NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"

CA Nos.704/2019
IN
CP (IB) No.64/Chd/Hry/2018

Under Section 31 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Durga Enterprises …. Petitioner-Operational Creditor

Vs.

SRS Meditech Limited …Respondent-Corporate Debtor

CA No.704/2019

And in the matter of:

Tarun Batra
Insolvency Professional
(IP Regn No. IBBI/IPA-001/IP-P00572/2017-18/11013)
…Applicant/Resolution Professional.

Order delivered on: 28.01.2020

Coram: Hon'ble Mr. A.K Vaysavayi, Member (Judicial).
Hon'ble Mr. Pradeep R. Sethi, Member (Technical).

For the Resolution Professional: 1.) Mr. Vaibhav Sahni, Advocate
2). Tarun Batra, RP in person

For the Resolution Applicant: 1). Mr. Anand Chhibbar, Senior Advocate
2). Mr. Gaurav Mankotia, Advocate

Per: Pradeep R. Sethi, Member (Technical)

ORDER

CA No.704/2019 is filed by the Resolution Professional (**RP**) under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **Code**) read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the **Regulations**) seeking sanction of resolution plan as approved in the meeting of the CoC held on 31.07.2019 and e-voting on 07.08.2019 & 08.08.2019.

2. It has been submitted that petition was filed by the operational creditor i.e. Durga Enterprises under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s SRS Meditech Limited (hereinafter referred to as **Corporate Debtor**) and the same was admitted vide order dated 02.11.2018 and the CIRP of the corporate debtor was initiated. It is submitted that the applicant was appointed as Interim Resolution Professional (**IRP**) vide order dated 15.11.2018 and within two days of the appointment order, the IRP issued a public announcement as per Regulation 6 of the Regulations read with Section 15 of the Code in Form A in two newspapers i.e. Amar Ujala, (Hindi) dated 17.11.2018 and Business Standard (English) on 17.11.2018 thereby inviting claims from the creditors of the corporate debtor as envisaged in the Code.

3. It is submitted that in pursuance of the public announcement, total 7 claims were received from the financial creditors which were verified and after collation, the IRP constituted the CoC provisions of Section 21 of the Code It is

stated that initially the CoC was constituted with seven financial creditorsi.e., State Bank of India having a voting share of 59.39%, Epimoney Private Limited having a voting share of 1.58%, Edelweiss Retail Finance Limited having a voting share of 4.47%, United Petro Finance Limited having a voting share of 0.88%, Simens Financial Services Pvt Ltd having a voting share of 10.93%, Hero Fincorp Limited having a voting 17.22% and DHFLhaving a voting share of 5.52%. These creditors filed their claims which were approved by the RP, in view of the unamended Regulation 12 of the Regulations and intimation in this regard was given to this Tribunal.

4. It is submitted that the applicant as IRP also appointed two registered valuers to determine the fair value and liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations and the fair value and liquidation value as assessed on the basis of these two reports as per unamended Regulation 35 comes to ₹192.71 lacs and ₹135.09 lacs respectively. The valuation reports submitted by the appointed valuers are at Annexure-6 of the paper book.

5. It is stated that in the first meeting of the CoC held on 14.12.2018, the CoC resolved to continue with the IRP and appointed him as RP. The RP made a public announcement for invitation of resolution plan/expression of interest (EOI) in Form G as prescribed in Regulation 36 (A) of the Regulations by publishing the Form G in Financial Express on 31.01.2019.

6. In the third meeting of the CoC on 13.03.2019, the COC was reconstituted based on 3 new claims of financial creditors and thereafter the total financial creditors part of COC became10. The shares of the members of CoC after incorporating all the claims of all creditors is as follows:

S.No.	Name of the Financial Creditor	Amount Claimed	Amount Admitted	Voting Share %
1	Epimoney Private Limited	45,26,820.00	45,26,820.00	1.50%
2	State Bank of India	17,01,00,000.00	17,01,00,000.00	56.52%
3	Edelweiss Retail Finance Limited	1,27,93,862.00	1,27,93,862.00	4.25%
4	United Petro Finance Limited	25,20,821.00	25,20,821.00	0.84%
5	Siemens Financial Services Pvt. Ltd.	3,13,14, 998.00	3,13,14, 998.00	10.41%
6	Hero Fincorp Limited	4,93,29,318.40	4,93,29,318.40	16.39%
7	DHFL	1,58,16,194.58	1,58,16,194.58	5.26%
8	Oxyzo Financial Services Private Limited	89,95,238.00	89,95,238.00	2.99%
9	Bajaj Finance Ltd.	29,81,975.00	29,81,975.00	0.99%
10	Equitas Small Finance Bank Limited	25,61,370.54	25,61,370.54	0.85%

