

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



**I.A. 41/2024**

**IN**

**C.P. NO. 571(IB)/MB/2022**

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

**Mr. Mahesh Govardhan Bagla**

Resolution Professional of M/s Peri Nitrates  
Private Limited

Having its residence at:

304, Gera Junction, Lulla Nagar Signal,  
Kondhwa Road – 411 040.

E-mail ID: maheshgbagla@gmail.com

**.... Applicant/ Resolution Professional**

Versus

1. Mr. Vijay Jagannath Markad
  2. Mr. Anurag Umashankar Singh
  3. Mr. Shreyas Pramod Gokhale
  4. Mr. Pramod Avinash Gokhale
  5. Mrs. Savitri Santosh Maske
  6. Mrs. Pallavi Pandharinath Maske
  7. Mr. Gajanan Maruti Gavade
- ("Successful Resolution Applicant(s)")*

**.... Respondent(s)**

**In the matter of:**

Union Bank of India Limited

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**.... Petitioner/ Operational Creditor**

Versus

Peri Nitrates Private Limited

**.... Corporate Debtor/ Respondent**

**Order Pronounced on: 07.02.2025**

**Coram:**

Hon'ble Smt. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Charanjeet Singh Gulati (Technical)

**Appearances:**

For Resolution Applicant: CS Pramodkumar Ladda a/w CS Stuti in IA  
41/2024 in main C.P. (IB)/571(MB)2022 for  
Resolution Applicant

For Resolution Professional: Adv. Rohit Gupta a/w Adv. Prashansa Agrawal  
i/b Adv. Aditya Dubey for Resolution  
Professional (in IA No.41/2024)

***PER: Ms. LAKSHMI GURUNG, MEMBER (JUDICIAL)***

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**ORDER**

**1. I.A. No. 41 of 2024**

This I.A. No. 41 of 2024 is filed by, **Mr. Mahesh Govardhan Bagla, the Resolution Professional of M/s Peri Nitrates Private Limited ('the Applicant')** on 26.04.2024 under Section 30(6) of the Insolvency and

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Bankruptcy Code, 2016 (**‘the Code’**) read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**‘CIRP Regulations’**), seeking following reliefs:

a) *Approve the Resolution Plan submitted by the Consortium of: - Mr. Vijay Jagannath Markad (Lead Member), Mr. Anurag Umashankar Singh, Mr. Shreyas Pramod Gokhale, Mr. Pramod Avinash Gokhale, Mrs. Savitri Santosh Maske, Mrs. Pallavi Pandharinath Maske, Mr. Gajanan Maruti Gavade, annexed hereto as “ANNEXURE NO. 20” in the present Application, as duly approved by the CoC Members through E-voting on 18.04.2024 and E-voting Results were circulated by the RP on 23.04.2024 after closure of E-voting window period on 22 .04.2024 (05:00 P.M.).*

b) *That the Hon'ble Tribunal may pass other such orders as may deem just and proper.*

**Brief Facts:**

2. M/s Peri Nitrates Private Limited (**‘the Corporate Debtor’**) was incorporated as a company limited by shares under Companies Act, 1956 on 01.08.1997, with Registrar of Companies at Pune. The authorized share capital is Rs. 9,90,00,000 and paid-up share capital is Rs. 9,90,00,000 of the Corporate Debtor. The Corporate Debtor has its registered office at S. No. 296, First Floor, Village Bhandgaon, Tal. Daund, Pune – 412214, Maharashtra, India is engaged in the business of corporate debtor comprise of manufacturing of ammonium nitrate and guanidine nitrate.

3. A Corporate Insolvency Resolution Process (**‘CIRP’**) was initiated under Section 7 of the Code against the corporate debtor vide order of this

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Tribunal dated 06.09.2022 under Section 7 of the Code (**'said order'**). Pursuant to the said order, Mr. Mahesh Govardhan Bagla, the Applicant herein was appointed as an Interim Resolution Professional (**'IRP'**).

4. Subsequent to admission of the petition for CIRP, a Public Announcement inviting claims from creditors was made by the IRP on 09.09.2022. The Public Announcement was made in Loksatta (Marathi Language) and The Indian Express (English Language) Newspapers in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (said **'IBBI (CIRP) Regulations, 2016'**). Later, a corrigendum for rectification of defects in Public Announcement was published in Loksatta (Marathi Language) Newspaper on 11.09.2022 and the same was published on the designated website of IBBI.
5. Following the Public Announcement, the IRP received the following claims from the stakeholders/creditors and collated them, which is given as under:

<b>Sr. No.</b>	<b>Category of Creditors</b>	<b>Amount Claimed (in Rupees)</b>	<b>Amount Admitted (in Rupees)</b>
1.	<b>Secured Financial Creditors</b>		
	a. Union Bank of India Limited	2988.55	2988.55
	b. The Zoroastrian Co-Operative Bank Limited	73.42	41.08
	<b>Total [I]</b>	<b>3061.97</b>	<b>3029.64</b>

