

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

**M.A. No. 3479 of 2019
IN
C.P. No. 1570 of 2017**

In the matter of an Application under
Section 30 and Section 31 of the
Insolvency and Bankruptcy Code,
2016

In the matter of

**Fairmacs Shipping & Transport
Services Private Limited**

... Operational Creditor

v/s

**Trimurti Corns Agro Foods Private
Limited**

... Corporate Debtor

M.A. No. 3479/2019

Mr. Harshad S Deshpande

Resolution Professional of

Corporate Debtor

**Trimurti Corns Agro Foods Private
Limited**

...Applicant/Resolution Professional

Reserved for orders on: **01.02.2023**

Order pronounced on: **24.03.2023**

Coram:

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

Hon'ble Smt. Madhu Sinha, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Akshay Petkar a/w Mr. Omkar Deosthale and
Mr. Parnav Shah, Counsel for Resolution
Professional

For the Operational Creditor: Mr. Sunilkumar V.N. i/b Mulla &
Mulla & Craigie Blunt & Caroe

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

1. This is an Application filed under Section 30 and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant CMA Harshad S Deshpande, which was approved by 100% voting share of the members of the Committee of Creditors (hereinafter referred to as 'COC').
2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') of the Corporate Debtor was initiated by this Bench by an order dated 20.11.2018 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Sandeep Dar was appointed as the Interim Resolution Professional (hereinafter referred to as 'IRP').
 - b. Subsequently in the 1st CoC meeting dated 02.01.2019, Mr. Harshad S Deshpande (hereinafter referred to as 'the Applicant') was appointed as Resolution Professional of the Corporate Debtor replacing the IRP vide Order dated 23.01.2019 passed by this Tribunal.
 - c. Mr. Vivek Jagtap and Mr. Hemant Ambaselkar, Registered Valuers, has provided the Valuation Report providing the value of the assets of the Corporate Debtor, wherein the Fair Value and the Liquidation Value of the Corporate Debtor was reported as follows:

Sr. No.	Class of Assets	Name of Valuer	Fair Value (Rs.)	Average Fair Value of a Class of Assets (Rs.)	Liquidation Value (Rs.)	Average Liquidation Value of a Class of Assets (Rs.)
1	Land	Mr. Vivek Jagtap	Nil	Nil	Nil	Nil
2	Building (factory & non-factory including site Development)	Mr. Vivek Jagtap	Unit 1: 74.37 Lakh Unit 2: 105.14 Lakh		Unit 1: 55.77 Lakh Unit 2: 78.85 Lakh	
3	Plant & Machinery of Perne Phata Unit and Burkega Unit	Mr. Hemant Ambaselkar	Rs. 431.73 Lakh		Rs. 136.19 Lakh	
		Total Fair Value	Rs. 431.73 lakh	Total Liquidation Value	Rs. 270.81 Lakh	

d. The Applicant on 22.04.2019 published the Form G in 'Financial Express' and 'Loksatta' inviting Expression of Interests (hereinafter

referred to as 'EoI') from the public towards the Resolution Plan for the Corporate Debtor.

- e. This Tribunal was pleased to pass the order granting extension of the period of CIRP by 90 days vide order dated 28.05.2019 in M.A. 1840 of 2019.
- f. On 23.08.2019, the Applicant in compliance of the resolution passed by the CoC, filed a MA 1570 of 2019 praying for the exclusion of the period 35 days for counting the period of CIRP. The said application is pending and has been heard on several occasions. The next date of hearing in the matter is 03.12.2019. The Applicant states that the Insolvency and Bankruptcy (Amendment), 2019. According to proviso to Section 12, the period of additional 90 days was allowed to the Corporate Debtor in respect of whom the CIRP is pending as on the date of the Notification dated 16.08.2019.
- g. The CoC in its 10th meeting held on 19.09.2019 considered the final Resolution Plan of Dr. Gopal Agarwal and approved the Plan with a voting share of 100%.
- h. Thereafter, the Applicant issued compliance certificate in Form "H".

