

Resolution Plan submitted by M/s Constantia Corporate Shared Services Private Limited and Alfa Buildhome Private limited (Resolution Applicant).

2. The facts leading to the Application are as under.
 - a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 31.05.2019 upon admission of a Petition under Section 7 of the Code and the Applicant was appointed as the Interim Resolution Professional (IRP).
 - b. The IRP made a public announcement on 11.06.2019 inviting claims from the creditors of the Corporate Debtor. After receipt of the claims IRP constituted the Committee of Creditors (CoC) of Corporate Debtor on 03.07.2019.
 - c. The Applicant conducted the 1st meeting of CoC on 09.07.2019 wherein the CoC resolved to appoint the Applicant as Resolution Professional (RP) and the same was confirmed by this Bench.
 - d. The Applicant placed the resolution for liquidation of the Corporate Debtor in the 3rd meeting of CoC held on 16.09.2019 and the same was rejected by the CoC with majority voting share.
 - e. The Applicant issued Form G on 20.09.2019. Since there was no response to it, another Form G was issued on 08.10.2019, inviting expression of interest (EOI) from prospective resolution applicants (PRAs). On 08.11.2019 the Applicant received only one EoI from a PRA viz. M/s Constantia Corporate Shared Services Private Limited and Alfa Buildhome Private Limited.
 - f. The CoC in its 5th meeting held on 20.11.2019 considered the Resolution Plan submitted by the Resolution Applicant and suggested some changes in the Plan as per the provisions of the Code.
 - g. In the 5th CoC meeting, CoC also resolved to file an Application for extension of the CIRP Period. Then the Applicant filed an Application in MA No. 3807 of 2019 for extension of CIRP period. The same was

allowed by this Bench vide order dated 27.11.2019 by extending period of CIRP by 90 days.

- h. In the 6th meeting of CoC held on 22.01.2020, the CoC members considered the revised Resolution Plan submitted by the Resolution Applicant dated 08.01.2020, and again suggested more changes in the Plan. Accordingly, the revised Resolution Plan was submitted by the Resolution Applicant on 01.02.2020.
3. After due verification of the eligibility of the Resolution Applicant in terms of Section 29A of the Code and as agreed by the CoC members in its 6th meeting, E-voting for approval of the Resolution Plan commenced from 03.02.2020 till 07.02.2020. The Resolution Plan submitted by M/s Constantia Corporate Shared Services Private Limited and Alfa Buildhome Private Limited (Successful Resolution Applicant) was thus approved with 100% voting share.

4. **Salient features of the Resolution Plan:**

a. **SUCCESSFUL RESOLUTION APPLICANT (SRA):**

M/s Constantia Corporate Shared Services Private Limited (CCSSPL) is a company limited by shares and incorporated on 01.06.2007. CCSSPL was formerly known as Constantia Properties Private Limited. CCSSPL has net fixed assets of ₹. 433 Lakhs and Total Net Worth of ₹. 423 Lakhs as on 31.03.2019. Alfa Buildhome Private Limited (ABPL) is a company limited by shares and incorporated on 05.10.2005. ABPL has net fixed assets of ₹. 784 Lakhs and Total Net Worth of ₹. 1,231 Lakhs as on 31.03.2019.

b. **TERM OF RESOLUTION PLAN:**

The term of Resolution Plan shall be commencing on the date of approval of plan by this Bench and shall continue until the Closing Date. Effective date means the date of receipt of certified copy of the order of this bench. Closing date means the date by which all dues as proposed in this Resolution Plan are

paid to the creditors including Financial Creditors and Operational Creditors and shall not be later than 45 days from the effective date.

c. FINANCIAL TERMS:

The total consideration under the plan is ₹. 1,81,62,000/-. Details are as follows:

Sr. No	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan
1.	CIRP Cost (Note 1)				26,14,406/-
2	Secured Financial Creditors	(a) Creditors not having right to vote under sub-section (2) of Section 21	-	-	-
		(b) Other than (a) above:			
		(i) Who did not vote in favour of the Resolution Plan	-	-	-
		(ii) Who voted in favour of the Resolution Plan	308,06,89,119/-	308,06,89,119/-	71,50,604/-
		Total (a) + (b)	308,06,89,119/-	308,06,89,119/-	71,50,604/-
3	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub Section (2) of Section 21	-	-	-
		(b) Other than (a) above:			
		(i) Who did not voted in favour of the Resolution Plan	-	-	-
		(ii) Who voted in favour of the Resolution Plan	-	-	-
		Total (a) + (b)			
4	Operational Creditors (Note 2)	(a) Related Party of Corporate Debtor	-	-	-
		(b) Other than (a) above:			
		(i) Sales Tax	2,34,98,999/-	2,34,98,999/-	2,34,990/-
		Total (a) +(b)	2,34,98,999/-	2,34,98,999/-	2,34,990/-
5	Other debts and dues		-	-	-
6.	Capex Infusion				81,62,000/-
Grand Total					1,81,62,000/-

Note 1: Full amount of ₹. 26.14 Lakhs to be paid in priority to any other creditors and from the fund infused in the 1st tranche.

Note 2: The SRA proposes to pay a lump sum amount of ₹. 2.35 Lakhs **against all its past operational dues** in priority over the Financial Creditors from the fund infused in the 1st tranche.

d. PAYMENT TERMS OF RESOLUTION PLAN:

Particulars	Amount (INR in Lacs)
Financial Outlay	
Total Consideration towards settlement of Resolution Debt + CIRP Cost:	
- Upfront (i.e. within 10 days of Effective Date).	10
- Within 45 days of Effective Date. Payment shall be made simultaneously with satisfactory receipt of all security documents i.e. title deeds and other land documents by the SRA and release of all encumbrances, liens, charges and attachments over the property of the Corporate Debtor. Upon the receipt of full payment provided in this Resolution Plan, the Financial Creditors shall issue certificate of “Discharge and No Dues” to the Corporate Debtor. The Financial Creditors shall also release the Corporate Debtor from all corporate guarantees given by it towards their debts whether invoked, claimed or not. (together the 1 st Tranche)	90
Fresh Infusion towards CAPEX for Setting up new plant – 2 nd Tranche (within a period of 12 months from the Effective Date)	81.62
Total	181.62

e. MEANS OF FUNDS:

SRA is going to infuse the whole amount of ₹. 1,81,62,000/- from its own resources. The SRA *vide* Affidavit dated 07.06.2021 has enclosed a comfort letter dated 09.12.2019 from Bekertilly Bank, stating that the amount required will be provided by the said Bank.

f. PERFORMANCE SECURITY:

SRA has provided a Bank Guarantee dated 25.02.2020 of ₹. 25 Lakhs with State Bank of India, Netaji Subhas Road Branch, towards performance security as per

Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the Regulations).

g. **MANAGEMENT OF THE CORPORATE DEBTOR:**

The management of the Corporate Debtor will be by the persons appointed by the SRA. Subsequently, with effect from the Effective Date, the Corporate Debtor shall be managed by a Reconstituted management / Board of Directors. The SRA will appoint such number of directors on the board of the Corporate Debtor, including independent directors, as may be necessitated.

h. **SUPERVISION OF THE RESOLUTION PLAN:**

A Monitoring Committee shall be constituted for supervision of the Resolution Plan comprising of one representative of the SRA, one representative of the CoC and the Resolution Professional, which shall monitor the implementation of the Plan after the effective date and until closing date. The Monitoring Committee shall have the following responsibilities:

- i. Monitoring the implementation of the Resolution Plan, during the Term of the Plan;
- ii. Ensure that all assets of the Corporate Debtor remain vested in the Corporate Debtor, on as is where is basis, free from all Encumbrances and/or without any encroachments (including but not limited to occupancy of possession by the erstwhile director/s or promoter/s or their men/agents/servants) upon implementation of the Plan;
- iii. Issue a certificate that the Resolution Plan has been duly implemented and the payments contemplated in this Resolution Plan have been duly completed.

i. **GOING CONCERN:**

The Corporate Debtor shall operate as a going concern in its normal course of the business upon implementation of Resolution Plan. With effect from the

effective date upto the closing date, the management of affairs of the Corporate Debtor would be done through the Monitoring Committee.

j. COMPLIANCE OF MANDATORY CONTENTS OF RESOLUTION PLAN UNDER THE CODE AND THE REGULATIONS:

It is submitted that the Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 and 39 of the Regulation and has submitted his Form H under Regulation 39(4). It is submitted that the Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not hit by the provisions of Section 29A of the Code. Accordingly, the Resolution Applicant has submitted an undertaking confirming its eligibility to submit a Resolution Plan u/s 29A of the Code.