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2.	<b>Unsecured Financial Creditors</b>	Nil	Nil
3.	<b>Operational Creditors (other than Workman and Employees)</b>		
	i. Government Dues	982.54	982.54
	ii. Workmen	18.18	18.18
	iii. Employees		
	iv. Other (Trade Related OCs)	86.07	68.02
	<b>Total [II]</b>	<b>1086.79</b>	<b>1068.74</b>
4.	Other debts and dues	-	-
	<b>Total [I+II]</b>	<b>4148.76</b>	<b>4098.38</b>

**Constitution of CoC**

6. Subsequent to collation of claims, the CoC was constituted on 28.09.2022 in accordance with Section 21 of the Code. The composition of CoC is given as under:

<b>Particulars</b>	<b>Amount Claimed (In Rupees)</b>	<b>Amount of Claim Admitted (In Rupees)</b>	<b>Percentage of Voting (%)</b>
Union Bank of India Limited, F.C. Road Branch	29,88,55,000.00	29,88,55,000.00	98.64

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The Zoroastrian Co-Operative Bank Limited	73,42,023.00	41,08,178.00	1.36
<b>Total</b>	<b>30,61,97,023.00</b>	<b>30,29,63,178.00</b>	<b>100</b>

**CoC Meetings**

7. The Applicant submits that 12 (Twelve) CoC meetings have been held during CIRP period, which is given as follows:

<b>Particulars</b>	<b>Date of CoC Meeting</b>
1st CoC Meeting held on	06.10.2022
2 <sup>nd</sup> CoC Meeting held on	18.10.2022
3 <sup>rd</sup> CoC Meeting held on	03.11.2022
4 <sup>th</sup> CoC Meeting held on	01.12.2022
5 <sup>th</sup> CoC Meeting held on	05.01.2023
6 <sup>th</sup> CoC Meeting held on	20.02.2023
7 <sup>th</sup> CoC Meeting held on	14.03.2023
8 <sup>th</sup> CoC Meeting held on	03.05.2023
9 <sup>th</sup> CoC Meeting held on	25.05.2023
10 <sup>th</sup> CoC Meeting held on	13.06.2023
11 <sup>th</sup> CoC Meeting held on	06.10.2023
12 <sup>th</sup> CoC Meeting held on	12.03.2024

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**Valuation**

8. For the purpose of determining Fair Value and Liquidation Value of Assets of the corporate debtor, the IRP appointed registered valuers as on 21.10.2022 as per Regulation 27 of the said IBBI (CIRP) Regulations, 2016 as follows:

<b>Sr. No.</b>	<b>Category</b>	<b>Details of Professional</b>
1.	Registered Valuer (Plant and Machinery)	<b>Pensar Valuation Private Limited</b> (IBBI/RV/08/2020/13414) and <b>Mr. Ompal Singh</b> (IBBI/RV/02/2021/13876)
2.	Registered Valuer (Land and Building)	<b>Pensar Valuation Private Limited</b> (IBBI/RV/08/2020/13414) and <b>Mr. Anil Kumar Saxena</b> (IBBI/RV/02/2018/10004)
3.	Registered Valuer (Securities and Financial Assets)	<b>Pensar Valuation Private Limited</b> (IBBI/RV/08/2020/13414) and <b>Mohit Sagar</b> (IBBI/RV/06/2019/11717)

9. Further, the above-mentioned valuers have submitted their Valuation Reports to the Applicant/RP. Copies of the Valuation Reports submitted by the Registered Valuers are annexed as **Annexure – ‘30’** to the Petition. As the estimates given by Registered Valuers are not significantly different, the average of the two values are considered as ‘Fair Value’.

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Further, the Average Valuation reported by the Valuers is provided as under:

<b>Particulars of Assets</b>	<b>Average Valuation</b>	
	<b>Fair Value (in Rs.)</b>	<b>Liquidation Value (in Rs.)</b>
Land	1,79,70,476.50	1,43,76,381
Building	1,20,25,590	84,17,913
Plant and Machinery	29,98,618.50	20,99,033
Security and Financial Assets	86,67,253.50	52,74,869.50
<b>Total</b>	<b>4,16,61,938.50</b>	<b>3,01,68,196.50</b>

10. The publication for Invitation of Expression of Interest from Prospective Resolution Applicants (**'PRA'**) in Form - G was made in The Indian Express newspaper (English Language) and Loksatta newspaper (Marathi Language) in Pune Edition on 10.11.2022. Later, a corrigendum to publication of Form-G was approved in the 3<sup>rd</sup> CoC Meeting held on 03.11.2022 and the publication was made in The Free Press Journal (English Language) newspaper and Navkal (Marathi Language) newspaper on 15.11.2022 wherein the last date of submission of EoI was 25.11.2022.

