

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

**I.A. No. 1719 of 2021
in
C.P. No. 775 of 2019**

In the matter of an Application
under Section 30(6) and Section
60(5) of the Insolvency and
Bankruptcy Code, 2016.

Concur

In the matter of

ICICI BANK LIMITED

... Financial Creditor

V/s.

**TULJABHAVANI COLD STORAGE
PRIVATE LIMITED**

... Corporate Debtor

I.A. No. 1719/2021

Mr. Gaurav Ashok Adukia

...Applicant/

Resolution Professional

Date of conclusion of arguments : **27.07.2022**

Order pronounced on : **12.09.2022**

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Ms. Punthi Shah, a/w. Mr. Tushar Mudgil and
Zahra Lokhandwala, Advocates

Ms. Deepti Babel, Advocate for Financial Creditor

Mr. Gaurav Ashok Adukia, Resolution
Professional-in-person

Mr. Shabbeer Ahmed, Advocate for Resolution
Applicant

Per Shri H. V. Subba Rao, Member (Judicial)

ORDER

1. This is an Application filed under Section 30(6) and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant M/s. Kamini Metalliks Pvt. Ltd., which was approved by 100% voting share of the members of the Committee of Creditors (hereinafter referred to as 'COC').

2. The facts leading to the Application are as under:
 - i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 24.02.2020 under section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Gaurav Adukia, was appointed as Interim Resolution Professional.
 - ii. However, pursuant to the stay imposed by the Hon'ble NCLAT on the constitution of Committee of creditors on 04.03.2020, the COC of the Corporate Debtor was not constituted. Further, upon the vacation of stay on constitution of the COC vide order dated 24.07.2020 passed by the Hon'ble NCLAT in Company Appeal (AT) 376/2020, the Applicant/ Resolution Professional constituted the COC on 29.07.2020.
 - iii. The Applicant published a public announcement in accordance with section 15 of the Code, in "Financial Express and Loksatta, Pune Edition on 04.03.2020 and the same was published on the website of the insolvency and Bankruptcy Board of India (IBBI), inviting claims from the creditors of the Corporate Debtor. The COC in its first meeting held on 04.08.2020 appointed (the present Applicant) as the Resolution Professional (RP).

- iv. The Applicant stated that the application for exclusion of period lost due to the Hon'ble NCLAT stay order dated 04.03.2020 and Covid-19 pandemic, the Corporate Debtor had filed matter with the Hon'ble NCLAT on 05.02.2021. the same was listed for hearing on 17.03.2021 and the exclusion of time was allowed from 04.03.2020 to 27.07.2020 on account stay imposed by the Hon'ble NCLAT and from 28.07.2020 to 31.01.2021 on account of Covid-19 pandemic. Thus, considering the order passed by the Hon'ble NCLAT, the last date for completion of CIRP i.e. 180th day from the Insolvency Commencement date, after exclusion of period from 04.03.2021 to 31.01.2021 is 28.07.2021.
- v. The Applicant submits the claims of financial and operational creditors exists as under:

Sr. No.	Category of Stakeholder	Amount Claimed	Claim Admitted
A	Secured/ Unsecured Financial Creditors	10.74	10.75
1.	ICICI Bank Limited		
B	Operational creditors		
1.	Good and Service Tax Department Maharashtra	1.14838	1.14838
C	Employee	0.00	0.00
D	Other Creditors/ Due/ Claim	0.00	0.00
E	Preference Shareholders/Existing Shareholders/ stakeholders Equity other	0.00	0.00
	Total	11.89	11.89

- vi. Thereafter, RP upon verification of the same, constituted the CoC. Pursuant to the public announcement RP received 5 (five) Expression of Interests from the Prospective Resolution Applicants (PRA's).

vii. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

3. The CoC decided to appoint a Valuer. The Resolution Professional accordingly appointed registered valuers on 11.08.2020 to determine the fair value and liquidation value of the Corporate Debtor, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These valuers had submitted their reports. The Liquidation and fair value of the Corporate Debtor is as follows:

Fair Value (Amount in Rupees)	Liquidation Value (Amount in Rupees)
Rs. 13.48 Crores	Rs. 9.70 Crores