3. The Salient Features of the Resolution Plan are as under:

- a. The Resolution Applicant is Dr. Gopal Agarwal is a M.B.B.S./M.D. from Pune and Post Doctorate from the USA, is resident of Pune and is having experience in Food Processing Industry/ Agri-Business and Agri- Infrastructure. He is a renowned cardiologist and has done his MBBS degree from the reputed BJ Medical College from Pune University. He has done his post doctorate in the USA and is practicing in the Ruby Hall Clinic, Pune

b. Trimurti Corns Agro Foods Private Limited (hereinafter referred to as 'Corporate Debtor'). The Corporate Debtor is a processor of Agro Foods, mainly Corn and Corn products headquartered in Pune. Established in 2004, the Corporate Debtor has its presence since the last 14 years and caters to both domestic and export markets.

c. Management of Corporate Debtor

- i. Upon approval of the Resolution Plan by the Adjudicating Authority, the control of the Corporate Debtor shall vest with the Board of Directors as per the Companies Act, 2013.
- ii. Upon approval of the Resolution Applicant Dr. Gopal Agarwal shall constitute the Board of the Corporate Debtor and appoint key managerial personnel, which may include independent professionals. ("NEW COMPANY MANAGEMENT").
- iii. The Board shall have the authority to act and execute in the name and on behalf of the Corporate Debtor all deeds, receipts and other documents, as may be required.
- iv. The Board shall have the authority to appoint appropriate professionals and employs in the Corporate Debtor, as it may deem fit, for the day to day operations of the business, and it shall have the power to delegate its authority to any such personnel.
- v. The Board shall have the authority to recognize the employees of the Corporate Debtor. Such organization shall include appointment, removal, promote or demote, change of functions, etc. for the personnel. The Corporate Debtor shall not be obligated to issue any compensation to any discontinued employees as a part of such reorganization. It

shall be able to carry out such process by issuance of simple notice to such employees without any notice period and without any salary in lieu of notice period.

d. **Implementation and Supervision of the Resolution Plan:**

- i. The Resolution Applicant shall be responsible for the proper implementation of the proposed Resolution Plan from the Approval date.
- ii. The approved Resolution Plan provides for an “Implementation and Monitoring Committee” comprising of 3 (three) persons of which 1 (one) will be a Resolution Professional as the supervisor, 1 (one) will be nominated by Dr. Gopal Agrawal, and 1(one) representative will be appointed by the Financial Creditors. The monitoring committee shall supervise the implementation and term of the approved Resolution Plan in the manner as prescribed in Resolution Plan.
- iii. The Supervisor shall be appointed for a period till the payment of all the liabilities mentioned in the Resolution plan and on the same terms & conditions agreed upon as Resolution Professional.
- iv. The terms of appointment of the members of Implementation and Monitoring Committee and details of the functioning of the Implementation and Monitoring Committee will be finalized mutually by the Resolution Applicant and Financial Creditors and when required.
- v. The proposed appointment and annual renewals of supervisor in the Implementation and Monitoring Committee shall be commercial and other terms as mutually acceptable to the Resolution Applicant and the Supervisor.

- vi. In case of the Supervisor appointment or renewal terms are not mutually acceptable, the Resolution Applicant shall be free to appoint any other Chartered Accountant or registered insolvency Professional as per the list of IBBI.
- vii. The Supervisor shall prepare quarterly report listing down the broad performance of the Corporate Debtors and adherence to the approved Resolution Plan. Such report shall be submitted to the Financial Creditors on quarterly basis.
- viii. No further approval shall be required from any of the creditors or stakeholders for executing or implementing any of the terms and conditions of the approved Resolution Plan on an ongoing basis.
- ix. In case the Resolution Applicants encounters any practical difficulty in implementation of the Resolution Plan, it may approach the Financial Creditors and seek for relaxation of the terms of the Resolution Plan which shall be approved with a simple majority by the Financial Creditors voting in favor of the proposed changes by the Resolution Applicants to address such difficulty.
- e. **Approval Date (A):** The Resolution Plan shall be considered to be effective from the Approval Date. The Approval Date is assumed to be the date of approval of the Resolution Plan by the Adjudicating Authority as per the IBC process.
- f. **Implementation Date:** The Resolution Plan shall be considered to be effective from the Implementation Date. The Implementation Date is assumed to be later of the date on which the NCLT gives its approval to the said Resolution Plan and Necessary Approvals are obtained by the Corporate Debtors ("Implementation Date"). In case the NCLT approval is delayed,