11. Following the publication of EoI in Form-G on 10.11.2022 (corrigendum on 15.11.2022), the Applicant only received a few enquiries for



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submission of EoIs therefore, CoC in its fourth meeting held on 01.12.2022 approved the re-publication of Form-G.

12. The CoC in its 5<sup>th</sup> Meeting held on 05.01.2023 approved the appointment of the IRP as a Resolution Professional (**'RP'**) and resolved to modify last date for receipt of EoI (for re-publication to Form-G) to 10.02.2023.
13. The Applicant/RP re-published Form-G dated 06.01.2023, wherein the last date for receipt of EoI was 10.02.2023. The publication was made in the following newspaper and regions as under:
- a) **Pune Edition:** Loksatta (Marathi Language) and The Indian Express (English Language) on 07.01.2023;
  - b) **Mumbai Edition:** Navkal (Marathi Language) and Free Press Journal (English Language) on 10.01.2023; and
  - c) **Surat/ Ankleshwar/ Baroda/ Ahmedabad Edition:** Gujarat Guardian (Gujarati Language) and Business Standard (English Language) in, respectively on 10.01.2023.
14. The CoC in its sixth meeting held on 20.02.2023 resolved to approve the Evaluation Matrix and Request for Resolution Plan and also directed the RP to apply extension of CIRP period by 90 days from 05.03.2023-03.06.2023
15. The Resolution Professional circulated a Provisional List of Prospective Resolution Applicant (**'PRAs'**) on 02.03.2023. In consequence to circulation of said provisional list of PRAs, the resolution professional clarified the ineligibility of promoters of the corporate debtor as PRAs in regards Section 29A of the Code vide an e-mail exchange dated 02.03.2023.

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16. Further, the Resolution Professional circulated the final list of PRAs on 17.03.2023, comprising of *Shanti G.D. Ispat and Power Private Limited* and *Galactico Corporate Services Limited*. The CoC in its 8<sup>th</sup> Meeting held on 03.05.2023, discussed and deliberated on the Resolution Plans submitted by PRAs.
17. As the CIRP period of 180 days was due to expire on 05.03.2023 from the insolvency commencement date so the RP filed I.A. 876 of 2023 which was allowed by this Tribunal vide order dated 09.05.2023 thereby extending the period of CIRP by 90 days from 06.03.2023 to 04.06.2023.
18. A Resolution Plan dated 11.03.2024 was submitted by the Resolution Plan submitted by the Consortium of Individuals comprising **(‘Consortium of Individuals’)**:-
- a. Mr. Vijay Jagannath Markad (‘Lead Member’),
  - b. Mr. Anurag Umashankar Singh,
  - c. Mr. Shreyas Pramod Gokhale,
  - d. Mr. Pramod Avinash Gokhale,
  - e. Mrs. Savitri Santosh Maske,
  - f. Mrs. Pallavi Pandharinath Maske and
  - g. Mr. Gajanan Maruti Gavade.
19. The RP appointed M/s Niranjan S. Karmarkar & Associates as a Transaction Auditor to conduct transaction audit of the account of CD to determine the transactions falling under Section 43, 45, 50 and 66 of the Code. The Transaction Audit Report dated 24.03.2023 was prepared for the period 04.04.2020 to 31.03.2022 and is annexed at Annexure – ‘24’ of the Petition.
20. In the 9<sup>th</sup> CoC Meeting held on 25.05.2023, the committee voted for the liquidation of corporate debtor. Accordingly, the Resolution Professional

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preferred a 'Liquidation Application' in I.A. No. 5724 of 2023 on 07.06.2023.

21. Later, the Resolution Professional convened the 11<sup>th</sup> CoC Meeting on 06.10.2023 wherein the CoC deliberated on the Resolution Plan submitted and decided to prefer an application as I.A. 2363 of 2024 to allow exclusion of the time period from 05.06.2023 to 03.03.2024 (till the filing of the proposed application) as well as an extension of CIRP in I.A. No. 2360 of 2024 by 60 days.
22. Accordingly, the RA preferred an application I.A. No. 5783 of 2023 before this Tribunal dated 15.12.2023 seeking a direction to the members of CoC to consider the Resolution Plan. This Tribunal vide order dated 04.03.2024 allowed the aforesaid application directing the applicant to convene a meeting of CoC to consider the Resolution Plan.
23. Consequent to the order dated 04.03.2024, the CoC discussed and deliberated the Resolution Plan in its 12<sup>th</sup> CoC Meeting dated 12.03.2024. The CoC voted with 98.64% majority (voting period was between 18.04.2024-22.04.2024). Further, the revised resolution plan dated 11.03.2024 was submitted by Consortium of Individuals (**'Successful Resolution Applicant'/'SRA'**) and is given at **Annexure- '25'** of the Petition. Accordingly, on considering the acceptance of the Resolution Plan by CoC, this Tribunal vide its order dated 19.04.2024 allowed the Resolution Professional to withdraw the Liquidation Application.
24. Pursuant to the same the Resolution Professional issued a Letter of Intent (**'LoI'**) to SRA on 23.04.2024 and the said LoI was accepted unconditionally by the SRA. A copy of Letter of Intent dated 23.04.2024 is annexed as **Annexure '18'**.

