

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO.1, MUMBAI BENCH

MA 306/2020

In

C.P. (IB) 3505/MB/2018

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

In the matter of:

Mr. Ravindra Chaturvedi

...Resolution Professional / Applicant

And

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016

In the matter of:

Suraksha Asset Reconstruction Limited

(Previously known as Suraksha Asset
Reconstruction Private Limited)

... Financial Creditor

V/s

Siddharth Milk Foods (India) Private Limited

... Corporate Debtor

Order Delivered on: 3rd August 2020

Coram: Hon'ble Member (Judicial): Smt Suchitra Kanuparthi

Hon'ble Member (Technical): Shri V. Nallasenapathy

For Resolution Professional: Mr J P Sen, Senior Counsel a/w. Advocate Savita
Nangare i/b. Atham Legal

For Resolution Applicant: Mr Rohit Gupta, Counsel a/w Advocate Vinod Kothari i/b. Apex Law Partners

For Committee of Creditors: Mr Shyam Kapadia, Counsel a/w Mr Aditya Udeshi and Mr Darshan Ashar, Advocates i/b. Bathiya Udeshi and Co.

ORDER

Per: Suchitra Kanuparthi, Member (Judicial)

1. This Miscellaneous Application (MA) No. 306/2020 is filed by Mr. Ravindra Chaturvedi, Applicant / Resolution Professional, under section 30(6) of Insolvency and Bankruptcy Code, 2016 (I&B Code) in C.P. (IB) 3505/MB/2018 which was admitted u/s 7 of I&B Code vide order of this Tribunal dated 26.04.2019, initiating Corporate Insolvency Resolution Process (CIRP) against Siddharth Milk Foods (India) Private Limited, the Corporate Debtor.
2. The Resolution Professional (RP) has filed this application under Section 30(6) of the I&B Code, seeking order for approval of the resolution plan, as approved by the members of Committee of Creditors (COC), for resolution of the Corporate Debtor submitted by consortium of Mr Sharad Mahadeo Jagdale, Mr Ajay Babulal Shah, Mr Krishna Baliram Thombare, Mr Prasad Kumar Dugge and Mr Prakash Sopanrao Shelke (Consortium/Resolution Applicants). The said five Resolution Applicants have come together and formed a consortium vide Consortium Agreement dated 20.08.2019 to govern *inter se*, rights and obligations.
3. The Applicant made a public announcement in compliance of section 13 and section 15 of I&B Code, on 28.04.2019 intimating the commencement of CIRP against the Corporate Debtor. Further, the appointment of Applicant as resolution professional was confirmed by the COC in the First COC meeting held on 25.05.2019.
4. The RP invited two Expression of Interest (EOI) in Form G. The first EOI was advertised vide publication dated 10.07.2019 and the second EOI was advertised vide publication dated 06.08.2019. Accordingly, the last date for submission of Resolution Plan was 30.09.2019 which was later

on extended, as per the request of Prospective Resolution Applicants, up to 17.12.2019.

5. The CIRP period for the Corporate Debtor was extended by 90 days vide order of this Tribunal dated 23.10.2019, accordingly, the CIRP period (including the extended period) for the Corporate Debtor ended on 21.01.2020. The Applicant filed the present application on 21.01.2020.
6. The Applicant submitted that, after the publication of first EOI, the Applicant received good response and therefore, the Applicant suggested the COC members to extend the time period for calling expression of interest. Accordingly, second EOI was published, pursuant to which, the Applicant received six EOI's until 22.08.2019. A provisional list of such Prospective Resolution Applicants (PRAs) was shared by the Applicant with all the members of COC and the final list of shortlisted PRAs was released on 05.09.2019. As per the final list, PRAs eligible to submit the resolution plan were- i) Suraksha Asset Reconstruction Limited; ii) Shailendra Kumar Singhal; iii) Mauli Foods and Agri Processing Private Limited; iv) Punjab Sind Foods (India) Private Limited, and; v) Mr Sharad Mahadeo Jagdale -Consortium. Further, as per the request of PRAs, the last date for submission of Resolution Plan was extended to 17.12.2019.
7. Finally, pursuant to the Request for Resolution Plan, the consortium of Mr Sharad Mahadeo Jagdale, Mr Ajay Babulal Shah, Mr Krishna Baliram Thombare, Mr Prasad Kumar Dugge and Mr Prakash Sopanrao Shelke, submitted the Resolution Plan. The said Resolution Plan was revised from time to time and final Resolution Plan was submitted on 08.01.2020.
8. The Applicant circulated the final Resolution Plan to the COC in the Sixth COC meeting held on 13.01.2020, upon which, the COC members requested the Resolution Applicants to submit an Addendum to the final Resolution Plan to remove conditionalities and vague statements so as to bring clarity to the Resolution Plan. Accordingly, on 15.01.2020, the Resolution Applicants submitted an Addendum to the Resolution Plan

