

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

I.A. NO. 4184 OF 2023

In

COMPANY PETITION (IB) No. 347/MB-IV/2021

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

Dr. CS Rajas Shreeram Bodas, Resolution
Professional

...Applicant

In the Matter of

C.P. (IB) No. 347/MB-IV/2021

M/s. Swikrutee Finance Pvt. Ltd.

...Petitioner

v/s.

M/s. Western Hill Foods Ltd.

...Respondent

Order Pronounced on: 19.12.2023

Coram:

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

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

CP (IB) No. 347/MB-IV/2021

For the Applicant/ RP

:

Mr. Avinash R. Khanolkar Ld.
Counsel for the Applicant.

ORDER

1. The present Application has been filed on 13.09.2023 by Dr. CS Rajas Shreeram Bodas, the Applicant Resolution Professional (“**RP**”) of M/s. Western Hill Foods Limited (“**Corporate Debtor**”), under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC, 2016**”) on behalf of the Committee of Creditors seeking approval of the Resolution Plan submitted by M/s. Yash Shares & Stock Private Limited (the “**SRA / Successful Resolution Applicant**”) and approved by 81.04% (eighty-one point zero four percent) of the voting share of the members of the Committee of Creditors (hereinafter referred to as “**CoC**”) of the Corporate Debtor.

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

2.1 Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor was initiated *vide* an Order *dated* 03.11.2022 of this Tribunal in C.P.(IB) No. 347(MB)/2021, on an application filed by Swikrutee Finance Pvt. Ltd. (“**Financial Creditor**”) under Section 7 of the IBC, 2016. In furtherance thereof, Mr. Vijay Nirmalkumar Jain (IBBI Reg. No.: IBBI/IPA-001/IP-P00536/2017-2018/10961) was appointed as Interim Resolution Professional (“**IRP**”). The said IRP made a public announcement *dated* 08.11.2022, informing the commencement of CIRP of the Corporate Debtor and invited claims from creditors.

2.2 The IRP conducted the First Meeting of CoC on 10.12.2022, wherein he conveyed his unwillingness to continue as a Resolution Professional for the CIRP based on some personal reasons. Accordingly, the CoC decided to replace the IRP with the Applicant Resolution Professional (“**RP**”) *viz.* Dr. CS Rajas Shreeram Bodas in the Second Meeting of CoC *dated* 16.01.2023, with a voting share of

81.04%. The said replacement was confirmed by this Bench *vide* Order *dated* 08.02.2023.

- 2.3** The Applicant RP submits that there was some delay till the time of the afore-mentioned Order *dated* 08.02.2023 was communicated to him. After getting charge from the erstwhile IRP, he called for the Fifth Meeting of CoC *dated* 05.04.2023 wherein further steps were taken for the benefit of CIRP. Additionally, the Applicant RP sought approval of the CoC for the publication of FORM-G *i.e.* Notice inviting Expression of Interest (“**EOI**”) for submission of Resolution Plan for the Corporate Debtor and also finalised the eligibility criterions for the Proposed Resolution Applicants (“**PRA**”). Accordingly, FORM-G was published in two newspapers *viz.* ‘The Free Press Journal (English)’ and ‘Navshakti (Marathi)’ *dated* 08.04.2023. Pursuant to the same, the last scheduled date of submission of EOIs was fixed as 25.05.2023.
- 2.4** During the intervening period, the Applicant RP submits that it received an E-Mail from one of the CoC members *viz.* Sharad Sahakari Bank Limited, Marnchar requesting the RP to modify the approved eligibility criterions for the better resolution of the Corporate Debtor. Accordingly, a resolution was passed to the same effect in the CoC Meeting *dated* 21.04.2023 with a voting percentage of 99.74%.
- 2.5** The Applicant RP submits that in this interregnum period, it received 4 (four) EOIs in response to FORM-G, and the same were duly communicated to the CoC *vide* E-Mail *dated* 30.04.2023. Based thereupon, the RP prepared a Preliminary List of Potential Resolution Applicants and circulated the same amongst the CoC members. Since no objection was received by any party to the said list, the Preliminary List was adopted as the Final List of PRAs. Accordingly, the RP

called Seventh Meeting of CoC *dated* 06.05.2023 for finalisation of Evaluation Matrices (“**EM**”) and detailed Request for Resolution Plans (“**RFRP**”). The Resolution to this effect was tabled and approved thereafter by CoC with a voting percentage of 99.74%. The said RFRP was circulated amongst the PRAs, for submission of their Final Resolution Plan for the Corporate Debtor.