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25. The Applicant has filed a Compliance Certificate i.e. Form- 'H' dated 23.04.2024 in compliance with Regulation 39(4) of the CIRP Regulations, 2016, which has been annexed to the petition as **Annexure- '21'**.
26. Upon considering the facts and circumstances of the case, this Tribunal vide order dated 27.11.2024 allowed I.A. No. 2360 of 2024 and I.A. No. 2363 of 2024 wherein the period of 274 days was excluded between 05.06.2023 to 04.03.2024 and the period of CIRP was allowed to be extended for 60 days from 05.03.2024 to 26.04.2024, respectively.

**Details of the Resolution Applicant**

27.1 The Successful Resolution Applicant (**'SRA'**) is a consortium of individuals comprising Mr. Vijay Jagannath Markad, Mr. Anurag Umashankar Singh, Mr. Shreyas Pramod Gokhale, Mr. Pramod Avinash Gokhale, Mrs. Savitri Santosh Maske, Mrs. Pallavi Pandharinath Maske and Mr. Gajanan Maruti Gavade. The SRA is headed by a lead member Mr. Vijay Jagannath Markad. Further, a Special Purpose Vehicle (SPV) comprising the consortium would be created for the purpose of acquisition of the Corporate Debtor. A copy of the Net Worth Certificate of the SRA is provided from Page Nos. 326-343 at **Annexure-'20'** – Copy of the Resolution Plan dated 11.03.2024.

27.2 The SRA states that it possesses good experience of running various businesses with a capability to effectively manage the business as well as the financials. Therefore, ensuring the revival of the Corporate Debtor and also focus on the expansion of the Corporate Debtor through new, innovative business channels/plans and generate adequate cash flow. Therefore, enhancing its business operations and providing significant impetus to its growth further giving additional strength to the operations and management of the Corporate Debtor. The SRA aims to capitalize the

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positive reputation, goodwill and brand identity associated with the Corporate Debtor.

27.3 The SRA in its Resolution Plan provides at *Clause 4.1* that the amount to be distributed to any creditor (or sub-category) or defined class of creditors shall be distributed on a pro-rata basis to the amounts payable to such creditor between the constituent class.

**Cause of Default:**

28.1 The SRA has ascertained the cause of default of the Corporate Debtor as disproportionate debt to the scale of operations and mismanagement of the fund flow.

28.2 It is viewed that as per the available financials the Corporate Debtor received credit from the Financial Creditor(s).

28.3 According, to the reasons specified in the cause of default the Resolution Plan envisages the financial Restructuring and business restructuring of the Corporate Debtor through infusion of funds for the Working Capital and Capital Expenditure, which is discussed later in the Order.

**Treatment of Financial Creditors**

29 The settlement amount payable to the Secured Financial Creditors from the SRA own funds is to be considered as full and final settlement amount including all principal, interest, tax, cess etc. The rights of the Financial Creditors against the personal or corporate guarantors shall not be extinguished. The Financial Creditors shall continue to have all rights and remedies against the guarantors. The personal guarantees and security executed by third parties to secure the debt shall continue to exist and the guarantors shall not have any right of subrogation against

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the Corporate Debtor or SRA. The assets of the CD which are mortgaged shall be released upon payment of the Resolution amount.

**Dissenting Financial Creditors**

30 The Resolution Plan also provides that the financial creditors who do not vote in favour of the Plan shall be paid in priority to the financial creditors who voted in favour of the Plan and the amount payable to them would not be less than amount payable under Section 53 in the event of liquidation. Further, the said amount shall be paid to the dissenting financial creditors, out of the settlement amount to the Financial Creditors without changing the overall amount.

**Treatment of Operational Creditors (Other than Government Dues)**

31 The Operational Creditors is to be paid in terms of Section 30(2)(b) of the Code, that is, an amount which is not less than (a) the amount to be paid to the operational creditors in the event of liquidation of the CD under Section 53 of the Code; or (b) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with Section 53(1), whichever is higher. It is further provided that the dues of all operational creditors shall stand extinguished.

