operational Creditors	(a) Related Party of Corporate Debtor	0	0	0	0
		(b) Other than (a) above:				
		(i)Government	6,03,90,02 7	6,03,09,02 3	6,03,09 0	01.00%
		(ii)Workmen	0	0	0	0
		(iii)Employees	0	0	0	0
		(iv)Other than Workmen and Employees and Government Dues	3,16,51,35 1	2,59,03,05 7	2,59,03 0	00.94%
		Total[(a) + (b)]	9,20,41,37 8	8,62,12,08 0	8,62,12 0	00.94%
4	Other debts and dues		0	0	0	0
Grand Total			51,25,56,2 13.15	50,67,26,9 15.15	14,12,6 2,965	27.56%

*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.]

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	76,29,600	0	100	0

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2	Preference	0	0	0	0
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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)
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?	Pg 6-10 of the plan	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Pg 8-Clause 5, Para 26	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Para 26, Appendix 5	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?]	Table 14 Para 9, Table 5.2 Table 14 Para 11.8 Para 24.8 Para 24.8 Para 11.7	Yes Yes Yes Yes Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Yes Yes, 100% voted in favour	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Yes	Yes

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Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Para 11.2	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Para 11.3, 24A 2	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?]	No; in Para 11.1 N.A.	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Para 24.8, Table 15	Yes
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Para 11.6, 24	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No such transaction observed	N.A.
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	As per the terms of RFRP, the RA was required to provide performance guarantee of Rs. 2,59,45,538 /- (25% of plan value). However, the SRA chose to pay the Performance	Yes

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		<p>Guarantee amount directly in the CIRP account of the Corporate Debtor. Accordingly, an amount of Rs. 2,60,00,000 /- has been deposited in the Bank Account of the Corporate Debtor on 30 March 2024.</p>
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10. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	25 July 2023
Regulation 6(1)	Publication of Public Announcement	T+3	28 July 2023
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	08 Aug 2023
Regulation 13(1)	Verification of Claims	T+21	15 Aug 2023
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	Not applicable
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	16 Aug 2023
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	22 Aug 2023
Regulation 35A	Determination of fraudulent and other transactions	T+115	No such transactions identified
Regulation 27	Appointment of two Registered Valuers	T+47	29 Aug 2023, 31 Aug 2023, 01 Sept 2023, 05 Sept 2023
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+95	28 October 2023

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Regulation 36A	Invitation of EoI	T+60	1. 11 September 2023 2. 14 October 2023 3. 15 January 2024
	Publication of Form G	T+60	4. 11 September 2023 5. 14 October 2023 6. 15 January 2024
	Provisional List of Resolution Applicants	T+85	09 Nov 2023 09 Feb 2024
	Final List of Resolution Applicants	T+100	1. 24 November 2023 2. 17 February 2024
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	1. 29 November 2023 2. 17 February 2024
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	To be submitted
Section 31(1)	Approval of Resolution Plan	T=180	NCLT approval pending

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	NA	NA	NA	NA
2	NA	NA	NA	NA
3	NA	NA	NA	NA

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

~~or~~

~~The Resolution Plan is subject to the following contingencies (Elaborate the contingencies):~~

- ~~i.~~
~~ii.~~

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): Not Applicable

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	CIRP not completed within 180 days	12	Extension sought	Yes
2				
3				

14. The CIRP period of 180 days expired on 21 January 2024. However vide the Order dated 07 February 2024 the Hon'ble NCLT has extended time till 20 April 2024. The Plan stood approved by the CoC on 29 March 2024 and thereafter it took some time for finalisation of Application and filing the same. Therefore a necessary prayer will be made to the Hon'ble NCLT

14A. Whether the resolution professional has, in accordance with regulation 35A,- Not applicable

(a) applied to the Adjudicating Authority on or before the one hundred and thirty-fifth day of the insolvency commencement date:

Yes/ No

(b) filed Form CIRP 8 with the Board on or before the one hundred and fortieth day of the insolvency commencement date:

Yes/ No]