the timeline of obligations under the Resolution Plan will shift according by the same number of days. No separate approval shall be required from COC for such shift in timeline and the same shall not be considered as modification/restructuring of the term of the Resolution Plan.

- g. The Resolution Plan proposes the following pay out towards various claims and business requirement:

Sources of Funds	Rs. in Lacs		Rs. in Lacs
Funds		Resolution Plans	
RA Infusion (Equity/ Quasi Equity/ Debt)	400.00	Insolvency Process Cost	15.0
Noncore Assets Monetisation	-	PF, ESIC and Gratuity Dues	11.1
CD Business Accruals	2,060.0	Employees Dues	-
		Financial Creditors	1691.0
		Trade Payables	13.2
		Statutory Liabilities	-
		Other Dues	-
Total	2,460.0	Total	1730.0

- Rs. 1730.3 lacs to be paid for the full and final settlement of all liabilities of the Corporate Debtor.
- The Proposed Funds for upfront cash payment of Rs. 347.80 lacs shall be infused by the Resolution Applicant in the form of equity.
- The Upfront Cash Payment of Rs. 347.80 lacs shall be made within 90 days from the Approval Date in the following manner:

Particulars	Upfront Payment (in Lacs)
Insolvency Process Cost	15.00
PF, ESIC & Gratitude Dues	11.1
Employees Dues	-
Operational Creditors	13.2

Financial Creditors	308.50
Other Creditors	-
Statutory Dues	-
Working Capital Infusion	-
Total	347.80

h. The approved Resolution plan envisages a total payment of Rs. 17,30,30,000/-. The outlay of the amount envisaged therein is as under:

Sr. No.	Payment Particulars	Amount (in Rupees)
1.	CIRP Costs	Rs. 15,00,000/-
2.	Secured Financial Creditors	Rs. 16,91,00,000/-
3.	PF, ESIC and Gratuity Dues	Rs. 11,10,000/-
4.	Employees Dues	NIL
5.	Existing Shareholders	NIL
6.	Trade Payables	Rs. 13,20,000/-
	Total (A)	Rs. 17,30,30,000/-
7.	Working Capital Infusion	NIL
	Total (B)	NIL
	Grand Total (A) + (B)	17,30,30,000/-

i. The Resolution Plan proposes a total consideration of **Rs. 17,30,30,000/- (Rupees Seventeen Crores Thirty Lakhs Thirty Thousand only)**.

4. **Interest of All the Stakeholders the details of the proposed payments are as follows:**

A) Corporate Insolvency Resolution Process Costs

i. The proposed Resolution Plan has made a provision of Rs. 15 lacs, (Rupees Fifteen Lakhs only) in total, towards the CIRP Cost.

In case of the CIRP Cost exceeds the above threshold of Rs. 15 lacs, such additional payout shall be adjusted from the proposed Upfront Payment for the Financial Creditors in the year under the approval of the Resolution Plan.

- ii. The full amount of the CIRP Cost shall be payable at actuals by the Resolution Applicants immediately (within 90 days) upon approval of the Adjudicating Authority. Such payment shall be, made in priority to the payment of other liabilities of the Corporate Debtor, as proposed under the Resolution Plan.