clarifying, deleting and modifying certain portions of the Resolution Plan. Therefore, the final Resolution Plan along with the Addendum dated 15.01.2020 submitted by the Resolution Applicants was placed for voting from 15.01.2020 till 16.01.2020.

9. The Resolution Plan of the Resolution Applicants was approved by 80.35% members of COC voting in favor. However, 19.65% members of COC dissented to the Resolution Plan.
10. The Form H compliance of Resolution Plan submitted by Resolution Professional is attached below:

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Sec. 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?	As stated in Clause 2 and clause 4 of Part - I 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?	Clause 3 of Part I and in Clause 3 (e) of Part II	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit is submitted by way of Appendix to Resolution Plan as mentioned in Clause 3 Part - I	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?	As stated in Part II, Clause No. 6 As stated in Part II, Clause Nos. 9 As stated in Part II, Clause No. 7 As stated in Part II, Clause No. 14 As stated in Part II, Clause 13 and Clause 14 As stated in Clause 16 of Part II	Yes Yes Yes Yes Yes No
Section 30(4)	Whether the Resolution Plan is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	As stated in Part II, Clause No. 3(g)	Yes Yes, the Plan has been approved by 80.35%

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Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	As stated in Part II, Clause No. 3(g), Clause 13 and Clause 14.	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	RA has provided confirmation in Point 5 of Addendum which mentions that the Clause 5(g) to the Resolution Plan stands substituted and confirmed that the RA have not entered in any transaction with the CD which is covered under Sec 43, 45, 50 and 66 of IBC 2016	The transactions were reported to COC after the period of 115 days of commencement of CIRP, as the books of accounts of the Corporate Debtor could not be finalised before 115 days of CIRP which was reported to CoC members in various CoC meetings. The report of forensic auditor J.C. Kabra and Associates was received on 14 th January 2020 after 6 th COC meeting. Further, the forensic auditor has reported few transactions in his report that fall under S. 43, 45, 50 and 66 of IBC, 2016. Draft Forensic Audit Report has been shared with suspended board of directors for their comments and clarifications.
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	As stated in Part II, Clause Nos. 9	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	As stated in Summary Statement Showing treatment of all Stakeholders (clause 12) – Part II	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?	As confirmed by RA in Part II, Clause No. 3(b)	No N.A.

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?	As stated in Part II, Clause No. 13 As stated in Part II, Clause No. 14 As stated in Part II, Clause 14	Yes Yes 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?	As confirmed by RA in Part II, Clause No. 15 Financial Projections and other detail as provided in the plan and reviewed by CoC As stated in Part II, Clause No. 13 and clause 14 As stated in Part II, Clause No. 17 As stated in Part II, Clause No. 3(g)	Yes Yes. The plan is feasible and viable as per approval of CoC by 80.35% of votes. Yes No specific approval sought. Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	As mentioned in Regl. 35A above	No Application is in process as mentioned above under Regl. 35A pending revert / clarification from the Suspended Board of Directors.
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	As stated in Clause-12 of Addendum to Resolution Plan	The Performance Guarantee / security of Rs. 25 lakhs. As mentioned in the addendum same will be provided before approval of plan by NCLT.