The RP apprised the CoC that EOI was received from four prospective resolution applicant namely, Harish Arora, Anil Prakash Aggarwal, Prudent ARC Limited and Vaibhav Buildtech Private Limited. The COC approved the eligibility criteria of net worth of ₹5.00 crores for submission of resolution plan and the evaluation matrix proposed by the RP. The RP also apprised the COC regarding appointment of Statutory Auditor for the financial year 2017-18. The last date for submission of resolution plan was fixed at 15.04.2019.

7. The RP apprised the CoC in its 4th meeting that the eligibility criteria of all the resolution applicants is as per EOI published on 31.01.2019 and therefore invitation for submission of resolution plan has been sent to all the four prospective applicants. The last date for submission of resolution plan was extended to 31.05.2019 as verification of plant and machinery by the resolution applicants were still pending.

8. CA No.324 of 2019 was filed by the RP under Section 12(2) of the IBC, 2016 for extension of the CIRP time period by a further period of 90 days and the same was allowed vide order dated 10.05.2019. A copy of the order is at Annexure A-11 of the paper book. It is stated that on receipt of request from one of the prospective resolution applicant i.e. Vaibhav Build Tech Private Limited,along with EMD of ₹25.00 lakh on 30.05.2019, the last date for submission of resolution plan was extended to 15.06.2019 for verification of documents and machinery. Copy of the demand draft is attached as Annexure A-12.

9. It is submitted that the RP received one resolution plan in sealed envelope from one of the prospective resolution applicant i.e. Vaibhav Build Tech Private Limited on 15.05.2019 for consideration of the CoC. In the 6th meeting of CoC held on 18.07.2019, the transaction audit report, valuation report and resolution plan was placed before the CoC members. As per the valuation reports, the fair and liquidation value of the assets of the company is as under: -

Name of the Valuer	**Fair Value**	**Liquidation Value**
Mr. Abhay Kumar	19400000.00	13619000.00
Mr. Sanjay Chopra	19142000.00	13400000.00
Average Value	**19271000.00**	**13509500.00**

10. It is submitted that the resolution plan was opened and presented to the CoC members in the 7th meeting of CoC on 24.07.2019. The CoC members advised the resolution applicant to revise the resolution plan on financial terms and to fix the timeline of recovery from the government institutions. Accordingly, the resolution applicant submitted the revised resolution plan on 27.07.2019

through email and courier and the same was forwarded vide email to all the CoC members on 31.07.2019.

11. In the 8th meeting of the CoC members on 31.07.2019, the members principally agreed on the financial terms of the revised resolution plan of M/s. Vaibhav Build Tech Private Limited. The RP conducted the e-voting on 07.08.2019 and 08.08.2019 and the revised resolution plan was approved by 92.65% voting by the members of CoC.

12. It is further stated that revised affidavit of Mr. Rakesh Kumar Agarwal, Director of Vaibhav Build Tech Private Limited, the resolution applicant regarding its eligibility under Section 29A, read with Regulation 38 of IBC, 2016 is at Annexure A-2 of Diary No.6907 dated 06.12.2019. Also the RP has filed compliance certificate in revised Form H (AnnexureA-1, Diary No.5221 dated 30.09.2019) as required under I&B Code (Amendment) Ordinance 2018 No.6 of 2018 dated 06.06.2018.It is certified by the RP in para 4 of Form H that the resolution plan complies with all the provisions of the Code, CIRP Regulations and does not contravene any of the provision of law for the time being in force and that the resolution plan stands duly approved by the 93% of the voting share of the financial creditors.

13. It is submitted that the CoC while accepting the bid had taken care of all the provisions of the Code and the Regulations. It is prayed that the application may be allowed and the resolution plan as approved by the CoC in the CIRP of the corporate debtor be approved.