B) Financial Creditors

- i. The Financial Creditors outstanding balance as on 20.11.2018, as mentioned by the Resolution Professional in the information memorandum dated 27.05.2019 are as given below:

Name of the Lender	Claimed Amount		Claim Admitted		Proposed Payment	
	(Rs. Lacs)	In	(Rs. Lacs)	In	(Rs. Lacs)	In
Bank of Maharashtra	2,118.6		2,094.9		1425	
Axis Bank	357.5		357.5		266.0	
Total	2476.1		2452.4		1691.0	

- ii. The above table is the full list of claims from the Financial Creditors to the extent that any Financial Creditor has not submitted any claim with the RP, it is clarified that upon the approval of the Resolution Plan by the Adjudicating Authority, no claim of such financial creditors shall lie with the corporate debtor.
- iii. The Financial Creditors are proposed to be paid an amount of Rs 1691.00 Lacs (Rupees One Thousand Six Hundred Ninety One Lacs only) as a full and final settlement of all the claims of

the Financial Creditors. Of the proposed amount Rs 308.50 Lacs shall be as an Upfront Payment, immediately after the Approval Date. The balance Rs. 1382.50 Lacs (Rupees One Thousand Three Hundred Eighty Two Lacs and Five Thousand only) ("Deferred Payment") shall be paid in three equal instalments from the Approval Date and before 31.03.2020, as per the table below:

Particulars (Rs. in Lacs)	Upfront Payment after Approval (Rs. in Lacs)	1st Instalment By Date 28/15/2019 (Rs. in Lacs)	2nd Instalment By Date 15/02/2020 (Rs. in Lacs)	3rd Instalment By Date 27/03/2020 (Rs. in Lacs)	Total (Rs. in Lacs)
Bank of Maharashtra Trimurti Principal	142.50	427.5	427.5	427.5	1425
Axis Bank Trimurti and DSNA Agro Foods Principal	166.00	50	50	50	266
Total	308.50	477.5	477.5	427.5	1691

- iv. If the proposed amount for the CIRP Cost exceeds Rs. 15 Lacs (Rupees Fifteen Lakhs) the amount paid Proposed for Upfront Payment to the Financial Creditors shall be adjusted. The Amount already paid upfront will be reduced and balance amount will be paid accordingly.
- v. The Corporate Debtor shall have the option to pre-pay or whole of the Deferred Payment amount to the financial Creditors. Such

Pre-payment shall be made at the NPV of the balance dues as per the payment structure, using a discounting rate of 12% p.a. The pre-payment can also be at any amount lower than that of the said NPV, as may be mutually acceptable to the Corporate Debtor and the respective Financial Creditor. Further, there shall not be any pre-payment penalty applicable. The Corporate Debtor shall have the option to pre-pay to any of the Financial Creditors as and when there is appropriate funding visibility.

- vi. The proposed payment amount to the Financial Creditors, as stated above, shall not carry any interest or any other changes.
- vii. To the extent that any financial Creditor has not submitted any claim with the RP or such claims not admitted by the RP till the Resolution Plan submission date, such Financial Creditor claims shall stand extinguished and no amount shall be payable by the RA against such claims.
- viii. Save and except the aforesaid sum of Rs 1691.00 Lacs (Rupees One Thousand Six Hundred Ninety One Lacs only) which is being paid in full and final settlement/payment of the entire claim of the Financial Creditors.

C) Proposal for Provident Fund, Employee State Insurance and Gratuity Dues

- i. The provident fund, employee state insurance and gratitude dues as per the assets and liabilities as on the insolvency date i.e., 20 November are as given below:

Particulars (Rs. in Lacs)	As on 20 November 2018 (Rs. in Lacs)	Amount Proposed to pay (Rs. in Lacs)
PF, ESIC & Gratuity	11.1	11.1
Total	11.1	11.1