**Sources of Fund**

32.1 The amount under the Resolution Plan will be paid to the stakeholders by the SRA using its own funds as well as through loan from group companies/ financial institutions The amount of contribution of funds by SRA (comprising consortium of individuals) is provided at Annexure-‘20’ on Page No. 344 as:

***a. The Shareholding Pattern in the Company and the amount of the Contribution of Funds would be as follows:***

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<b>Sr. No.</b>	<b>Name of the Resolution Applicant</b>	<b>Shareholding Pattern in the Company (%)</b>	<b>Amount of Contribution of Funds (Rs.)</b>
1.	Mr. Vijay Jagannath Markad	25	75,75,000/-
2.	Mr. Anurag Umashankar Singh	25	75,75,000/-
3.	Mr. Shreyas Pramod Gokhale	12.50	37,87,000/-
4.	Mr. Pramod Avinash Gokhale	12.50	37,88,000/-
5.	Mrs. Savitri Santosh Maske	8.33	22,25,000/-
6.	Mrs. Pallavi Pandharinath Maske	8.33	22,25,000/-
7.	Mr. Gajanan Maruti Gavade	8.33	22,25,000/-
<b>Total</b>		<b>100</b>	<b>3,03,00,000/-</b>

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32.2 The SRA states that it can infuse funds via availing loan and accordingly make requisite expenses for reviving the corporate debtor such as to meet its working capital and capital expenditure. A copy of Net Worth Certificate of the SRA is provided from Page Nos. 326-343 at **Annexure-‘20’** – Copy of the Resolution Plan dated 11.03.2024.

**Manner of disbursement of amount payable under Resolution Plan**

33 The maximum amount payable to all stakeholders under this Resolution Plan (including pursuant to any reallocation or redistribution) shall not exceed the Total Resolution Amount of Rs. 3,03,00,000 (Rupees Three Crores Three Lakhs Only/-). It is noted that the plan value is more than the liquidation value of the Corporate Debtor as Rs. 3,01,68,196.50. The amount payable towards the resolution plan is payable in two tranches which is reproduced as under:

<b>Tranche No.</b>	<b>Particulars</b>	<b>Total amount of claim (in INR)</b>	<b>% of amount payable</b>	<b>No. of days in which the amount is paid</b>
1 <sup>st</sup>	<i>The maximum amount payable to all stakeholders under this Resolution Plan</i>	3.03 Crores	25%	30 days from the Order of Hon’ble NCLT
2 <sup>nd</sup>			75%	45 days from the Order of Hon’ble NCLT.



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**Note:**

**1. An amount of Rs. 10,00,000/- (Rupees Ten Lakhs Only) was deposited as Earnest Money Deposit (EMD) to the account of the Corporate Debtor on 06.09.2023, which is to be adjusted in 01<sup>st</sup> or 02<sup>nd</sup> tranche as decided by the Hon'ble NCLT.**

**34 Treatment of the Resolution Plan Value towards its Stakeholders**

The statement showing the treatment given to the stakeholders as mentioned in Form H is as under:

*(Rs. in Lakhs)*

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>	<b>Settlement Value Offered</b>	<b>% of Settlement amount to the admitted amount</b>
1	<b>Secured Financial Creditors</b>	3061.97	3029.64	277.00	9.05
2	<b>Unsecured Financial Creditors</b>	Nil	Nil	Nil	N.A.
3	<b>Operational Creditors</b>				
a.	<b>Employees and Workmen</b>	18.18	18.18	13	71.50

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b.	<b>Government Authority Dues</b>	982.54	982.54	1.5	0.15
c.	<b>Other Operational Creditors</b> (Trade Related OCs)	86.07	68.02	1.50	1.74
d.	<b>Other debts and dues</b>	-	-	-	-
	<b><u>Total</u></b>	<b>4148.76</b>	<b>4098.36</b>	<b>293</b>	<b>1.47</b>

35 It is pertinent to note that in addition to the amount offered to the stakeholders and as mentioned in FORM-H, following payments are also proposed and undertaken by the SRA: -

**I. CIRP Cost:**

The SRA in its Resolution Plan provides that the Resolution Plan contemplates payment of entire CIRP cost. The CIRP cost is considered at Rs. 10,00,000/- for the purpose of calculation and that 100% of the CIRP cost will be paid by RA over and above the Resolution Plan Amount. Further, it is stated that the total Resolution Amount shall increase simultaneously with increase in CIRP Cost, if any.

**II. Payment towards Workmen and Employee Dues**

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During the course of the hearing, a query was qua the treatment of amount to workmen along with their Provident Fund and Gratuity and whether this resolution plan is compliant with the rationale derived in *Jet Aircraft Maintenance Engineers Welfare Association versus Ashish Chhawachharia and Ors., Company Appeal (AT) (Insolvency) No.1705 of 2023 & I.A. No. 6137 of 2023* and *Mamta Binani (infra)*. In response thereto, Affidavit dated 27.08.2024 was filed contents of which are summarized as under:

a. Treatment of Principal and Interest Amount of EPFO dues:

The SRA undertakes to pay the entire principal amount of Rs. 18,18,613 in priority as well as interest amount of Rs. 16,26,536 in instalments (subject to approval of concerned authorities) aggregating to Rs. 34,45,149/- towards the claim of EPFO.

b. Treatment of Damages pertaining to EPFO dues:

In regards the damages concerned, the SRA relies on the decision of Hon'ble National Company Appellate Tribunal in ***Regional Provident Fund Commissioner, EPFO Regional Office, Jamshedpur versus Ms. Mamta Binani, Resolution Professional and Ors., Company Appeal (AT)(Ins) No. 245 of 2022***, and accordingly seeks to approach the concerned authority for waiver of claim for damages of Rs. 13,18,759 pursuant to direction of this Hon'ble Tribunal in the Order approving the Resolution Plan.