14. The learned counsel for the resolution professional submitted that as per revised Form H (AnnexureA-1, Diary No.5221 dated 30.09.2019), all the provisions of the Code and the Regulations were complied with and that the

approval of the resolution plan was made by 93% voting share of the financial creditors in the meeting of the CoC held on 31.07.2018 and therefore, the resolution plan submitted by M/s.Vaibhav Buildtech Private Limitedmay be approved.

15. During the course of hearing on 22.10.2019, the learned counsel for the RP was directed to file the computation in terms of amended Section 30(2) of the Code, missing Annexures 1 to 3 of the plan and the details of the reference made/amounts received by the RP during CIRP period and how these funds are kept and the details of how they are going to be utilised.

16. In compliance of the aforesaid order, the learned counsel for the RP filed compliance affidavit vide Diary No.6464 dated 20.11.2019 stating therein that 2 accounts were maintained by the Corporate Debtor i.e. one with State Bank of India and the second with Yes Bank which were operated by the Corporate Debtor after 15.11.2018. The total amount recovered by the Corporate Debtor is ₹1,23,09,122/-. The said amount will be utilised first in paying the CIRP cost i.e. ₹37,90,438/-and the balance amount of₹ 85,68,114.11/- (available in the above said accounts) will be distributed amongst the secured financial creditors in proportion to their shares. Further, the computation in terms of Section 30(2) of the Code has been annexed as Annexure A-1 and the missing Annexures 1 to 3 of the resolution plan are attached as Annexure A-2 of the affidavit.

17. By order dated 21.11.2019, the learned counsel for the RP was directed to clarify para 4.1 of the implementation of the resolution plan. Also by the same order, it was noticed the affidavit filed as Annexure A-19 of the application is not in accordance with requirement of Section 29A of Code and

directed the applicant file additional documents with regard to further declarations made in form H.

18. The learned counsel for the RP filed compliance affidavit of the RP dated 06.12.2019 (Diary No.6907 dated 06.12.2019)stating the details of the implementation and Monitoring Committee which are as under: -

Name of Proposed Member of Implementation and Monitoring Committee	**Brief Description of the Proposed Member of Implementation and Monitoring Committee**
Tarun Batra	Resolution Professional of the Corporate Debtor
S.K. Pandya	Assistant General Manager, State Bank of India, SAM Branch, New Delhi. He is also looking after the account of Corporate Debtor in State Bank of India
Rakesh Mishra	Technical Expert of relevant field having 11 years' experience. He has prepared the technical study/viability study report for the revival of Corporate Debtor.

The email communication of the RP with the members of the CoC is attached as Annexure A-1 of the affidavit. Further it is stated that there is no definition of key lender referred in the resolution plan. However, SBI having 56.62% voting share and being the only bank in the CoC is the Key Lender. Rest all other financial creditors are Non-Banking Finance Companies. The member of Advisory Board referred in the resolution plan is technical expert by the CoC. The revised affidavit as per Section 29 A is annexed as Annexure A-2 of the affidavit.

19. We have carefully considered the submissions of the learned counsel for the RP and the learned Senior Counsel for the resolution applicant and have also perused the record.

20. The corporate debtor was incorporated on 28.06.2010 and as discussed above, the CIRP proceedings were initiated by order delivered on 02.11.2018. The present application is filed for approval of the resolution plan

submitted byM/s.Vaibhav Buildtech Private Limited. The approval has been sought under the provisions of Section 31 (1) of the Code.

21. We may first of all state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditors, the distribution of voting share among them and the position of voting for the resolution plan is as under (para no.4 of Form H – Annexure A-1, Diary No.5221 dated 30.09.2019)

Sl. No.	***Name of Creditor***	***Voting Share (%)***	***Voting for Resolution Plan (Voted for / Dissented / Abstained)***
1	*State Bank of India*	*56.52%*	*Voted For Resolution Plan*
2	*Edelweiss Retail Finance Limited*	*4.25%*	*Voted For Resolution Plan*
3	*Siemens Financial Services Private Limited*	*10.41%*	*Voted For Resolution Plan*
4	*Hero Fincorp Limited*	*16.39%*	*Voted For Resolution Plan*
5	*DHFL*	*5.26%*	*Voted For Resolution Plan*
6	*Epi money Private Limited*	*1.50%*	*Dissented*
7	*United Petro Finance Limited*	*0.84%*	*Dissented*
8	*Oxyzo Financial Services Private Limited*	*2.99%*	*Dissented*
9	*Bajaj Finance Limited*	*0.99%*	*Dissented*
10	*Equitas Small Finance Bank Limited*	*0.85%*	*Dissented*