- ii. The cash flows in the Resolution Plan are not sufficient to service all the Financial Creditors in full. Accordingly, the dues of provident fund, employee's state insurance and gratuity dues may not be eligible to receive any payment towards their claims. The claims available as on 20 November, in the interest of the workmen and employees and towards abundant caution, the Resolution Applicant has considered the provident fund, employee state insurance dues as provided in Material Litigations as on the Insolvency Commencement Date i.e. 20.11.2018 as provided in IM version 27.05.2019.
- iii. These provident fund, employee's state insurance and gratuity dues are proposed to be settled in full at Rs. 11.1 lacs. The dues shall be paid upfront within 90 (ninety) days from the Approval Date.
- iv. The proposed dues for Provident Fund, Employees State Insurance and Gratitude, as stated above, shall not carry any interest, penal, belated charges and shall charges from the above proposed payment.
- v. In case there are any changes in the amounts of admitted claims from "under review or non-submission" or "non-claimed" or "additions" or charge in Provident Fund, Employees State Insurance and Gratuity Dues as on 20.11.2018, such incremental admitted claims would not attract additional payment under the Resolution Plan. Instead, the proposed pay-out of Rs 11.1 lacs towards provident fund, employee's state insurance and gratuity due shall be verified by the supervisor of the Resolution Plan.
- vi. The dues shall be paid after verification and admission of such dues. In case of the verification of dues during the

period of CIRP Process, it shall be verified by the RP. In case of verification of dues after the completion of CIRP process, the same shall be verified by the Supervisor of the Resolution Plan.

- vii. This Resolution Plan assumes no additional liability has accrued dues towards provident fund, employees state insurance and gratuity between the Insolvency commencement Date and the Completion Date, and such liabilities (if any) stand settled by the Resolution Professional and claimed as Insolvency Cost. If any amount is payable on this account, then the payments made to the creditors shall be accordingly reduced.

D) Proposal for Operational Creditors other than Provident Fund, Employee State Insurance Gratuity, Employees and Statutory Dues.

- i. The claim on Operational Creditors as per the assets and liabilities as on the insolvency date i.e., 20.11.2018 are as given below:

Particulars (Rs in Lacs)	Amount Claimed	Amount Admitted	Amount Proposed to Pay
Trade Payable	26.4 (Rs in Lacs)	26.4 (Rs in Lacs)	13.2 (Rs in Lacs)

- ii. The proposed payment to the Operational Creditors, as stated above, shall not carry any interest, penal charges, warranty charges, break down charges, charges for breach of contract etc. herein under defined as “Net Claim Amount”. Thus, Net Claim amount is the claim admitted by the Resolution Professional less if any interest, penal charges, detention charges, breakdown charges, charges for breach of contract etc. charged by the Operational Creditors.

- iii. The Resolution plan proposed to pay a maximum amount of Rs 13.2 lacs (being 50% of the admitted claim amount) towards the operational Creditors. This amount shall be Payable on pro-rata basis against the total claims admitted. Hence the admitted claims of Operational Creditors shall be paid 50% of such admitted Net Claim Amount or pro rata payable of Rs 13.2 lacs whichever is lower.
- iv. The Operational Creditors, whose claims have been verified and admitted, shall be paid within 90 (ninety) days from the approval date or Adjudicating Authority.
- v. In case there any changes in the amount of admitted claims from “under review” or “non-submission” or “non-claimed” or “additions” or change in Operational Creditors (Trade payable & Advance from Customer) as on 20.11.2018, leading to increase in Operational Creditor claim beyond Rs 26.4 lacs, such incremental pay-out of Rs 13.2 lacs towards Operational Creditors shall get paid proportionately.
- vi. On the approval of the Resolution Plan, any cheques or demand promissory notes or post-dated cheques or letter of credit or legal proceedings or Corporate guarantees or under any law or other such instruments/securities furnished by the Corporate Debtor or any of its Promoters or Guarantor’s or Key Manage Management Personnel to any vendor or operational creditors to secure the payment obligations of the Corporate Debtor in relation to any transaction with an operational creditors shall be returned to the Corporate Debtor and in any event all obligations thereunder shall be denied to have been duly extinguished. The payment obligations of the Corporate Debtor to such operation creditors (s) shall be limited to the amount set out in this Resolution Plan.

- vii. Despite negligible recovery potential for such creditors under the liquidation scenario, however considering the importance of the Operational Creditors for the business and in an effort to balance the interest of all stakeholders, the Resolution Plan has attempted making partial payment of such liabilities, as specified above.