- 2.6** The Applicant RP submits that pursuant to an extension of 90 days *w.e.f.* 03.05.2023, granted by this Bench *vide* Order *dated* 30.01.2023; The deadline to submit the Resolution Plans was extended upto 19.06.2023 in the Eighth Meeting of CoC. Accordingly, two PRAs *viz.* M/s. Morde Foods Pvt. Ltd. and M/s. Yash Shares & Stock Pvt. Ltd. submitted their Resolution Plans for consideration. Pursuant thereof, deliberations ensued by the members of CoC and in accordance with resolution passed in Tenth Meeting of CoC *dated* 27.07.2023, a further extension of 60 (sixty) days in CIRP Period was consequently granted by this Bench *vide* Order *dated* 10.08.2023.
- 2.7** Accordingly, the Applicant RP called for the Eleventh Meeting of CoC *dated* 17.08.2023, wherein the Resolution Plan submitted by M/s. Yash Shares & Stock Private Limited was approved with a voting percentage of 81.04%. Resultantly, M/s. Yash Shares & Stock Private Limited was declared as the Successful Resolution Applicant (“**SRA**”) for the Corporate Debtor.
- 2.8** The Applicant RP hereby submits that the Resolution Plan approved by the CoC is in compliance with the legal requirements mandated under IBC, 2016 as mentioned hereinafter:
- a. Compliance to S. 30 (2) (a) : The SRA has provided that payment of Admitted amount of ₹ 60,08,216/- will paid in Priority and in Full. And*

therefore, the proposed Resolution Plan is in compliance of the said provision.

- b. Compliance to S. 30 (2) (b) : The SRA has provided that towards the claims of the Operational Creditors in following manner :*
- i. Government Dues : The SRA has proposed a payment of 6.21% of the Admitted claim amount towards payment of the Government Dues.*
 - ii. Other Operational Creditors : The SRA has proposed a payment of 12.57% of the Admitted claim amount towards payment of the Other Operational Creditors.*
 - iii. Dissenting Financial Creditor : The SRA has proposed a fair and Equal distribution as per the provisions of S. 30 (2) (b) (ii) vide clause 6.3 (c) of the proposed Resolution Plan.*
- c. Compliance with S. 30 (2) (c) : It is stated and submitted that the proposed Resolution Plan in clause 17 & 19 provides for the change in management and shareholding of the Corporate Debtor and therefore the proposed Resolution Plan is in compliance with the said provision.*
- d. Compliance with S. 30 (2) (d) : It is stated and submitted that the proposed Resolution Plan in clause 16 provides for formation of 'Implementation Committee' consisting of the Applicant, one member from the CoC and three nominees from the SRA to supervise the implementation of the Resolution Plan. Accordingly, it is stated and submitted that the proposed Resolution Plan is in conformity of the said provision.*
- e. Compliances with S. 30 (2) (e) & (f) : It is stated and submitted that the SRA has not provided anything and / or sought approval to anything which is against / contrary to any Law for time being in force. The SRA has asked certain reliefs and concessions from this Hon'ble Bench which*

would completely be at discretion of this Hon'ble Bench and therefore the proposed Resolution Plan is not contrary to any Law for time being in force. Further, as stated supra the proposed Resolution Plan is in conformity of the Regulation 38 of the CIRP Regulations. And therefore, the proposed Resolution Plan, in opinion of the Applicant, is in compliance with the said provision.