11. The Resolution Applicants have submitted an Affidavit pursuant to section 30(1) of the I&B Code confirming their eligibility under section 29A of the Code to submit resolution plan. The RP has further certified that the said Resolution Plan has been approved by the COC in accordance with the provisions of the I&B Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 80.35% of voting share of COC after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

12. The manner of voting by the COC is as per the following table:

Sr. No.	Name of the Financial Creditor	Percentage of voting share (%)	Voted Assent	Voted Dissent	Voted Abstained
1.	Suraksha Asset Reconstruction Limited	75.72%	75.72%	—	—
2.	State Bank of India	19.65%	—	19.65%	—
3.	Mauli Foods and Agri Processing Private Limited	4.63%	4.63%	—	—
	TOTAL	100%	80.35%	19.65%	—

13. The Resolution Professional has confirmed vide his letter dated 11.02.2020 that he has received Performance Security of ₹25,00,000/- (Rupees Twenty Five Lakh Only) from the Resolution Applicants as required and to the satisfaction of COC. Copy of Bank statement of Corporate Debtor and Fixed Deposit receipts have been submitted in proof thereof.
14. The Resolution Professional appointed two set of registered valuers as per the Regulation 27 of the CIRP Regulations to determine fair value and liquidation value of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations. The liquidation value of the corporate debtor as arrived at by the registered valuers appointed by Resolution Professional is ₹39,47,37,096/- and the fair market value is ₹51,71,38,582/-.

Salient features of the Resolution Plan:

15. The date of commencement of the implementation of the Resolution Plan is termed as "Closing Date/ Effective Date". As per the Resolution Plan, the obligations of the Resolution Applicants to implement the

Resolution Plan shall be from the closing date i.e., the date of approval of this Resolution Plan u/s 31(1) of I&B Code by the National Company Law Tribunal (NCLT) or the National Company Law Appellate Tribunal (NCLAT) or the Supreme Court.

16. The Resolution Plan provides for following implementation schedule:

Steps	Implementation of various Activities	Indicative Term / Schedule from the Closing Date
1	• Re-constitution of Board of Directors	3 months
	• Setting up of management team and control systems	
	• Completion of Definitive Documents	
	• Identification of contractors and execution of documents	
2	Restarting the factory of the Corporate Debtor	4 th month onwards
3	Improvement in production	Within 1 to 5 Years

17. Under the Resolution Plan, the Resolution Applicants will infuse equity to the extent of ₹1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) by issuing 15,00,000 (Fifteen Lakh) shares, each having face value of ₹10/- (Rupees Ten Only) to be issued to the new promoters i.e., the Resolution Applicants.

18. The Resolution Applicants propose following payments to various stakeholders under the Resolution Plan:

(In Rupees)

Sr. No.	Particulars of Claim	Claim Admitted (INR)	Payment under Plan	Term of Payment
1.	IRP Costs	90,00,000	At Actual (Approximately ₹90,00,000/-)	Upfront Payment (within 90 days from the effective date)

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2.	Secured Financial Creditors			
	Suraksha Asset Reconstruction Limited	138,45,00,000	70,10,00,000	₹10,00,000/- Upfront Payment ₹60,00,00,000/- 12% Secured Non-Convertible Debentures / Secured Term Loan (STL) redeemable / repayable within 5 years in the following manner: <ul style="list-style-type: none"> • 1st Year-₹2,50,00,000/- • 2nd Year-₹10,00,00,000/- • 3rd Year-₹12,50,00,000/- • 4th Year-₹15,00,00,000/- • 5th Year-₹20,00,00,000/-
	Mauli Foods and Agri Processing Private Limited	18,43,00,000		₹10,00,00,000/- 12% Secured Non-Convertible Debentures / Secured Term Loan (STL) redeemable / repayable at the end of 5 th year from the date of issue.
3.	Unsecured Financial Creditors			
	Suraksha Asset Reconstruction Limited	163,16,00,000	25,00,000	Upfront Payment
	State Bank of India	78,25,00,000		
4.	Operational Creditors	9,90,79,339	10,00,000	Upfront Payment
5.	Sub-judice Operational Creditors	53,36,18,294	Nil	No amount is proposed to be paid towards sub-judice claims

6.	Workmen & Employees	Nil	Nil	No claims received from the Employees or workmen
7.	Existing Equity shareholders	—	Nil	Existing Equity share capital will be written down fully.
8.	Provision for Contingency	—	15,00,000	Upfront Payment
	Total	462,45,97,633	71,50,00,000	