4. The Applicant states that the COC in its Meeting decided that an advertisement for inviting EOI be issued. Form G inviting EOI was published on 24.09.2020. Thereafter modified Form G was published on 12.10.2020 and the last date of receipt of Resolution Plan was 02.12.2020, which was further extended to 17.12.2020.
5. The Applicant further states that in furtherance of the revised Form-G issued by applicant, he received EOIs from 3 Prospective Resolution Applicants (PRAs) within the stipulated time period. Below are the names of the prospective resolution applicant:
- i. Mr. Mahesh Kale
 - ii. M/s. Baheti Infra Pvt., Ltd.
 - iii. M/s. Kamini Metalliks Pvt. Ltd.
6. The Applicant submits that, during the 8th Meeting of COC held on 28.06.2021, the proposed Resolution Plans were evaluated on the basis of the evaluation matrix. The resolution passed and e-voting commenced from 07.07.2021 & concluded on 15.07.2021, it was

declared that the plan submitted by the Kamini Metalliks Pvt. Ltd. was approved.

7. The COC in its 8th meeting held on 28.06.2021 considered the final Resolution Plan of M/s. Kamini Metalliks Pvt. Ltd. and approved the Plan with a voting share of 100%. Thereafter, the Applicant issued letter of intent dated 16.07.2021 to Resolution applicant and compliance certificate was in Form "H" was issued by the Resolution professional.

8. The salient features of the Resolution Plan are as under:

- a. **M/s. Kamini Metalliks Pvt. Ltd. (KMPL)**, the "Successful Resolution Applicant" (SRA), is engaged in business of manufacture of TMT Bars. The company started its operations in the year 2007-08 with a Rolling Mill project with a capacity of 15 Tonnes per hour. The registered office and plant of the company is located at Sy no.372, Chandapur Village, Hatnoora Mandal, Medak, Telangana - 502296. The company Installed Capacity is 90,000 MT PA of TMT Bars. The Company is promoted by Sri Samir Bhagat who is a reputed industrialist in the Hyderabad steel market. He has over a decade of experience in the field of manufacturing TMT bars.
- b. The Corporate debtor TULJABHAVANI COLD STORAGE PRIVATE LIMITED ("TCSPL" or "the Corporate Debtor" or "Company") (U63022PN2003PTC018082) is a private company, limited by shares, incorporated on July 30, 2003 having its registered office at P.NO., D-19, MIDC Baramati Industrial Area, Baramati, Pune - 413133, Maharashtra, India. Tuljabhavani Cold Storage Private Limited is engaged in the business of

providing Cold Storage Services. TCSPL has engaged in providing cold Storage Services and warehousing of perishable goods under refrigerated condition at P.NO., D-19, MIDC Baramati Industrial Area Baramati, Pune - 413133 in the warehousing carpet area of 15*20 sq. ft. (12 rooms) and 22*20 sq. ft. (3 rooms) and the temperature of the warehouse is maintained as per the requirement which is generally not below than -22 degree Celsius. The capacity of the cold storage is 9600 mt. and the storage of blast freeze is 10 mt. per shift.

- c. **Formation of New Board:** All the Existing directors shall retire/ resign/ terminated/ vacated unconditionally on effective date. The entire new directors and managerial personal shall be as appointed as approved by SPV. As per Circular No. 04/2020 dated 17/02/2020 issued by Ministry of Corporate affairs, the Resolution Professional of the corporate debtor shall file NCLT Order at the time of admitting CIRP Process as well as the approval of Resolution Plan by Adjudication Authority in form INC-28 with the ROC and also make an application to the ROC to appoint new board of Directors. All the institutions shall provide NOC for satisfaction of charge to the Resolution professional and Resolution professional shall need to file digitally signed form with ROC for satisfaction of charge.
- d. As Financial Creditors dues is more than the liquidation value, the amount available to equity shareholders, preference shareholders and share application money is nil. Hence, the entire existing equity shares or preference shares or share application money or any other shares (including 50,000 (old) of Rs. 10/- each (Share capital of Rs 5,00,000 /-) shall be cancelled as per regulation 37(ca) of IBBI (Insolvency Resolution process

for corporate person) Regulations. The amount of share capital cancelled shall be transferred to the Capital Reserve Account.