Therefore, the *Principal and Interest amount payable EPFO* is **Rs. 34,45,149/-**, instead of Rs. 13,00,000/- as proposed earlier, under the head Employees and Workmen.

Thus, SRA has undertaken to pay the PF dues as per above affidavit and shall be bound by the said undertaking given by it.

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**III. Government Dues:**

a. It is relevant to mention that the Income Tax Department filed its revised claim of Rs. 9,99,95,336 (Original Claim was recorded at Rs. 8,85,46,552) in FORM - B after the approval of the Resolution Plan by CoC, which was rejected by the Resolution Professional. Resultantly, I.A. No. 5739 of 2024 was preferred by the Income Tax Department challenging the decision of Resolution Professional in rejecting the revised claim of the department.

b. In this regard, the SRA filed an additional affidavit dated 26.08.2024 wherein the SRA vide later dated 05.08.2024 has agreed to give same treatment to the additional amount as given to the earlier admitted claim of Income Tax Department i.e. 0.15% of the admitted claims of Income Tax. More particularly the SRA has agreed to pay an amount of Rs. 17,480/- to the Income Tax Department over and above the payment proposed under the Plan.

**IV. Working Capital**

The SRA proposes to infuse Rs. 1 Crore for working capital requirement., which is to be disbursed in two phases of Rs. 50,00,000 each within 90 days to 180 days, respectively (whether through own funds and/or in the form of debt from the director to the said Corporate Debtor).

**V. Capital Expenditure**

SRA proposes to infuse Rs. 60,00,000 for capital expenditure, which is to be disbursed in two phases of Rs. 30,00,000 each, payable within ninety days and 180 days, respectively (whether through own funds and/or in the form of unsecured loan from the director of the Corporate

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36 Considering the undertakings by SRA as stated above relating to payment of CIRP Cost, additional PF dues, additional Income Tax dues, infusion of Working Capital and Capital Expenditure, the Resolution Plan value comes to approx. Rs. 485 lakhs.

**Earnest Money Deposit (EMD)**

37 The SRA deposited Bid Bond Guarantee amounting to Rs. 10,00,000/- vide bank deposit (RTGS Transaction ID: UTRPUNBR52023090618694454) in favor of Corporate Debtor on 06.09.2023. A copy of evidence of such payment is given at page no. 438-444 at Annexure - '20': Copy of the Final Resolution Plan dated 11.03.2024.

**Performance Bank Guarantee**

38 As per the Resolution Plan, the Successful Resolution Applicant deposited an amount of Rs. 30,30,000/- (Rupees Thirty Lakhs Thirty Thousand Only/-) in favor of said Corporate Debtor vide UTR Number – UTIBR52024042400360248 from Axis Bank, Balewadi Branch to the CIRP Bank Account of Union Bank of India, FC Road Branch. A copy of e-mail dated 24.04.2024 addressed by the SRA to the Resolution Applicant acknowledging the payment made is attached **at Annexure - '19'** of the Petition.

**Supervision of the Resolution Plan from the NCLT Approval Date**

39 A Monitoring Committee would be formed by the Resolution Professional for proper and timely implementation of the Plan. The composition of this committee would comprise of the Resolution Professional as a Chairman; one member appointed by the Resolution Applicant; and one representative appointed by the Financial Creditor. The tenure of this committee is stated to end when all the financial payments to all the stakeholders is made as per the approved Resolution Plan.

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**Treatment of Existing Shareholders**

40 Upon approval of Resolution Plan by this Tribunal, all existing issued, subscribed and paid-up equity share capital of the company would be reduced without any consideration to the shareholder.

**Issue of New Share Capital**

41.1 An issue of 100% shareholding of the Corporate Debtor shall be made and such new capital would be issued in the name of Special Purpose Vehicle created for the resolution of the Corporate Debtor.

41.2 Further, the SRA provides that the authorized share capital of the Corporate Debtor shall stand increased to the amount necessary, if required, in order to accommodate the issuance of new equity shares in accordance with the resolution plan, and the provisions for the same shall be completed within 90 days from the Effective Date.

**Management and Control**

42 All existing directors of corporate debtor shall stand discharged from their duties as on the Effective Date. Thereafter, the SRA shall reconstitute the committee of Board of Directors by appointing nominee directors and consortium on such committees in the manner as specified by the SRA.

**Preferential, Undervalued, Fraudulent and Extortionate Transactions (PUFE)**

43 It is provided that recovery, if any, made pursuant to the order passed by this Tribunal under Sec 43 (preferential transactions), Sec 45 (undervalued transactions), Sec 50 (extortionate credit transactions) and Sec 66 (fraudulent transactions) of the Code, shall be exclusive right of the Financial Creditor. However, it is clarified that the SRA shall pursue all the applications filed under the above-mentioned sections although

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Secured Financial Creditor(s) shall have the rights to the benefits or proceeds of such order.