3. The Resolution Applicant viz M/s. Yash Shares & Stock Private Limited has confirmed that it is eligible to submit Resolution Plan as per Section 29A of Insolvency and Bankruptcy Code, 2016.
4. The Applicant RP further submits that the he had appointed a consultant for making compliances with the Provident Fund Department. Accordingly, the said payments have already been made and therefore as on date there is nothing outstanding towards the payments of the Workers / Employees of the Corporate Debtor. Further, the SRA, in compliance with the terms of the RFRP, has made a payment of ₹ 25,00,000/- towards Earnest Money Deposit and after approval of Resolution Plan by the CoC has made further payment of ₹ 50,00,000/- towards the performance security.
5. As per the Applicant RP, the Fair Value and Liquidation Value determined by the Registered Valuer are as follows:

Fair Value: INR 25,24,12,557.30/-

(Rupees Twenty-five crores, twenty-four lakhs, twelve thousand, five-hundred fifty-seven and thirty paise only)

Liquidation Value: INR 34,98,40,335.70/- (Rupees Thirty-four crores, ninety-eight lakhs, forty thousand, three thirty-five and seventy paise only)

6. The key features of the Resolution Plan for Corporate Debtor submitted by the SRA *viz.* M/s. Yash Shares & Stock Private Limited is summarized below:

Particulars	Admitted / Provisionally Admitted Claim Rs.	Resolution Amount (upfront) in Rs.	%	Total Settlement Amount
Payment of CIRP Costs	60,08,216	60,08,216	100%	60,08,216
Payments towards Claims of Financial Creditors	15,69,71,359	12,50,00,000	82.82%	13,00,00,000
Payment towards claim of Unsecured Financial Creditors	14,65,39,006	8,00,000	5.46%	80,00,000
Payments towards claims of Workmen and Employees	0	0	0	-
Government Dues	4,82,94,254	63,00,000	13.05%	30,00,000
Payments towards claims of	4,13,711	52,000	6.21%	52,000

Operational Creditor				
Total of A	35,82,26,546	13,81,60,216		14,70,60,216
Funds infused in Corporate Debtor for additional Working Capital (Within 180 to 365 Days From The Resolution Plan Effective Date or as and when required)	-	-	-	3,29,39,784
Total of B			-	3,29,39,784
Total Bid Value A+B		13,81,60,216		18,00,00,000

Furthermore, the Resolution Applicant has proposed to implement the Resolution Plan in full within 90 days from the approval of the proposed Resolution Plan by this Tribunal. The brief of timelines is provided hereinafter:

Particulars	Resolution Amount (upfront) in Rs.	Timelines
Payment of CIRP Costs	60,08,216	T + 45 Days
Payments towards claims of Workmen and Employees	NIL	
Government Dues	30,00,000	T + 75 Days

Payments towards claims of Operational Creditor	52,000	T + 75 Days
Payment towards claim of Unsecured Financial Creditors	80,00,000	T + 80 Days
Payments towards Claims of Financial Creditors	13,00,00,000	T+90 Days
Total of A (Rupees)	14,70,60,216	14,70,60,216
Funds infused in Corporate Debtor for additional Working Capital (Within 180 to 365 Days From The Resolution Plan Effective Date or as and when required)	-	3,29,39,784 T + 180 Days
Total of B (Rupees)	-	3,29,39,784
Total Bid Value A+B (Rupees)		18,00,00,000

7. The Learned Counsel for the Applicant Resolution Professional has annexed a certificate of the Form-H to the Application, under Regulation 39(4) In Form-H of the CIRP Regulations, 2016 to certify that the Resolution Plan has approved by the CoC meets all the requirements of the IBC and its Regulations as mentioned hereinafter:

FORM H
COMPLIANCE CERTIFICATE

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

I, Rajas Shreeram Bodas, an insolvency professional enrolled with ICSI Insolvency Professionals Agency and registered with the Board with registration number IBBVIPA-002/IP No 120012021 -22/ 14010, am the resolution professional for the corporate insolvency resolution process (CIRP) of Western Hill Foods Limited.