E) Proposal for Other Dues

- i. The other dues as per the financials as on 20 November 2018 are as given below:

Particulars (In Lacs)	As on 20 Nov 2018 (Rs. in Lacs)	Amount Proposed to Pay (Rs. in Lacs)
Other Liabilities	-	-
Other Dues	-	-
Short Term Provisions	141.8	-

Note: PF of Rs 11.1 Lacs has been assumed separately and provided for total short term provision including PF of Rs 153.00 Lacs.

- ii. The cash flow in the Resolution Plan are not sufficient to services all the Financial Creditors. Operational Creditors and Statutory Liabilities in full. Accordingly, the other Liabilities might not be receiving any payment towards their claims.
- iii. In case there any changes in the amount of admitted claims from “under review” or “non- submission” or “non-claimed” or “additions” or change in Other Liabilities as on 20.11.2018, Leading to increase in other liabilities claim beyond Rs 142 lacs, such incremental admitted claims would not attract additional payment under the Resolution Plan.
- iv. The proposed payment amount to the other liabilities, as stated above, shall not carry any interest, penal charges, delay charges.
- v. On the approval of the Resolution Plan, any cheques or demand promissory notes or post-dated cheques or letter of credit or legal proceedings or Corporate guarantees or under any law or

other such instruments/securities furnished by the Corporate Debtor or any of its Promoters or Guarantor's or Key Management Personnel to any vendor or operational creditors to secure the payment obligations of the Corporate Debtor in relation to any transaction with an operational creditors shall be returned to the Corporate Debtor, and, in any event all obligations thereunder shall be denied to have been duly extinguished. The payment obligations of the Corporate Debtor to such operation creditors (s) shall be limited to the amount set out in this Resolution Plan, as given above.

- vi. If does not include any claims with respect to damages, torts or alleged infringements/breaches, and does not include interest claims or claims to legal costs. All claims of such nature shall be treated as written off on the approval of the Resolution Plan.

F) Proposal for Equity Shareholders

As the Shareholders are the first one to take any write off, existing Equity Shares issued by the Company shall be written off to tune of 100% equity share held by erstwhile promoters shall be written off. New Equity Shares shall be issued to Resolution Applicant. The Revised Equity Shareholding post the Resolution Plan approval and fund infusion shall be as per the table below:

Name of Shareholders	No. of Shares	Amount (in Lacs)	Percentage of Share
Resolution Applicant			
Dr. Gopal Agarwal	47,85,150.87	478.50	79.00 %
Mr. Santosh Shinde	12,72,002.13	127.20	21.00 %
Total	60,57,153	605.70	100%

G) Resolution of Disputed Legal Cases/ Litigations and Contingent Liabilities

- i. The Contingent Liabilities as per Financials as on 20.11.2018 are as given below:

Sr. No.	Proceedings in the Matter of	Related Law/ Regulations	Amount (Rs. in Lacs)	Period
1.	Tax Deducted at Source	Income Tax Act	Rs. 8.9	March – 2017
2.	Tax Deducted at Source (Rent)	Income Tax Act	Rs. 0.9	March – 2017
3.	Tax Deducted at Source (Contractor)	Income Tax Act	Rs. 3.5	March 2017 – August 2017
4.	Value Added Tax	Income Tax Act	Rs. 5.6	March 2017
5.	Central Sales Tax	Income Tax Act	Rs. 9.1	March 2017
6.	Professional Tax Payable	Income Tax Act	Rs. 5.7	May 2017 to October 2017
	Total		Rs. 33.7	

- ii. The Disputed Legal cases and contingent liabilities against the Corporate Debtor as on 20.11.2018 are as given above.
- iii. For the purpose of the Resolution plan, the liability arising out of the said cases, if any, is being considered as deemed crystallized as on the approval date. Hence, the Resolution Applicant is not disputing the above liabilities any further and instead considering them as deemed crystallized and admitted. Simultaneously, the Resolution Applicants is proposing to pay NIL value against all the contingent liabilities and legal cases pending against the Corporate Debtor, including the ones listed above.
- iv. Further any Liability crystallizing out of the contingent liabilities or disputed legal cases or pending appeals of the Corporate Debtor or any other unknown or unclaimed liability pertaining to the transaction or incident dating to a period prior to the

Insolvency Commencement Date or during the CIRP which does not find a place in the approval the Resolution Plan, shall be deemed to have lapsed on the approval of the plan and the Corporate Debtor shall be deemed to have been duly discharged from all legal liability arising from such antecedent claims.