22. The details of stakeholders under the resolution plan given in para 7 of Form H (Annexure A-1, Diary No.5221 dated 30.09.2019) is as follows:-

(*Amount in Rs.* lakh)

Sl. No.	*Category of Stakeholder**	*Amount Claimed*	*Amount Admitted*	*Amount Provided under the Plan#*	*Amount Provided to the Amount Claimed*	*Amount available in liquidation*

					(%)	
1	*Dissenting Secured Financial Creditors*	*-*	*-*	*-*	*-*	*-*
2	*Other Secured Financial Creditors*	*2793.54*	*2793.54*	*1350.00*	*48.33%*	
3	*Dissenting Unsecured Financial Creditors*	*215.86*	*215.86*	*25.00*	*11.58%*	*Nil*
4	*Other Unsecured Financial Creditors*	*-*	*-*	*-*	*-*	
5	*Operational Creditors*	*8547.15*	*6766.92*	*35.00*	*0.502%*	*Nil*
	Government	*-*	*-*	*-*	*-*	
	Workmen	*125.72*	*125.72*	*125.72*	*100%*	
	Employees					
6	*Other Debts and Dues*	*-*	*-*	*-*	*-*	
Total		*11682.27*	*9902.04*	*1535.72*	*15.51%*	

23. The compliance of the resolution plan has been given in para No.9 of Form H (supra) as follows:-

Section of the Code / Regulation No.	***Requirement with respect to Resolution Plan***	***Clause of Resolution Plan***	***Annexure and Relevant Page of Paper Book***	***Compliance (Yes / No)***
25(2)(h)	***Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?*** *The criteria of Resolution Applicant Net worth was Rs. 500.00 Lakh. The Resolution Applicant meets the criteria and submitted Net Worth Certificate.*	*Part 1, Business Plan of the Resolution Applicant*	*Page 254-259*	*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****?* *The Resolution Applicant has submitted an affidavit 1st August 2019 stating that, they are eligible to submit Resolution Plan.*	*Annexure A-19*	*Page 285-286*	*Yes*
Section 30(1)	***Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?*** *The Resolution Applicant has submitted an affidavit 1st August 2019 stating that, they are eligible to submit Resolution Plan.*	*Annexure A-19*	*Page 285-286*	*Yes*

Section 30(2)	*Whether the Resolution Plan*: ***(a) provides for the payment of insolvency resolution process costs?*** The Resolution Applicant provides for the full CIRP cost in priority to all other debts with in 30 days of the approval of resolution plan. *(b) provides for the payment of the debts of operational creditors?* *The Resolution Plan provides for payment of debt due to operational creditors with in 90 days of the approval of resolution plan* ***(c) provides for the management of the affairs of the Corporate debtor?*** The Resolution Plan provides complete plan for management of the affairs of the corporate debtor. ***(d) provides for the implementation and supervision of the resolution plan?*** *The Resolution Plan provides for implementation and monitoring committee for supervision of the resolution plan* ***(e) contravenes any of the provisions of the law for the time being in force?*** *The Resolution Plan does not contravene any provision of the code.*	Part IV of the Resolution Plan, Para 3 Part IV of the Resolution Plan, Para 6 Part -1, Business Plan of the Resolution Applicant in Resolutin Plan, Para 2 Part II, Mandatory Provision of the Resolution Plan, Para 4.1.1 Complianc e certificate issued by advocate Vivek Sibal	*Page 264* *Page 267* *Page 254-259* *Page 261*	*Yes* *Yes* *Yes* *Yes* *Yes*
Section 30(4)	*Whether the Resolution Plan* ***(a) is feasible and viable, according to the CoC?*** *The Resolution Plan was circulated to COC and COC members deliberated on the plan. State Bank of India (56.52% voting share) has team of specialized person for verification of*	*Part 1 of the Resolution Plan – Business Plan of the Resolution*	*Page 254-259*	*Yes*