44 The SRA states that requisite consents/ approvals/licenses with respect to business of the corporate debtor shall be obtained as per the Final Resolution Plan dated 11.03.2024 in due course of time. Further, the Resolution Plan is not subject to any contingency.

45 Following is the timeline for completion of Resolution Plan which is given as under:

<b>Sr. No.</b>	<b>Particulars ('Action')</b>	<b>Timeline (Effective Date = 'T')</b>
1.	Payment of the CIRP Cost	Within T+30 days
2.	Payment to Secured Financial Creditors	Within T+45 Days
3.	Payment to Operational Creditors excluding Employees, Workmen and Government Dues	Within T+45 days
4.	Payment to Operational Creditors (Government Dues)	Within T+45 days
5.	Payment to Workmen and Employees (along with PF, ESIC, and Gratuity)	Within T+45 Days
6.	Unsecured Financial Creditors	Within T+45 days

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7.	Related Party Dues	Not Applicable
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**Compliance Certificate in Form – H**

46 Pursuant to Regulation 39(4) of Said IBBI (CIRP) Regulations, 2016, the Successful Resolution Applicant has prepared a Compliance Certificate dated 11.11.2020 in Form H which is annexed to the Application.

47 The Resolution Plan defines ‘**Effective Date**’ shall mean the date on which Steps as set out in Section 10 (Resolution Plan Steps) are completed, which date shall in any event not exceed 90 Days from the NCLT Approval Date.

**a. Compliance of mandatory requirements under the Insolvency & Bankruptcy Code, 2016:**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Clause of Resolution Plan</b>	<b>Compliance</b>
1	<b><u>Section 25(2)(h):</u></b> Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the said corporate debtor?	--	Yes.



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<b>2</b>	<b>Section 29A:</b> Whether Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Clause 1 (Para 5)	Yes
<b>3</b>	<b>Section 30</b>		
	<b>(1)</b> Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Format X annexed to the Resolution Plan at page no. 445	Yes
	<b>(2)(a)</b> Whether the Resolution Plan provides for payment of insolvency resolution process costs?	Clause 8.1.1 at page no. 347 of Vol.2	Yes
	<b>(2)(b)</b> Whether the Resolution Plan provides for the payment of the debts of operational creditors?	Clause 8.1.3, 8.1.4 and 8.1.5 at page no. 354	Yes
	<b>(2)(c)</b> Whether the Resolution Plan provides for the payment to the financial creditors who did not vote in favor of the resolution plan?	Clause 9.5.5 at page no. 369, Vol. 2	Yes

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	<b>2(d)</b> Whether the Resolution Plan provides for the management of the affairs of the Said corporate debtor?	Clause 7	Yes
	<b>2(e)</b> Whether the Resolution Plan Provides for implementation and supervision of the resolution plan?	Clause 10	Yes
	<b>(2)(f)</b> Whether the resolution plan contravenes any of the provisions of the law for the time being in force?	Clause 16.6.1	Yes
	<b>(4)(a)</b> Whether the Resolution Plan is feasible and viable, according to the CoC?	-	Yes
	<b>(4)(b)</b> Whether the Resolution Plan has been approved by the CoC with 66% voting share?	-	Yes
<b>4</b>	<b><u>Section 31(1):</u></b> Whether the Resolution Plan has provisions for its effective implementation Plan, according to CoC	Clause 10.3	Yes

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**b. Compliance under mandatory requirements under IBBI (Insolvency Resolution Process of Said corporate debtors) Regulations, 2016**

<b>Regulation 38</b>		<b>Clause of Resolution Plan</b>	<b>Compliance</b>
<b>1</b>	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 8.1.4.2	Yes
<b>1A</b>	Whether the resolution plan includes a statement as to how it has dealt with the interest of all stakeholders?	Table in Clause 4 and Clause 9	Yes
<b>1B</b>	i) Whether the Resolution Applicant or any of its related parties has filed to implement or contribute to	Clause 14.2(3)	-

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	<p>the failure of implementation of any resolution plan approved under the Code?</p> <p>ii) If so, whether Resolution Applicant has submitted the statement giving details of such non-implementation?</p>		
<b>2(a)</b>	<p>Whether the Resolution Plan provides the term of the plan and its implementation schedule?</p>	<p>Clause 10.2</p>	<p>Yes</p>
<b>2(b)</b>	<p>Whether the Resolution Plan provides for the management and</p>	<p>Clause 12.1.3 and 12.2 at page no. 375</p>	<p>Yes</p>