- v. All litigation initiated and pending adjudication, before any judicial or quasi-judicial authority (both central and state) against the Corporate Debtor, its erstwhile or new promoters, erstwhile guarantors, directors and employees of the Corporate Debtor, related to the matters that are addressed as per this Resolution Plan shall be withdrawn by the creditors of the Corporate Debtor upon Approval of this Resolution Plan by the Adjudicating Authority. All such creditors shall be deemed to have executed appropriate documents and take appropriate steps to give effects to the above.

5. Review of Interest of all Stakeholder:

- i. The Resolution Applicant has made an attempt to review and as possible, provide for addressing the claims of all the stakeholders of the Corporate Debtor.
- ii. In the effort to address the claims of all the stakeholders, the Resolution Applicant has attempted to balance the serviceability of the claims and outstanding liability, as per assets and liabilities as on 20.11.2018 and claim list as per information memorandum dated 27.05.2019, with the viability of such servicing based on potential cash flow from the business.
- iii. Accordingly, the following amounts and rationale is provided as per the table below for each of the stakeholder.

Sr. No.	Stakeholders	Claim Amount (Rs. in Lacs)	Payment Proposed (Rs. in Lacs)	Rationale
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1.	Outstanding CIRP Cost	-	Rs. 15.0 Lacs	The Resolution Applicant shall pay a sum of Rs. 15,00,000/- or at actuals towards the entire outstanding CIRP Cost. Since the entire CIRP Cost is being paid by the Financial Creditors during the CIRP period, the same proposal is for the repayment to all the contributions by the Financial Creditors in their proportion to their respective contribution towards the CIRP Costs incurred.
2.	Payment to the Other Operational Creditors towards discharge of their Operational Debt in full and final settlement thereof. This amount shall	Rs. 26.4 Lacs	Rs. 13.2 Lacs	Higher of the following: a. Successful Resolution Applicant proposes a settlement of Rs. 13,20,000/- towards claims of Operational Creditors. b. The amount to be paid to such creditors in the event of a liquidation of the Corporate Debtor under Section 53 of the Code; or

	be distributed among other Operational Creditors in proportion to their admitted claims.			c. The amount that would have been paid to such creditors, if the amount to be distributed under this Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53 of the Code.
2.	Payment towards Financial Creditors	Rs. 2476.10 Lacs	Rs. 1536 Lacs	The Financial Creditors are proposed to be paid 66.50% of the admitted claims amounting to Rs 1536 Lakhs over the Resolution period based on cash flow visibility from business.
3.	Provident Fund, Employee State Insurance and Gratuity Dues	Rs. 11.1 Lacs	Rs. 11.1 Lacs	100% of the known claims have been proposed to be paid considering the nature and importance of the employees and workmen for the revival of the organization.
4.	Employee Dues	-	-	NIL amount has been proposed to be paid as there hasn't been any claims received. The assets and liabilities

				statement dated 20.11.2018 also do not reflect any outstanding employee dues.
5.	Operational Creditors (Trade Payables)	Rs. 26.4 Lacs	Rs. 13.2 Lacs	Operational Creditors being unsecured and unlikely to receive any recovery under liquidation scenario have also been proposed to be paid 50% of the admitted claims given their importance and contribution towards business: operations.
6.	Statutory Liabilities	-	-	NIL amount has been proposed to be paid as there hasn't been any claims received. The assets and liabilities statement dated 20.11.2018 also do not reflect any outstanding dues.
7.	Other Dues	Rs. 1.42 Lacs	NIL	Other Liabilities have been proposed to pay NIL, given the insufficient cash visibility for all stakeholders.