	commercial viability of the Plan. They have also checked the feasibility and viability of the resolution plan ***(b) has been approved by the CoC with 66% voting share?*** *The Resolution Plan is approved by 93% voting share by COC*	*Applicant* *Voting Results at Annexure A-17*	*Page 247*	*Yes*
Section 31(1)	***Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?*** *The Resolution Applicant has proposed formation of implementation and monitoring committee* *On and from the NCLT Approval Date, and till the occurrence of the Effective Date, the Corporate Debtor shall be managed by the Implementation and Monitoring Committee.* *Upon the NCLT Approval Date, an Implementation and Monitoring Committee comprising 3(three) persons of which 1(one) will be RP, 1 (one) will be nominated by the Key Lenders, and 1 (one) will be a member of the Advisory Board as selected by the COC, will be constituted without any further action or omission required from the Corporate Debtor or the Resolution Applicant ("Implementation and Monitoring Committee").* *In the Resolution Plan, Schedule 4 for Implementation Provisions is given, where Resolution Plan steps are provided by the Resolution Applicant.*	*Part II, Mandatory Provision of the Plan.* *Schedule 4 of the Resolution Plan*	*Page 261* *Page 278-280*	*Yes*
Regulation 35A	**Where the resolution profesional *made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66,before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?***	*Application filed with NCLT under section 66 of IBC 2016.*		*Yes*

	The Resolution Professional based on the report of the Transaction Auditor has made determination of Preferential Transactions and Fraudulent Transactions under section 43 and 66. The same could not be done in 115 day of the Insolvency Commence date, as due to fire in the premises of corporate debtor, all the books of accounts were destroyed. The same were recovered from email data of the corporate debtor. The Forensic Auditor submitted his report on 15th July 2019 and same was discussed in the 6th COC Meeting dated 18th July 2019. The application under section 43, 45, 50 and 66 filed with Adjudicating Authority on 9th August 2019 for avoidance of certain transactions.	*CA 703/2016*		
Regulation 38 (1)	*Whether the Resolution Plan identifies specific sources of funds that will be used to pay the* **-** *(a) insolvency resolution process costs?* *The CIRP Costs shall be paid in full in terms of Section 30(2)(a) of the Code and Regulation 38(1)(a) of the CIRP Regulations. The Resolution Applicant understands from the IM that the IRP Costs presently aggregate to approximately INR 75,00,000 (Indian Rupees Seventy-Five Lakh). The CIRP Costs shall be paid out from the Upfront Commitment* ***(b) liquidation value due to operational creditors?*** *Operational Creditors shall be paid an aggregate amount of INR 35.00 Lakh (Indian Rupees Thirty Five Lakh) ("Statutory Creditors Amount") as liquidation value payable to the Operational Creditors under Regulation 38(1)(b) of the CIRP Regulations is NIL* *(c)* ***liquidation value due to dissenting financial creditors****?* *All Unsecured financial creditors are dissenting and they shall be paid an aggregate amount of INR 25.00 Lakh (Indian Rupees Twenty-Five Lakh) ("Statutory Creditors Amount") as liquidation value payable to the Unsecured Financial Creditors under Regulation 38(1)(b) of the CIRP Regulations is NIL*	*Part IV of the Resolution Plan-Financial Proposal of the Resolution Applicant*	*Page 264-265* *Page 267* *Page 266*	*Yes*