19. The Resolution Plan proposes that the payment towards the Corporate Insolvency Resolution Process Cost (CIRP Cost) will be made in priority to any other debts of the Corporate Debtor. The Plan proposes that from the initial equity of ₹1,50,00,000/- to be infused by the Resolution Applicants, CIRP Cost of ₹90,00,000/- will be paid within 90 days from the Closing Date. In the event the CIRP Cost increases beyond ₹90,00,000/-, the Resolution Applicants shall bring additional fund to pay the excess amount of CIRP Cost.
20. The Resolution Plan proposes upfront payment of ₹10,00,000/- to the Secured Financial Creditors from the initial equity of ₹1,50,00,000/- to be infused by the Resolution Applicants. Further, the Resolution Applicants will issue 12% Secured Non-Convertible Debenture ("NCD")/ Secured Term Loan ("STL") to the Secured Financial Creditors, of ₹60,00,00,000/- (Rupees Sixty Crore Only) redeemable/repayable within a period of 5 (Five) years from the date of issue. The Resolution Applicants will also issue 12% Secured Non-Convertible Debenture ("NCD") / Secured Term Loan ("STL") to the Secured Financial Creditors, of ₹10,00,00,000/- (Rupees Ten Crore Only) redeemable/repayable at the end of 5th (Fifth) year from the date of issue. The upfront payment as well as NCD/STL will be distributed amongst both the Secured Financial Creditors pari-passu to their claim admitted as the financial debt. The NCD/STL will be secured by way of charge on all the assets of the Corporate Debtor, 100% pledge of shares of the Corporate Debtor and such other security as may be acceptable to the subscriber of the NCD/lender of such STL. In addition to the aforesaid securities, all the existing securities available to the Secured Financial Creditors as on date shall continue as securities for the

NCD/STL. The Resolution Applicants shall ensure that the value of security being provided/offered is more than the value of NCD/STL.

21. The Resolution Plan proposes upfront payment of ₹25,00,000/- to the Unsecured Financial Creditors from the initial equity of ₹1,50,00,000/- to be infused by the Resolution Applicants. The aforesaid amount will be distributed on pro rata basis between both the unsecured financial creditors as regards the guarantee obligations of the Corporate Debtor.
22. The Resolution Plan proposes upfront payment of ₹10,00,000/- on pro rata basis to all Operational Creditors (including statutory dues) to be paid from the initial equity of ₹1,50,00,000/- to be infused by the Resolution Applicants. Further, it is directed that the Resolution Professional and the Resolution Applicant shall ensure that the amount payable to Operational Creditors under the resolution plan must be paid in accordance with Section 30(2) of the I&B Code.
23. Further, no payment is proposed under the Resolution Plan towards the Sub-judice claims of Operational Creditors. As per the estimation of Resolution Applicants the liquidation value of the Corporate Debtor is not sufficient to cover the dues of the Secured Financial Creditors and therefore in terms of the provisions of the I&B Code read with the CIRP Regulations no payment is offered towards the Sub-judice claims of Operational Creditors.
24. The Resolution Plan also provides that upon approval of the Resolution Plan u/s 31(1) of I&B Code, any and all claims or demands made by or liabilities or obligations owed or payable to any actual or potential Operational Creditors of the Corporate Debtor, whether arisen or not or may arise in future date, pertaining to assessment or other proceedings of past or future years under direct or indirect tax laws, whether as a result of pending or future proceedings, admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, disputed or undisputed, present or future, any liability, dispute, disallowance or addition, whether or not set out in the balance sheet of the Corporate Debtor or the profit and loss account statements

of the Corporate Debtor, in relation to any period prior to the Closing Date or arising on account of the acquisition of control or shares or shares by the Resolution Applicants over the Corporate Debtor pursuant to this Resolution Plan and/or implementation of this Resolution Plan, will be written off in full and shall be deemed to be permanently and perpetually extinguished and waived and the Corporate Debtor or the Resolution Applicants shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

25. The payment under the Resolution Plan towards employees and workmen is Nil. As per the information provided by the RP in the Information Memorandum, there are no workmen dues pertaining to the Corporate Debtor.
26. That, as per the Information Memorandum, as on 16th November 2019, outstanding equity share capital of the Corporate Debtor is ₹12,50,00,000/- (Rupees Twelve Crore Fifty Lakhs Only). The Resolution Applicants will cancel and reduce the existing equity share capital of the Corporate Debtor in entirety upon approval of the Resolution Plan by NCLT. Further 15,00,000 shares of ₹1,50,00,000/-, each share having face value of ₹10/-, will be issued to the new promoters i.e., the Resolution Applicants. The face value of the cancelled shares of Corporate Debtor will be credited to Capital Reserve Accounts of the Corporate Debtor. The following table depicts the Capital Reduction and Shareholding of the Corporate Debtor before and after the Resolution Plan:

Share holders	Before Resolution				After Resolution			
	No. of shares	Face value (₹)	Amount (₹)	% of share-holding	No. of shares	Face value (₹)	Amount (₹)	% of share-holding
Existing promoter	12,49,995	100	12,49,99,500	99.99	0	0	0	0
Other Share-holder	5	100	500	0.01	0	0	0	0
New Promoters (the Resolution Applicants)	0	0	0	0	15,00,000	10	1,50,00,000	100
Total	12,50,000	100	12,50,00,000	100	15,00,000	10	1,50,00,000	100

27. The Resolution Plan proposes that any remaining claims and debts and other dues from the Corporate Debtor to any person for the period prior to the NCLT Approval Date, that is not expressly provided for in this Resolution Plan, including any claims from third parties, disputed claims or legal cases (initiated and pending) or threatening adjudication before any judicial or semi-judicial or quasi-judicial authority relating to any contract entered into by the Corporate Debtor including damages on account of termination of such contracts pursuant to this Resolution Plan and/or implementation hereof or claims which are in the nature of recovery, disgorgement, penalty, fees or recoupment of loss, shall be deemed to have been extinguished upon approval of this Resolution Plan, without any liability whatsoever on the Corporate Debtor or the Resolution Applicants.
28. The Resolution Plan is to be financed by the consortium of Mr. Sharad Mahadeo Jagdale and others. The details of Source of Funds of Resolution Applicants are set out in the following table:

S. No.	Source of Funds	₹																					
1.	<p>Upfront Payment: Equity Infusion</p> <p>Source: The upfront payment shall be paid out of infusion of funds by way of equity in the Corporate Debtor by the Resolution Applicants as under:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">S. No.</th> <th style="text-align: center;">Name of Resolution Applicant</th> <th style="text-align: center;">₹</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td>Ajay Shah</td> <td style="text-align: right;">85,00,000</td> </tr> <tr> <td style="text-align: center;">2</td> <td>Sharad Jagdale</td> <td style="text-align: right;">15,00,000</td> </tr> <tr> <td style="text-align: center;">3</td> <td>Krishna Tombhare</td> <td style="text-align: right;">20,00,000</td> </tr> <tr> <td style="text-align: center;">4</td> <td>Prasad Kumar Dugge</td> <td style="text-align: right;">15,00,000</td> </tr> <tr> <td style="text-align: center;">5</td> <td>Prakash Shelke</td> <td style="text-align: right;">15,00,000</td> </tr> <tr> <td></td> <td style="text-align: center;">Total</td> <td style="text-align: right;">1,50,00,000</td> </tr> </tbody> </table> <p>The aforesaid funds shall be brought in by the Resolution Applicants out of their networth and/or from out of funds arranged through their</p>	S. No.	Name of Resolution Applicant	₹	1	Ajay Shah	85,00,000	2	Sharad Jagdale	15,00,000	3	Krishna Tombhare	20,00,000	4	Prasad Kumar Dugge	15,00,000	5	Prakash Shelke	15,00,000		Total	1,50,00,000	1,50,00,000
S. No.	Name of Resolution Applicant	₹																					
1	Ajay Shah	85,00,000																					
2	Sharad Jagdale	15,00,000																					
3	Krishna Tombhare	20,00,000																					
4	Prasad Kumar Dugge	15,00,000																					
5	Prakash Shelke	15,00,000																					
	Total	1,50,00,000																					

	friends, relative and other related entities. The Comfort letter has been submitted by the Resolution Applicants.	
2.	Loan (Credit Facility) arranged by Resolution Applicants	5,00,00,000
	Total	6,50,00,000

The Resolution Applicants have submitted letter of credit facilities issued by the Bank. Further, the Resolution Applicants undertake that such raising of funds from friends/family members are not directly or indirectly related to the promoters of the Corporate Debtors and not disqualified as per the provisions of the Code.