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

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1	Preferential transactions under section 43	Not applicable	Not applicable	Not applicable
2	Undervalued transactions under section 45	Not applicable	Not applicable	Not applicable
3	Extortionate credit transactions under section 50	Not applicable	Not applicable	Not applicable
4	Fraudulent transactions under section 66	Not applicable	Not applicable	Not applicable

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

- a. Estimated liquidation cost: Rs. 35,94,838
- b. Estimated liquid assets available: Nil
- c. Contributions required to be made: Rs. 35,94,838
- d. Financial creditor wise contribution is as under:

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1	The Vishweshwar Sahakari Bank Limited	15,19,898
2	The Maharashtra State Co-Op Bank Ltd. Limited	7,94,099
3	Rajarambapu Sahakari Bank Ltd., Peth	12,80,841
	Total	Rs. 35,94,838

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.] Yes, pursuant to Regulation 39D of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 fee of Rs. 1,00,000 + GST per month

16. I Anagha Anasingaraju 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.

(Signature)

Name of the Resolution Professional: Anagha Anasingaraju

IP Registration No: IBBI/IPA-002/IP-N00247/2017-18/10732

Address as registered with the Board: Kanjmag & Co, 1-2 Aishwarya Sankul, G.A. Kulkarni Path ,Pune, Maharashtra ,411038

AFA Validity till 22 November 2024

Email id as registered with the Board: rp.anagha@kanjcs.com

Date:

Place: Pune

9. In the circumstances mentioned hereinabove, the Applicant Resolution Professional has filed this Application seeking approval of this Tribunal on the Resolution Plan, submitted by the Resolution Applicant *viz.* M/s. F and K Agro Private Limited stating that the plan is in accordance with Section 30(2) of IBC, 2016, and other provisions laid thereunder.
10. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
- i.* Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - ii.* Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - iii.* 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.
 - iv.* The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
11. The Applicant RP has complied with the requirements of the Code in terms of Section 30(2)(a) to 30(2)(f) of IBC, 2016, and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of CIRP Regulations.
12. The Applicant 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 members of CoC in the (*Adjourned*) Seventh Meeting convened on 29.03.2024, with a voting percentage of 100% (One hundred percent). Further, there are no such pending proceedings *u/s.* 66(1) *r/w.* 43(1) and 44(1) of the Code.
13. The Resolution Applicant has additionally sought certain waivers, concessions and relief per Item {25} of the Resolution Plan.

- 13.1. We make it expressly clear that **no** reliefs, concessions and dispensations that fall within the domain of other government department/authorities are granted hereto, and the same shall be dealt with by the respective competent authorities/fora/offices, Government (State or Central) with regard to the respective reliefs, if any.
- 13.2. During the course of hearing on 01.05.2024 in the captioned application and in response to a query of this Bench thereto, the Ld. Counsel for the Applicant has duly submitted that the Resolution Applicant is not a party to any Lease Arrangement(s) and/or Memorandum of Understanding(s). In light of the same, we are of the considered view that the Applicant is not entitled to any relief from this tribunal in respect of the relief(s) sought *via* Sl. No. (17) and (19) under Item {25} of the Resolution Plan.
- 13.3. Be that as it may, the Learned Counsel for the Applicant RP has categorically affirmed that the implementation of the Resolution Plan is not conditional or contingent upon grant of any or all of such reliefs, concessions and dispensations by this Adjudicating Authority.
14. 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.

15. 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)**.”*

16. 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.

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ORDER

17. The present Application being I.A. No. 27 of 2024 in C.P. (IB) No. 76/MB/2023 is hereby **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.

17.1. 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.

17.2. 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.

17.3. 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 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 a part of the Resolution Plan.

17.4. 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.

17.5. The moratorium under Section 14 of the Code shall cease to have effect from this date.

17.6. 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.

17.7. 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.

17.8. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

18. The captioned Interlocutory Application bearing I.A. No. 27 of 2024 in C.P. (IB) No. 76/MB/2023 is accordingly **Allowed** and **Disposed-of**.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
09.05.2024
Aditya Kalia

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