Regulation 38(1A)	***Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders**?* *The Resolution Plan includes statement as to hot it has dealt with the interest of all the stakeholders. The Plan provides details of the settlement proposed with the all the stakeholders*	*Part IV of the Resolution Plan-Financial Proposal of the Resolution Applicant*	*Page 264-267*	*Yes*
Regulation 38(2)	*Whether the Resolution Plan provides:* ***(a)** the term of the plan and its implementation schedule?* *The Resolution Plan proposed an implementation schedule. The Resolution Plan provides upfront payment of CIRP Cost and Payment to workmen and employees. The Resolution Plan provides upfront payment of Rs. 350.00 Lakh to Secured Financial Creditors and payment of Rs. 1000.00 Lakh from recovery of funds from government departments or before 31st March 2020.* *The payment of Rs. 35.00 Lakh to operational creditors and payment of Rs. 25.00 Lakh unsecured financial creditors is also upfront.* ***(b) for the management and control of the business of the corporate debtor during its term?*** *The Resolution Plan provides for the management and control of the business of corporate debtor during its term. On and from the NCLT Approval Date, and till the occurrence of the Effective Date, the Corporate Debtor shall be managed by the Implementation and Monitoring Committee. Upon the NCLT Approval Date, an Implementation and Monitoring Committee comprising 3(three) persons of which 1(one) will be RP, 1 (one) will be nominated by the Key Lenders, and 1 (one) will be a member of the Advisory Board as selected by the COC, will be constituted without any further action or omission required from the Corporate Debtor or the Resolution Applicant ("Implementation and Monitoring Committee").* *After the Effective Date, and following the acquisition by the Resolution Applicants of control of the Corporate Debtor, the*	*Part I of the Resolution Plan-Business Plan of the Resolution Applicant And Part IV of the Resolution Plan-Financial Proposal of the Resolution Applicant* *Part II, Mandatory Provision of Resolution Plan*	*Page 258* *Page 264* *Page 261*	*Yes*

	Resolution Applicants shall constitute the board of directors of the Corporate Debtor or the Amalgamated Company, as the case may be, and appoint key managerial personnel, which may include persons from the Advisory Board. The Corporate Debtor shall, without any obligation, and subject to acceptable performance norms, endeavor to retain existing manpower, which was engaged by the Corporate Debtor in relation to its business. Employee head count can be increased or reduced based on the operational performance and growth of the Corporate Debtor. The Implementation and Monitoring Committee, along with the Reconstituted Board, shall have the responsibility of management of the Corporate Debtor and implementation and supervision of the Resolution Plan till the Effective Date. The terms of functioning of the Implementation and Monitoring Committee shall be finalised by the COC and the Resolution Applicants jointly. All decisions taken by the Implementation and Monitoring Committee shall be by way of a majority vote of the members of the Implementation and Monitoring Committee. *The Advisory Board comprises a team of experts with specialized knowledge, and the conduct of business of the Corporate Debtor and implementation of the Resolution Plan by the Implementation and Monitoring Committee and Reconstituted Board, shall be in consultation with the Advisory Board.* ***(c) adequate means for supervising its implementation?*** *The Resolution Applicant has already envisaged the cost of supervising and implementation of Resolution Plan and has adequate means are available for supervising and implementation of Resolution Plan*	*Part II, Mandatory Provision of Resolution Plan*	*Page 262*	
38(3)	***Whether the resolution plan demonstrates that –*** ***(a) it addresses the cause of default.*** *The Resolution Plan provides the cause of*	*Part 1, Business Plan of the Resolution Applicant*	*Page 255*	*Yes*

	default by Corporate Debtor. As per Resolution Plan, the reason for default are high repayment obligation, fluctuation in prices, Bad Debts and funds forfeited by government departments ***(b) it is feasible and viable.*** *The Resolution Plan was circulated to COC and COC members deliberated on the plan. State Bank of India (56.52% voting share) has team of specialized person for verification of commercial viability of the Plan. They have also checked the feasibility and viability of the resolution plan* ***(c) it has provisions for its effective implementation.*** *The Resolution Plan has provided provisions of effective implementation of the Plan.* ***(d) it has provisions for approvals required and the timeline for the same?*** *The Plan does not envisage any special approval from any agency except for the permissions already available and required in normal course of business.* ***(e) the resolution applicant has the capability to implement the resolution plan?*** *As per Resolution Plan, the Resolution Applicant has the capability to implement the Resolution Plan and resolution applicant have already made tie up with suppliers, buyers, key employees, land and building and professional agencies as Part I **(Business Plan of the Resolution Applicant)***	*Part 1, Business Plan of the Resolution Applicant* *Part II, Mandatory Provision of the Plan* *Para 6 of the Part 1, Business Plan of the Resolution Applicant* *Part I **Business Plan of the Resolutio n Applicant***	*Page 254-257* *Page 261* *Page 259* *Page 254-257*	
39(2)	***Whether the RP has filed applications in respect of transactions observed, found or determined by him?*** *The Resolution Professional based on the report of the Transaction Auditor has made determination of Preferential Transactions*	*CA 703/2019*		*Yes*

	and Fraudulent Transactions under section 43 and 66. The same could not be done in 115 day of the Insolvency Commence date, as due to fire in the premises of corporate debtor, all the books of accounts were destroyed. The same were recovered from email data of the corporate debtor. The Forensic Auditor submitted his report on 15th July 2019 and same was discussed in the 6th COC Meeting dated 18th July 2019. The application under section 43, 45, 50 and 66 filed with Adjudicating Authority on 9th August 2019 for avoidance of certain transactions.			