29. As the Corporate Debtor is in procurement, trading, processing and marketing of milk products, the Resolution Applicants being in the same line of activities will be able to bring in their expertise and ensure that the units of the Corporate Debtor are made operational as per the covenants of this Resolution Plan. Therefore, the Resolution Applicants undertake to bring in additional working capital to the tune of ₹5,00,00,000/- (Rupees Five Crore Only) within 90 days of the Closing Date to ensure smooth operation and revival of the Corporate Debtor.
30. The Resolution Plan provides that subject to compliance of Section 29A of the I&B Code, to the extent of which affidavits have been filed, the Resolution Applicants propose to retain such existing manpower (workers and employees) of the Corporate Debtor that may be required for the operations of the Corporate Debtor, pursuant to the review of their performance and co-operation, within 90 days from the Closing Date. We accept this proposal and further direct the Resolution Applicants to comply with all the Industrial, Labour and any other applicable laws in this regard. The Resolution Applicants may also enter into appropriate agreements with the employees of the Corporate Debtor in respect of their terms of employment and are directed to retain the employees to the extent possible.

31. The Resolution Plan provides for mechanism regarding management, control and supervision of the affairs of the Corporate Debtor in phase wise manner. The Resolution Applicants have proposed to implement the Resolution Plan in three phases.
- a Phase - I period will start from the date of approval of the Resolution Plan by the COC until NCLT approval date, during which period the Resolution Professional will continue to manage the affairs of the Corporate Debtor and hence, the Resolution Professional will exercise control and supervision over the affairs of the Corporate Debtor.
 - b Further, Phase - II for 3 months period will start from the date of the approval of Resolution Plan by the NCLT until completion of financial restructuring of the Corporate Debtor. The Resolution Plan proposes to appoint an Implementation and Monitoring Committee (I&MC) comprising of 3 (Three) persons of which 1 (One) is Resolution Professional and 1 (One) representative each of Resolution Applicants and Secured Financial Creditors. The newly appointed I&MC shall be responsible for the supervision of the day to day affairs of the Corporate Debtor for the Phase II period. Pursuant to the NCLT Approval Date, all the existing directors of the Corporate Debtor, without any further action being required on the part of any person, shall be deemed to have resigned from the Board and the Committees of the Corporate Debtor, and the Board along with all the committees of the Corporate Debtor will be reconstituted to comprise of persons nominated by the I&MC and if no persons are nominated by the I&MC, in such an event, the members of the I&MC shall constitute the Board of the Corporate Debtor("Reconstituted Board"). The Reconstituted Board shall be assisted by team of professionals as and when necessary. Further, the Resolution Applicants may also appoint an independent observer to the Reconstituted Board by way of a clean terms arrangement, in accordance with applicable laws from the NCLT Approval Date. The Reconstituted Board shall be functional till the formation of the New Corporate Debtor Management and shall be replaced by the New Corporate Debtor Management.

- c Further, Phase – III period shall start from the expiry of the Phase – II period, in the Phase III period, the Resolution Applicants will constitute the Board of the Corporate Debtor and appoint Key Managerial Personnel, which may include independent professionals (“New Corporate Debtor Management”). The control and supervision in Phase – III period will be fully with the Resolution Applicants. During Phase Period I to III, Suraksha Asset Reconstruction Limited (Secured Financial Creditor) shall invariably have a right to appoint a Nominee Director on the Board of the Corporate Debtor. Further, the Resolution Applicants shall do necessary compliance with MCA and other concerned and applicable authorities as per applicable laws.
32. The Resolution Applicants have sought certain reliefs and concessions in the Resolution Plan. This bench is not inclined to allow any of the said reliefs and concessions prayed by the Resolution Applicants under the abovesaid provisions or under any other provisions of the Resolution Plan. Therefore, the Resolution Applicants may apply to the relevant regulatory authorities for said reliefs and concessions and the relevant authorities may consider it as per the relevant applicable laws.
33. The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading as follows:-

"If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]"

34. The conditions provided for in Section 31(1) of the Code for approval of resolution plan are therefore:-

- (a) *The Resolution Plan is approved by the COC under Section 30(4) of the Code;*
- (b) *Section 30(2)(b) provisions have been extracted above and may be seen;*
- (c) *The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

35. The resolution plan submitted by the RP has been approved by the vote of 80.35% and therefore the conditions provided for by section 30(4) of the Code are satisfied.