2. The details of the CIRP are as under:

Sl .No.	Particulars	Description
1	Name of the CD	Western Hill Foods Limited
2	Date of Initiation of CIRP	03.11.2022
3	Date of Appointment of IRP	03.11.2022
4	Date of Publication of Public Announcement	12.11.2022
5	Date of Constitution of CoC	02.12.2022
	Date of final reconstitution of COC	15.02.2023
6	Date of First Meeting of CoC	10.12.2022
7	Date of Appointment of RP	08.02.2023
8	Date of Appointment of Registered Valuers	08.03.2023 16.06.2023
9	Date of Issue of Invitation for EoI	08.04.2023

10	Date of Final List of Eligible Prospective Resolution Applicants	05.05.2023
11	Date of Invitation of Resolution Plan	06.05.2023
12	Last Date of Submission of Resolution Plan	19.06.2023
13	Date of Approval of Resolution Plan by CoC	17.08.2023
14	Date of Filing of Resolution Plan with Adjudicating Authority	01.09.2023
15	Date of Expiry of 180 days of CIRP	10.05.2023
16	Date of Order extending the period of CIRP	1 st Extension 09.05.2023 2 nd Extension 10.08.2023
17	Date of Expiry of Extended Period of CIRP	31.08.2023
18	Fair Value	(25,24,12,557.30)
19	Liquidation value	(34,98,40,335.70)
20	Number of Meetings of CoC held	11

3. I have examined the Resolution Plan received from Resolution Applicant Yash Shares and Stock Private Limited and approved by Committee of Creditors (CoC) of Western Hill Foods Limited.

4. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the Resolution Applicant Yash Shares and Stock Private Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 1 voter by which Resolution Plan was approved by CoC by 81.04 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) ~~The voting was held in the meeting of the CoC on 17.08.2023 where all the members of the CoC were present.~~

or

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

[strike off the part that is not relevant]

5. The list of financial creditors of the CD Western Hill Food Limited being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan)Voted for /Dissented / Abstained(
1	Sharad Sahakari Bank Ltd	81.04	Voted for
2	Swikrutee Finance Private Limited	18.70	Abstained
3	Mr. Ankit Modi	0.26	Abstained

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rupees)

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided	Amount Provided to the

	Stakeholder*				under the Plan#	Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21				
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in	15,69,71,359	15,69,71,359	12,50,00,000	82.82%

		favour of the resolution plan				
		Total[(a) + (b)]	15,69,71,359	15,69,71,359	12,50,00,000	82.82%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21				
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan	14,65,39,006	14,65,39,006	80,00,000	5.46%

		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	14,65,39,006	14,65,39,006		5.46%
3	Operational Creditors	(a) Related Party of Corporate Debtor				
		(b) Other than (a) above:	4,82,94,254	4,82,94,254	63,00,000	13.05%
		(i)Government	4,13,711	4,13,711	52,000	
		(ii)Workmen				6.21%
		(iii)Employees				
		(iv)				

		Total[(a) + (b)]	48707965	48707965	6352000	19.26%
4	Other debts and dues					
Grand Total			35,82,26,54 6	35,82,26,54 6	13,81,60,21 6	

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

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl.No	Category of Share Holder	No .of Shares held before CIRP	No .of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%)held after CIRP
1	Equity	89,13,000	0	100%	0
2	Preference	0	0	0	0
3					

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

Section of the Code / Regulation No .	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance)Yes / No(
Section 25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	3.1	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?	3.3	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		
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?	6.1(a)	Yes

	(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?]	6.3(d) 19 16	Yes Yes Yes
Section 30(4)	Whether the Resolution Plan)a (is feasible and viable, according to the CoC?)b (has been approved by the CoC with 66 % voting share?	12	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	23	Yes
Regulation38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Addendum to RP	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Part D	Yes

Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]		No
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?	21.2 19 16	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?	 12 12 7.1, 21.2 13.1 13	Yes Yes Yes Yes Yes
39(3)	Whether the RP has filed applications in		NA

	respect of transactions observed, found or determined by him?		
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]		NA

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

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	T
Regulation 6(1)	Publication of Public Announcement	T+3	T+1
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	T+14
Regulation 13(1)	Verification of Claims	T+21	T+21
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	NA

Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	T+23
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	T+30
Regulation 35A	Determination of fraudulent and other transactions	T+115	T+249
Regulation 27	Appointment of two Registered Valuers	T+47	T+125
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54	T+54
Regulation 36A	Invitation of EoI	T+75	T+146
	Publication of Form G	T+75	T+149
	Provisional List of Resolution Applicants	T+100	T+171
	Final List of Resolution Applicants	T+115	T+186
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	T+181
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	T+295
Section 31(1)	Approval of Resolution Plan	T=180	Awaited

11. The time frame proposed for obtaining relevant approvals is as under: Not applicable

Sl .No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1				
2				
3				

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

or

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

~~i.....~~

~~ii.....~~

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No / Circular No.	Reasons	Whether rectified or not
1	Filing of Form CIRP 4	IBBI/CIRP/023/2019	Inadvertently	Filed belated on 18 July 2023
2	Filing of Form CIRP 6	IBBI/CIRP/023/2019	Inadvertently	Filed belated on 18 July 2023
3	Filing of Form CIRP 8	IBBI/CIRP/42/2021	Inadvertently	Filed belated on 18 July 2023

14. The Resolution Plan is being filed days before the expiry of the period of CIRP provided in section 12 of the Code. – Not applicable

14A. Whether the resolution professional has, in accordance with regulation 35A,-
(a) applied to the Adjudicating Authority on or before the one hundred and thirty-fifth day of the insolvency commencement date:

Yes/ No

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

Yes/ No]

15. Provide details of section 66 or avoidance application filed / pending. – Not applicable

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43			
2	Undervalued transactions under section 45			
3	Extortionate credit transactions under section 50			
4	Fraudulent transactions under section 66			

15A. The committee has approved a plan providing for contribution under regulation 39B as under: Not applicable

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

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1		
2		
..		
Total		

15B. The committee has recommended under regulation 39C as under: Not applicable

- a. Sale of corporate debtor as a going concern: Yes-/ ~~Ne~~
b. Sale of business of corporate debtor as a going concern: Yes-/ ~~Ne~~

The details of recommendation are available with the resolution professional.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D.]
Not applicable

16. I Rajas Shreeram Bodas hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

Dr. CS Rajas Bodas

Chairperson/ Resolution Professional

Western Hill Foods Limited

(Undergoing Corporate Insolvency Resolution Process)

Address: 997/18, Navi Peth, Satsang Society, Suraksha Apartments, Pune
411030

E-mail ID: rajascs@yahoo.co.in

IBBI Registration No.: IBBI/IPA-002/IP No 1200/2021-
22/14010

Date: 21/04/2023

Place: Pune

8. In the circumstances mentioned hereinabove, the Applicant Resolution Professional has filed this Application seeking approval of this Tribunal on the Resolution Plan, submitted by the Resolution Applicant viz. M/s. Yash

Shares & Stock Private Limited stating that the plan is in accordance with the Section 30(2) and other provisions laid down under the code.

9. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
- i. Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - ii. Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - iii. For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - iv. The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
10. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.
11. The RP has filed Compliance Certificate in Form-H along with the plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the members of CoC in the Eleventh Meeting held on 17.08.2023, with a voting percentage of 81.04% (Eighty-one point zero-four percent).
12. There are no such pending proceedings u/s 66(1) r/w 43(1) and 44(1) of the Code.
13. In the case of *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On

receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

14. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra)."

15. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

ORDER

16. The present Application being IA No. 4184/2023 in CP(IB)/347/(MB-IV)/2021 is **allowed**. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

16.1. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

16.2. The approval of the resolution plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate authorities in accordance with law.

16.3. Further in terms of the judgment of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra And Sons Private Limited V/S Edelweiss Asset Reconstruction Company Limited*, on the date of approval of the Resolution Plan by the adjudicating authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.

16.4. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

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

16.6. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.

16.7. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.

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

17. The Interlocutory Application i.e. IA No. 4184 of 2023 in CP(IB)/347(MB)/2021 is accordingly allowed and disposed of.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
19.12.2023

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