- e. **Equity Share Capital** – Special Purpose Vehicle (SPV) shall subscribe to Share Capital of Company i.e. Rs. 0.50 Crore/- (5,00,000 New Shares @ Rs10.00 each allotted at par) within 60 Days of effective date. The amount will be utilized for payment under resolution plan.
- f. The issuance of shares pursuant to this Resolution Plan shall be pursuant to the order of the NCLT and shall not be subject to the procedure for preferential issuance under the Companies Act. The Reconstituted Board shall be entitled to issue and allot shares pursuant to this Clause 6 (a) upon receipt of the corresponding subscription amount from the Resolution Applicant or SPV. As there will be substitution of shares, through cancellation and reissuance, the Corporate Debtor shall be entitled to benefit from stamp duty already paid on the cancelled equity shares and shall not be required to pay any additional stamp duty on the new shares to be issued to the Resolution Applicant.
- g. **Monitoring Committee:-** Upon approval of this Resolution Plan by the Adjudicating Authority, the Monitoring Committee shall be appointed with members as indicated in the Resolution Plan.
- h. **Key Managerial Professionals :-** The Resolution applicant key managerial persons are fully focused and supervise the operation of the unit themselves. They have huge industrial experience to run the proposed unit.

- i. Effective Date (E): –“**Effective date**” is date of receipt of certified copy of the order approving the Resolution Plan by the Hon’ble NCLT (Adjudicating Authority).
- j. The Resolution Plan proposes a total Consideration of **Rs. 7.70 Crores** for the settlement of claims by the Resolution Applicant.

9. **The details of the proposed payments are as follows:**

A) CORPORATE INSOLVENCY RESOLUTION PROCESS COSTS

- i. Out of the total fund proposed for the resolution plan the payment shall be made to Corporate Insolvency Resolution Process Cost (CIRP Cost) on approval by Committee of Creditors, NCLT (Adjudicating Authority) and completion of all necessary legal and other compliances. The payment of Corporate Insolvency Resolution Process Cost shall be as approved by Committee of creditors and to be paid from initial subscription as per Financial Plan. The amount proposed for CIRP Cost is as per Financial Proposal. CIRP cost will be paid from upfront payment in priority to payment of any other debt or due as provided under Section 30(2) of IBC 2016.

B) FINANCIAL CREDITORS

- i. Interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor (Clause no. 3 of financial proposal): The interest of all stakeholders including financial creditors and operational creditors of the corporate debtor have been considered while submitting the Resolution Plan and their interest is duly incorporated in the financial

Proposal. The Residual amount due to the operational creditors, if any, (after allocation of resolution plan fund to financial creditors) shall be given priority in payment over financial creditors. Amount proposed for operational creditors is as per Financial Proposal. The Resolution Plan dealt with the interest of all the stakeholders as payment to them is as per 53 of IBC. Additional amount is proposed for operation creditors, employees and unsecured financial creditors as they are eligible for NIL amount as per sec 53 in view of high secured financial creditor's dues.

C. Payment to Operational creditors

- i. As per estimate of Resolution Applicant the Liquidation value is probably much less than the dues of the secured financial creditors. The amount provided to operational creditors is as per Clause No. 2, 3 and 4 of financial proposal of the Resolution Plan. The amount due to operational Creditors shall be paid in priority before any payment to financial creditors as per the Resolution Plan. The amount proposed for Operational Creditors is as per clause no. 2, 3 and 4 of financial proposal. Payments to Operational Creditors will be minimum to the extent as provided in section 30(2)(b). If there is shortfall in amount available to operational creditors as per section 30(2)(b), in that case shortfall amount will be paid to them by reducing amount available to the financial creditors.

10. **The implementation of the proposed resolution plan is set out as below:**

- i. **Effective date** is the date of receipt of certified copy of the order approving the Resolution Plan by the Hon'ble NCLT (Adjudicating Authority) under section 31 of Insolvency Bankruptcy Code 2016.