36. The provisions of Section 30(2) of the Code are as follows:-

"The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

- (a) *provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;*
- (b) *Section 30(2)(b) provisions have been extracted above and may be seen;*
- (c) *provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;*
- (d) *the implementation and supervision of the resolution plan;*
- (e) *does not contravene any of the provisions of the law for the time being in force;*
- (f) *confirms to such other requirements as may be specified by the Board."*

37. The compliance of Section 30(2) of the Code is given in Para No.10 (supra) of Form H. The same is being further examined as under:-

Section 30(2)(a): The resolution plan provides for the payment of ₹90 lacs (estimated) as CIRP Cost in priority to all other debts within 90 days from the Effective Date. It is also stated that any increase or decrease in CIRP cost shall be borne by RA.

Section 30(2)(b): It is stated in Form H that the average liquidation value of the corporate debtor is ₹39,47,37,096/- and the fair market value is ₹51,71,38,582/-. The Resolution Applicant proposes to pay ₹10,00,000/- upfront to the Secured Creditor and total payment of ₹70,10,00,000/- over the period of 5 years as captured at Para 18 above, the Unsecured creditor shall be paid an amount of ₹25,00,000/- upfront and payment of ₹10,00,000/- upfront to the Operational Creditor. The Resolution Professional has not received any claims from Employees and as such there is no question of payment of monies to them.

Section 30(2)(c) & (d): Under the Resolution Plan, the Resolution Applicants will infuse equity to the extent of ₹1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) by issuing 15,00,000 (Fifteen Lakh) shares, each having face value of ₹10/- (Rupees Ten Only) to be issued to the new promoters i.e., the Resolution Applicants.

Section 30(2)(e): In Form H (*supra*) (Para No. 10), the RP has certified that the resolution plan complies with the provisions of the Code and Regulations and does not contravene any of the provisions of law for the time being in force.

38. We are now examining the compliance of the proviso to section 31(1) of the Code that the Resolution Plan upon approval, the present RP shall constitute the interim committee as mentioned in para 31 above. The terms of the plan implementation scheduled will be a period of five years from the approval of plan by the adjudicating authority. An upfront payment of ₹10 lacs will be paid to the secured financial creditor, and the total amount of ₹71.50 crores will be paid by the Resolution Applicant.

39. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No.10 of Form H

(supra) the RP has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The RP has confirmed that the Resolution Applicants have filed affidavit pursuant to Section 30(1) of the code confirming the eligibility under Section 29A of the Code and the content of the affidavit are in order. The RP has submitted that the resolution plan has been approved by the COC with 80.35% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations. It has been held in para 42 of **K. Sashidhar Vs. Indian Overseas Bank & Ors. (Civil Appeal No. 10673 of 2018 dated 05.02.2019)** by the Hon'ble Supreme Court *inter alia* that no corresponding provision has been envisaged by the legislature to empower the Resolution Professional, the Adjudicating Authority (NCLT) or for that matter the Appellate Authority (NCLAT), to reverse the "commercial decision" of the COC. It was also held that whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority. In view of the above discussion, the decision taken by the financial creditors falls within the ambit of its commercial and banking wisdom and is therefore, not being interfered with. A similar view has been taken in the case of Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Ors. in Civil Appeal Nos. 4967-4968 of 2019.

40. In requirement of the regulation 39(4), the resolution applicant has given a performance guarantee, letter of comfort and thus the requirement of performance security under regulation 39(4) r/w regulation 36(B)(4A) are complied with.
41. On the basis of discussion made above and in view of the provisions of Section 30(4) of the Code, we approve the resolution plan submitted for Siddharth Milk Foods (India) Private Limited as approved by the COC. The resolution plan so approved shall be binding on the corporate debtor and 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, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

42. Under the provisions of Section 31(3) of the Code, we also direct as under:-
- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 26.04.2019 shall cease to have effect; and
 - b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its data base.
43. The Resolution Plan is approved as per directions above, under Section 31(1) of I&B Code. The MA 306/2020 is accordingly allowed and disposed of.

Sd/-
V. NALLASENAPATHY
Member (Technical)

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)