5. The Applicant submits that the Resolution Plan meets the requirement of Section 30(2) of the Code in the following manner:

- A. Plan provides for the payment of CIRP cost in full and in priority from the fund to be infused by the SRA [Section 30(2)(a)].
- B. Proposes to pay the Operational Creditors of the Corporate Debtor in priority over the Financial Creditor. [Section 30(2)(b)].
- C. The Management of the affairs of the Corporate Debtor after approval of the Resolution Plan would be with the Resolution Applicant [Section 30(2)(c)].
- D. The Plan also provides for implementation and supervision of the Resolution Plan as stated above [Section 30(2)(d)].
- E. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force [Section 30(2)(e)].

6. The Resolution Plan is in compliance of Regulation 38 of the Regulations in terms of Section 30(2)(f) of the Code as under:

- a) Payment to Operational Creditor under the Resolution plan shall be given priority in payment over financial creditors (Regulation 38(1)(a) of the Regulations).
 - b) Since the plan has been approved by 100% voting share of the CoC, provision of dissenting financial creditors does not arise. This is in compliance of Regulation 38(1)(b) of the Regulations.
 - c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A) of the Regulations).
 - d) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of its related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38(1B) of the Regulations).
 - e) The Plan also provides for term and implementation schedule, management and control of the Corporate Debtor and adequate means for supervising its implementation (Regulation 38(2) of the Regulations).
 - f) The Resolution Plan also addresses the cause of default, feasibility and viability, as required under Regulation 38(3) of the Regulations.
7. The SRA has sought certain reliefs, concessions and waivers at section VII of the Resolution Plan.
8. It is beneficial to refer to the observation of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta &Ors.:(2019) SCC OnLine SC 1478* as under:

“67.

A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would

throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.”

9. In view of the above ruling of the Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. As already indicated the Resolution Plan has been approved by the CoC with 100% votes.
10. In *K.Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150* the Hon’ble Apex Court held that if the CoC had approved the Resolution Plan with 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.
11. In **CoC of Essar Steel** (*supra*) 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).”*

12. In view of the discussions and the law thus settled, we are satisfied that the Resolution Plan as approved by the CoC under Section 30(4) of the Code meets the requirements of Section 30(2) of the Code and Regulations 37 and 38 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 as provided under Section 31 of the Code. Hence ordered.

ORDER

The Application be and the same is allowed. The Resolution Plan submitted by M/s Constantia Corporate Shared Services Private Limited and Alfa Buildhome Private Limited annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

- a. 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 arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- b. As far as the permits held by the Corporate Debtor and the rights and benefits accrued therein, the Corporate Debtor (under the new Management) needs to approach the authorities concerned for renewal and that the same may have to be considered by them favourably,

subject to relevant Law and Rules, so that the implementation of Plan becomes smooth.

- c. With regard to the reliefs and concessions sought by the Resolution Applicant in respect of the Corporate Debtor, the Monitoring Committee or the new Management, as the case maybe may approach the respective authorities and departments for such reliefs. The authorities concerned may favourably consider such applications as deemed proper under law, keeping in view the object of resolution of the Corporate Debtor as envisaged in the Code and various pronouncements of the Hon'ble Apex Court.
- d. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- e. Henceforth, no erstwhile creditors of the Corporate Debtor can claim anything other than the liabilities taken over by the Resolution Applicant.
- f. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- g. The Applicant shall supervise the implementation of the Resolution Plan and shall file Status Report of its implementation before this Authority from time to time, preferably every quarter.
- h. 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.

- i. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant for necessary compliance. The certified copy so granted shall include the Resolution Plan approved herein.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Janab Mohammed Ajmal
Member (Judicial)