Sr No	Particulars	Rs. (In Crores)
A	CIRP Cost *	0.15
B	Secured/ Unsecured Financial creditors	7.45
C	Operational creditors	0.10
D	Employee Claims	0.00
E	Other Creditors	0.00
F	Payment to outside party (A+B+C+D+E)	7.70
G	Repairs /Deposit	1.25
H	Working capital margin	0.75
I	Investment in Company (G+H)	2.00
J	Fund required from promoters (F+I)	9.70
K	Borrowing WC	0.00
L	Total fund required (J+K)	9.70

“If the expenses incurred for CIRP Cost is less than the amount proposed then the same shall be paid to financial creditors in proportion to their admitted claim. If the expenses incurred is more the same shall be paid out of fund available to financial creditors. The payments are proposed as per the requirements of Section 53, to protecting the interests of various creditors as provided for in the said section. Additional amount is proposed for operation creditors, employees and unsecured financial creditors as they are eligible for NIL amount as per sec 53 in view of high secured financial creditor’s dues.”

- ii. From upfront contribution first the entire CIRP Cost shall be paid, then Operational Creditors payment will be paid first, then employees and unsecured financial creditors shall be paid and then only the Secured Financial Creditors will be paid.

- iii. The bank guarantee and/ or deposit of Rs.1 Crore/- provided by resolution applicant shall be released within 1 day of upfront payment.
- iv. As per circular no 04/2020 dated 17.02.2020 issued by the Ministry of Corporate Affairs, the resolution Professional shall file an application with jurisdictional Registrar for appointment of first authorized signatory of the board and thereafter the new director can appoint the second director and the management and control of TCSPL shall vest with SPV from effective date. Supervision of the resolution plan shall be done till payment of final installment as per resolution plan by monitoring committee. Possession of the units shall be provided to SPV immediately on effective date as per the resolution plan.
- v. On Effective date, the physical possession of various company's assets including:
 1. Land and Building at P.NO., D-19, MIDC Baramati, Industrial Area Baramati, Pune – 413133 in the warehousing carpet area of 15*20 sq. ft. (12 rooms) and 22*20 sq. ft. (3 rooms)
- vi. other premises, civil works, plant & machinery, equipment's, electrical, utilities, infrastructure created and other assets with absolute control and management of the Company shall be handed over to the Resolution plan applicant or their nominated persons. On effective date, all the assets including land together with premises, shed, building, civil works, plant & machinery, equipment's, electrical, utilities, infrastructure created, Intangible assets like brand, trademark, licenses,

permissions etc., current assets, investment, noncurrent assets, loans and advances (present of future) and other assets including Any other plant and machinery, Spares which are uninstalled, partly installed, under installation or lying in the premises shall continue with corporate debtor with absolute control and management by SPV. Peaceful vacant possession of all the above assets with clear title, free from all encumbrances and free from all attachments to be handed over to resolution applicant.

- vii. The Registered word marks / trademarks/ brand under TCSPL (if any) shall continue with corporate debtor under control of the SPV.

11. **SOURCES OF FUNDS:** Clause 5 of the financial proposal of the Resolution Plan provides for sourcing of fund as tabulated below:

(Rs. In Crores)

Time Period	Equity from SPV	Unsecured loan/ inter corporate deposit/ other loan/ Internal accruals	Bank Borrowing	Utilization
Within 30 Days from effective date	0.50	7.20	-	Towards CIRP cost/ operational creditors / existing liability/ stakeholders/ Employee/ Unsecured or Secured Financial Creditors
Within 1 year from effective date	-	1.25	-	Towards Refurbishment, repairs & maintenance, Deposits, Capital expenditure and start-up expenses
Within 1 year from effective date	-	0.75	-	Towards Working Capital Margin

“A special purpose vehicle will subscribe to the capital of TCSPL. Fund will be infused by Resolution Applicant, its directors and related parties from their own fund and borrowing. The SPV may also borrow the fund directly in TCSPL. The existing business assets of Tuljabhavani Cold Storage Private Limited continue to be charged to Secured Financial Creditor till completion date. After final payment the security to be released by Secured Financial Creditor and the resolution applicant shall be free to create fresh charge in favor of new bankers/ financial institution. The net worth of the resolution applicant is Rs 16.52 Crores as on 31.03.2019. The cash accruals in FY 18-19 is Rs.3.25 Crores. “

12. SUMMARY OF PAYMENTS:

Amounts provided for the various stake holders under Resolution Plan is as below*:

(Rs. in Crore)

Sr. No	Category of Stakeholder	Amount claimed	Amount Admitted	Amount provided under the Resolution plan	Amount provided to the amount admitted %
A	Secured / Unsecured Financial Creditors				
1	ICICI Bank Limited	10.74	10.74	7.45	69.35%
B	Operational Creditors				
1	Goods and Service Tax Department, Maharashtra	1.14838	1.14838	0.10000	8.71%
C	Employee	0.00	0.00	0.00	0.00%
D	Other Creditors/Due/Claim	0.00	0.00	0.00	0.00%
E	Preference Shareholders /Existing Equity Share Holders/ Other stakeholders	0.00	0.00	0.00	0.00%
	Total	11.89	11.89	7.55	63.49%

*“*The division of the amount is indicative and to be updated based on updated list of claim and further development in the various cases/ claims. No Interest amount shall be paid by the Resolution Applicant. For any further claim admitted or ordered by NCLT to be paid, then the amount is*

to be divided as per section 53 of IBC act 2016 within the total amount of Rs. 7.70 Crores. Out of total amount Rs.0.15 Crores is proposed for CIRP process cost, Rs.7.45 Crores is proposed for financial creditors and Rs.0.10 Crores is proposed for Operational creditors. No additional amount shall be paid by resolution applicant. Nil amount is provided the claims which are not admitted.”

“DISSENTING FINANCIAL CREDITORS:**

The dissenting financial creditors (financial creditors who have right to vote but did not vote in favour of resolution plan) shall be paid their proportionate share in priority of payment of proportionate share to assenting financial creditors (financial creditors who have right to vote and voted in favour of the resolution plan).”

13. DISBURSEMENT OF AMOUNT:

The Resolution Professional has submitted the following chart showing the details of the total claims received and admitted by him and amount provided for the stakeholders under Resolution plan as under:

(amount in Rs.)

Sr. No	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Secured Financial Creditors	a. Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		b. Other than (a) above:			NA	NA
		(i) who did not vote in favour of the Resolution Plan (ii) who voted in favour of the resolution plan	107433240	107433240	74500000	69.35%
		Total [(a) + (b)]	107433240	107433240	74500000	69.35%
2	Unsecured Financial Creditors*	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA

		(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	NA NA	NA NA	NA NA	NA NA
		Total[(a) + (b)]	NA	NA	NA	NA
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a): (i) Government (ii) Workmen (iii) Employees (iv) Suppliers	11483774 NIL NIL NIL	11483774 NIL NIL NIL	1000000 NIL NIL NIL	8.71% NIL NIL NIL
		Total [(a) + (b)]	11483774	11483774	1000000	8.71%
4	Other Debts and Dues	No claims received from other creditors	NIL	NIL	NIL	NIL
Grand Total			118917014	118917014	75500000	63.49%

“#The Resolution Plan states that if the expenses incurred for CIRP cost is less than the amount proposed then the same shall be paid to financial creditors in proportion to their admitted claims. If the expenses incurred is more the same shall be paid out of fund available to financial creditors.

The Resolution plan further states that if there is shortfall in amount available to operational creditors as per section 30(2) (b) of IBC Act, 2016, in that case shortfall amount will be paid to them by reducing amount available to the financial creditors.”

14. The indicative Repayment Tenure towards various creditors in the events for implementation of Resolution plan from approval date is as follows:-

Particulars	Time from effective date (effective date is date of receipt of certified copy of the order approving the Resolution Plan by the Hon’ble NCLT (Adjudicating Authority))
Payment of Rs.7.70 Crores. Equity Infusion: Rs.0.50 Crores USL Rs : 7.20 Crores	Towards CIRP cost Rs.0.15 Crores, Rs.0.10 Crores towards operational creditors /existing liability/ Employee /stakeholders cost and Rs.7.45 Crores/- towards Financial Creditors within 30 days from effective date

Payment for Insolvency Resolution Process Cost/operational creditors/Employee	Within 30 Days from Effective date
Payment to Secured Financial Creditors	Within 30 Days from Effective date
Further Payment for refurbishment/deposit/Capital Expenditure (Rs.1.25 Crores further infusion of unsecured loan)	Within 1 year from Effective date
Additional fund infusion for Working capital as Unsecured Loan Rs.0.75 Crores	Within 1 year from Effective date

15. The Resolution Applicant is eligible to submit resolution plan. The successful Resolution Applicant has given an Affidavit satisfying the eligibility criteria as per the provisions under section 29A of the Insolvency & Bankruptcy Code, 2016.