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	control of the business of the said corporate debtor during its term?		
<b>2(c)</b>	Whether the Resolution Plan provides adequate means for supervising its implementation?	Clause 10.4, page no. 371	Yes
<b>2(d)</b>	Provides for the manner in which proceedings in respect of PUFETransactions will be pursued and the manner in which the proceeds will be distributed	Clause 14.2 at page no. 376	
<b>3</b>	Whether the Resolution Plan demonstrates that -		
<b>(a)</b>	It addresses the cause of default?	Clause 4.12, page no. 318	Yes
<b>(b)</b>	It is feasible and viable?	Clause 15, Business Plan at page no. 345	Yes

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<b>(c)</b>	It has provisions for its effective implementation?	Clause 10.3 at page no. 370	Yes
<b>(d)</b>	It has provisions for approvals required and the time for the same?	Clause 8.1.9 (iii) at page no. 366	Yes
<b>(e)</b>	The Resolution Applicant has the capacity to implement the Resolution Plan?	Clause 2 – Para 6; the net worth certificates of the individuals constituting the consortium RA are annexed at page nos. 326,330,333,336,338, 340 and 343, respectively.	Yes
<b>Regulation 39</b>			
<b>2</b>	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	-	Yes
<b>4</b>	Provide details of performance security received as referred to in sub-	Performance Bank Guarantee to the tune of Rs. 30.30 Lakhs is to be received from the	Yes

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	regulation (4A) of Regulation 36.	SRA prior to filing of suitable IA with Hon'ble NCLT – Mumbai Bench.	
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48 On perusal of Form-H, it is seen that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code. The Resolution Plan also meets the requirements of Regulations 37, 38, 38(1A) and 39 (4) of the IBBI Regulations, 2016. The SRA has submitted an Affidavit dated 11.03.2024 in **Annexure- '22'** of the application stating that the Successful Resolution Applicant nor any other person who is a connected person (as defined under the IBC) are ineligible under Section 29 A of the IBC. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law.

49 The Applicant identifies that there are no avoidance transaction applications pending before this Tribunal.

50 In **K Sashidhar v. Indian Overseas Bank & Others (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 Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex 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

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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.

51 In **Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta & Ors (2020) 8 SCC 531**, 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 has approved.

52 In view of the law laid down by Hon'ble Supreme Court, the commercial wisdom of the COC is to be given paramount importance for approval / rejection of the resolution plan. As the Resolution Plan meets the requirements of the Code and the IBBI (CIRP) Regulations, 2016 the same needs to be approved. Accordingly, the **Resolution Plan is approved** with the following directions:


- i. The Additional Affidavit dated 26.08.2024 and 27.08.2024 providing undertakings on behalf of the forms an integral part of the Resolution Plan and the SRA shall be bound by the undertakings given by it and recorded in the above affidavits.
- ii. Subject to above, the Resolution Plan submitted by the Consortium is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Said 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.



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- iii. No person will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which a part of the Resolution Plan is not.
  - iv. The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall review operational performance of the Said corporate debtor.
  - v. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise further line of action required for starting of the operations.
  - vi. As per the Resolution Plan, extinguishment of existing shares of the said corporate debtor, allotment of shares to the Resolution Applicant and to New Investor and reduction of share capital do not require the consent of shareholders as required under the Companies Act or any other authority for implementation of the Resolution Plan.


**Reliefs and Concessions:**

- a. Approval of the Resolution Plan shall not be a ground for termination of any existing consents, approvals, licenses, concessions, authorizations, permits or the like that has been granted to the Said corporate debtor or for which the Said corporate debtor has made an application for renewal, grant permissions, sanctions, consents, approvals, allowances, exemptions etc.

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- b. Any exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan including damages under the EPFO Act is not granted but the Resolution Applicant is at liberty to approach Competent Authorities for the exemptions / waiver/ payment in instalments etc., if permitted under the law.
- c. For past non-compliances of the Said corporate debtor under applicable laws the Resolution Applicant shall not be liable for any liabilities and offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016.
- d. It is hereby clarified that in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim which is not a part of the Resolution Plan.
- e. With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- f. Any amount out of the action taken against other persons for Preferential/ Fraudulent Transactions u/s. 43 and 66 of the IBC,

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2016 as found in the Audit Report and also Unauthorized Transaction post CIRP order the Resolution Applicant with reference to the terms of the Resolution Plan dated 11.03.2024 shall pursue all the applications filed under the given sections although Secured Financial Creditor(s) shall have the rights to the benefits or proceeds of such order.

- g. The Resolution Applicant shall appropriate Rs. 10,00,000/- deposited as Earnest Money Deposit in second tranche towards disbursing settlement value towards resolution plan that is within 45 days from the date of approval of resolution plan by this Tribunal
- h. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), 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.
- i. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- j. 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.
- k. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

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43 Accordingly, with the above observation the Resolution Plan in I.A. No. 41 of 2024 is hereby allowed and **approved**.

**Sd/-**

**Charanjeet Singh Gulati**

**Member (Technical)**

Akshita, L.R.A.

**Sd/-**

**Lakshmi Gurung**

**Member (Judicial)**