24. Section 30(2)(b) as substituted by Act No. 26 of 2019 w.e.f. 06.08.2019 is as follows:-

"[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than— (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or (ii) 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 the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor– – (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority; (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]"

25. It is observed that the amount payable towards the operational creditors is ₹0.35 crore as provided in the resolution plan. Further, the amount to be distributed between operational creditors in the event of liquidation, if distributed in order of priority in Section 53(1) of the Code would be NIL. There are 5 dissenting unsecured financial creditors i.e. EPI Money Pvt. Ltd., United Petro Finance Limited, Oxyzo Financial Services Pvt. Ltd., Bajaj Finance Limited and Equitas Small Finance Bank Ltd. and the amount provided for the dissenting unsecured financial creditors is ₹0.25 crore. The liquidation value payable to them under Section 53(1) in the event of liquidation would be NIL. Hence, Section 30(2)(b) of the Act stands complied with.

26. The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading as follows: -

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

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

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

(a) The Resolution Plan is approved by the CoC under Section 30(4) of the Code;

(b) The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;

(c) The Resolution Plan has provisions for its effective implementation.

The satisfaction of the conditions is discussed below.

28. It is submitted by the RP that the resolution plan has been approved by a vote of 93% of voting share of the financial creditor and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

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

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

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) *the implementation and supervision of the resolution plan;*

(e) *does not contravene any of the provisions of the law for the time being in force;*

(f) *confirms to such other requirements as may be specified by the Board.*

30. The compliance of Section 30(2) of the Code is given in para No.9 of Form H (*supra*). The same is being further examined as under: -

Section 30(2)(a): The resolution plan (page 264 of the application) provides for the full payment of CIRP cost in priority to all other debts. The CIRP cost aggregate to ₹75,00,000/- approximately and are to be paid upfront.

Section 30(2)(b): It is stated in Form H that the average liquidation value is ₹135.09 lacs. It is further stated that the unsecured financial creditors shall be paid an aggregate amount of ₹0.25 crore and the operational creditors shall be paid an amount of ₹0.35 crore. The liquidation value payable to the unsecured financial creditors and operational creditors is Nil. The payment is to be made from upfront infusion of funds. The resolution plan provides for upfront payment of ₹1.25 crore towards workmen and employees dues. The claims by Government are stated to be nil.

Section 30(2)(c) & (d): The resolution plan provides complete plan for management of the affairs of the corporate debtor (page 254-259 of the application). As per para 4.1.1 of the resolution plan (pg. 261) and as per the affidavit dated 06.12.2019 (Diary No.6907), upon the NCLT Approval Date, the corporate debtor will be managed by the Implementation and Monitoring Committee comprising of 3 persons namely, Tarun Batra, Resolution Professional, S.K Pandya, Assistant General Manager, SBI and Mr. Rakesh Mishra, Technical Expert. It is stated in the resolution plan that the board of directors of the corporate debtor or amalgamated company will be reconstituted and key managerial personnel will be appointed.

Section 30(2) (e): In Form H *(supra)* (para No.4), the RP has certified that the resolution plan complies with the provisions of the Code and Regulations and does not contravene any of the provisions of law for the time being in force.

31. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan states that upon NCLT Approval Date, an Implementation and Monitoring Committee will be constituted. The constitution of the Committee is given in para no 18 (supra). The terms of the plan and its implementation schedule is stated to be three months from the approval of the plan by the Adjudicating Authority. Apart from upfront payment of ₹3.50 crore to secured financial creditors, deferred payment of ₹10.00 crores from the recovery of outstanding receivables of government departments and market or fresh contribution of resolution applicant is to be paid to secured financial creditors latest by 31.03.2020. The resolution applicant will also infuse into the Corporate Debtor ₹1.00 crore for building infrastructure of the factory, ₹3.00 crore towards plant and machinery and ₹2.00 crore for working capital requirements.

32. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No.4 of Form H (supra) the RP has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that the resolution applicant Vaibhav Buildtech Private Limited has submitted affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to

submit the resolution plan and the contents of the said affidavit are in order. The RP has submitted that the resolution plan has been approved by the CoC with 93% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations. It has been held in para 42 of **K. Sashidhar Vs. Indian Overseas Bank & Ors. (Civil Appeal No. 10673 of 2018 dated 05.02.2019)** by the Hon'ble Supreme Court *inter alia* that no corresponding provision has been envisaged by the legislature to empower the resolution professional., the Adjudicating Authority (NCLT) or for that matter the Appellate Authority (NCLAT), to reverse the "commercial decision" of the CoC. It was also held that whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority. In view of the above discussion, the decision taken by the financial creditors falls within the ambit of its commercial and banking wisdom and is therefore, not being interfered with.

33. The order was reserved on 09.12.2019 but thereafter it was noticed that provisions of Regulation 39(4) of the CIRP Regulations, 2016 inter-alia providing for submission of evidence of receipt of performance security required under Regulation 36B(4A) have not been complied with and the matter was listed for hearing on 07.01.2020.

34. The RP filed compliance affidavit dated 15.01.2020 (Diary No. 404 dated 16.01.2020) stating therein that as per Para 1.9.1 of request for resolution plan, the resolution applicant is required to submit either Performance Guarantee of 5% of the Cash contribution or to provide funds equivalent to Performance

Guarantee in the Bank account number 32671242676 of the Corporate Debtor maintained with State Bank of India. The Resolution Applicant in compliance of Regulation 36B (4A) of the Regulations, had transferred ₹30 lakh being 5% of the Cash Contribution in the Resolution plan on 31.08.2019 in the aforesaid Bank Account. Copy of the bank account statement is attached as Annexure A-2 of the affidavit.

35. During the course of hearing on 17.01.2020 the learned counsel for the Resolution Professional was directed to file the computation of the Cash Contribution and the same was filed by way of affidavit dated 17.01.2020 (Diary No. 475 dated 17.01.2020). It is stated in the affidavit that the computation of cash contribution by the Resolution Applicant is approximately ₹6 Crore, and thus deposited ₹30 lacs, being 5% of the upfront contribution of the Resolution Applicant and that the cash contribution by the Resolution Applicant is as under:

Detail of Upfront Contribution as per the Resolution Plan submitted by the Resolution Applicant	**Amount in Crore**
Payment to Financial Creditors	Rs. 3.50 Crores
Payment to Employees and Workmen	Rs. 1.25 Crores
Payment of CIRP Cost	Rs. 0.75 Crores
Payment to Unsecured Financial Creditor	Rs. 2.25 Crores
Other Upfront Commitments anticipated by Resolution Professional	Rs. 0.25 Crores
Total expected upfront commitment	**Rs. 6.00 Crores**
Performance Bank Guarantee Required being 5%	Rs. 0.30 Crores
Funds Provided by the Resolution Applicant on 31.08.2019 in lieu of Performance Bank Guarantee in account No. 32671242676 of Corporate Debtor	Rs. 0.30 Crores

It is thereby submitted that the requirements of performance security under Regulation 39(4) of the Regulations read with 36B(4A) of the Regulations are complied with.

36. On the basis of discussion made above and in view of the provisions of Section 30(4) of the Code, we approve the resolution plan submitted by Vaibhav Buildtech Private Limited as approved by the CoC. The resolution so approved shall be binding on the corporate debtor and its employees, members, creditors [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan. We may add that as discussed in para No. 15 and 16 supra, the RP has stated that the total amount recovered by corporate debtor during CIRP (after payment of CIRP cost) would be distributed amongst the secured financial creditors in proportion to their shares.

37. Under the provisions of Section 31 (3) of the Code, we also direct as under:-

a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 15.11.2018 shall cease to have effect; and

b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

CA No. 704/2019 is disposed of.

Pronounced in open court Sd/-

Sd/- Sd/-

(Ajay Kumar Vatsavayi) (Pradeep R. Sethi)

Member (Judicial) Member (Technical)

January 28, 2020

Yashpal

CA Nos. 704/2019

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CP (IB) No. 64/Chd/Hry/2018