16. **OBSERVATIONS AND FINDINGS :-**

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor in terms of Section 30(2)(c).
- iii. The Plan also provides for implementation of provision of the Resolution Plan as stated above as per Section 30(2)(d).
- iv. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - please

include a statement to this effect in the Resolution Plan as per Section 30(2) (e)

- v. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- vi. As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- vii. As required by section 31(4) of IBC The resolution Applicants pursuant to the resolution Plan shall obtain all necessary approvals within one year or within such time limit as may be prescribed under the respective Act.
- viii. The resolution applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- ix. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - b. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).

- c. Provides for the mechanism regarding management and control of the Company post the NCLT Approval Date.
- d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
- e. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under subsection (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- h. Provides that the amount due to the Operational Creditors under a resolution plan shall be given priority in payment over Financial Creditors.
- i. Provides for the management and control of the business of the Corporate Debtor during its term.]
- j. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.

k. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.

1. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).

17. The Resolution Plan has been approved in the 8th COC meeting held on 28.06.2021 with 100% voting in accordance with the provisions of the Code.

18. In the judgement of ***Venus Recruiters Private Limited v. Union of India and Ors.: CM Appl. 36026/2019*** the Hon'ble Delhi High Court observed that:

“74.....

The role of the RP is not adjudicatory but administrative in nature. Thus, the RP cannot continue beyond an order under Section 31 of the IBC, as the CIRP comes to an end with a successful Resolution Plan having been approved. This however subject to any clause in the Resolution Plan to the contrary, permitting the RP to function for any specific purpose beyond the approval of the Resolution Plan.”

19. In view of the above ruling of the Delhi High Court, it can be easily derived that, the Resolution Professional in case it is so proposed in the Resolution Plan will continue to discharge his duties regarding the pending applications to the main petition even though the Resolution Plan is approved.

20. In **K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150**) 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.
21. The Hon'ble Apex Court at para 42 in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online**, 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.
"Para 42- 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)."
22. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating

Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.

23. 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 Resolution Plan is feasible and viable. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- i. The Interlocutory Application No. 1719 of 2021 is allowed. The Resolution Plan submitted by **M/s. Kamini Metalliks Pvt. Ltd.**, is hereby approved. It shall become effective from this date and shall form part of this order. 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 payment of dues arising under any law for the time being in force is due.
- ii. 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. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. In accordance with law

any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of above judgment extracted herein below:

“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 part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

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

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the

period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. In line with the judgement of Hon'ble Delhi High Court in the matter of **Venus Recruiters Private Limited v. Union of India and Ors.** and as proposed by the Resolution Professional during the course of hearing of the Resolution Plan, the Resolution Professional will pursue application u/s. 43, 45, 60 & 66 with the Adjudicating Authority.
- vii. The Bench takes note of the Additional Affidavit filed on 29.03.2022 by the Resolution Professional (the Applicant) and para 3 of the financial proposal made by the Successful Resolution Applicant in the Resolution Plan application at page 167 which reads as under:

“If any recovery is made by the Corporate Debtor for the Preferential Transactions under section 43, 44; Undervalue Transactions under section 45; Avoidable Transactions under section 46; Transactions Defrauding creditors under section 49; Extortionate Transactions under section 50 of the Insolvency and Bankruptcy Code 2016 then the amount recovered net of expenses incurred by the Corporate Debtor will be paid to Financial Creditors. If there is no recovery then the expenses shall be borne by Corporate Debtor.”

- viii. In line of the above the Bench as decided by COC approves that, even subsequent to the approval of the Resolution plan any other application under Section 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the Insolvency and Bankruptcy Code, 2016, pending would be pursued by the COC.
- ix. 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.
- x. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- xi. The Interlocutory Application No. 1719 of 2021 is accordingly allowed and disposed of.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)