8.	Contingent and Disputed Liabilities	Rs. 0.34 Lacs	NIL	Contingent and disputed liabilities, undisputed legal cases, have been assumed as deemed admitted and proposed to be paid NIL value.
9.	Equity Shareholders	Rs. 6.06 Lacs	Capital Reduction	Equity shareholders being the highest class of risk takers and last one to recover money in business are proposed to bear capital reduction of 51 % of their existing.
10.	Payment towards Secured Financial Creditors (excluding the Dissenting Financial Creditors)			The balance of the Upfront Cash from total payment of Rs. 3,47,80,000/- (i.e., after payment of amounts as contemplated above shall be payable by the Resolution Applicant/ Nominees.
Total Upfront Cash				Rs. 3,47,80,000/-

6. In addition to the Upfront Cash, the Deferred Cash of Rs. 13,82,50,000/- shall be utilized towards the balance payments to the Financial Secured Creditors, payable in Four Instalments.:

Particulars (Rs. in Lacs)	Upfront Payment	1 st Instalment	2 nd Instalment	3 rd Instalment	Total
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	after Approval (Rs. in Lacs)	By Date 28/15/2019 (Rs. in Lacs)	By Date 15/02/2020 (Rs. in Lacs)	By Date 27/03/2020 (Rs. in Lacs)	(Rs. in Lacs)
Bank of Maharashtra Trimurti Principal	142.50	427.5	427.5	427.5	1425
Axis Bank Trimurti and DSNA Agro Foods Principal	166.00	50	50	50	266
Total	308.50	477.5	477.5	427.5	1691

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

8. Implementation Provisions:

- i. The issue and allotment of the New Equity Shares by the Corporate Debtor is being effected as an integral part of and in accordance with the Plan and shall be deemed to have been carried out without any further deed or action required by the Corporate Debtor or any other person as if the procedures laid down under Section 42, Section 62 (1)(c) and other provisions of the 2013 Act and related rules and other Applicable Laws Including the SEBI (Listing Obligations and Disclosures) Regulations, 2015 are duly complied with.
- ii. In terms of the circular (ref IBC/01/2017) dated 25 October 2017 issued by the Ministry of Corporate Affairs, read with

explanation to section 31(e) of the Code inserted by Act No.26 of 2018, sec.23 (ii) (B) (w.e.f. 6-6-2018), approval of the shareholders of the Corporate Debtor to the transactions contemplated under the Plan including the offer and Issuance of the New Equity Shares shall be deemed to have been given on the approval of the Plan by the NCLT.

- iii. It is clarified that the approval of the NCLT and the Committee of Creditors shall constitute adequate approval for Issuance of new shares in accordance with the Section 42 and Section 62 (1) (c) of 2013 Act and other applicable Law and accordingly, no approval/ consent shall be necessary from any other Person in relation to either of these actions under any agreement, the constitution documents of the Corporate Debtor or under any Applicable Law.
- iv. For the purpose of providing information to the Registrar of companies in respect of the offer and issuance of new Equity Shares:
 - a. The Corporate Debtor shall, if applicable, cause the Corporate Debtor to, file the copy of the record of the private placement offers in Form PAS-5 along with the private placement offer letter in Form PAS-4 with the registrar of companies within the time prescribed under Applicable Law.
 - b. After the issue and allotment of the New Equity Shares in terms thereof, within the time period prescribed under Applicable Law, the Corporate Debtor shall, if applicable, file the return of allotment in Form PAS-3 with the registrar of companies.

9. OBSERVATIONS AND FINDINGS:

- i. As per IBC Code 30(2)(a) – The Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. As per Section 30(2)(b), the Resolution Applicant has agreed to pay operational creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor. The Resolution Applicant has proposed to pay liquidation value to unsecured financial creditors who dissent from the plan.
- iv. As per Section 30 (2)(c), provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan.
- v. Under Section 30 (2) (d) & Regulation 38(2)(c) provides for a term of the plan, implementation schedule and supervision of the Resolution Plan.
- vi. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- vii. As per Section 30(2), the Resolution Plan does not contravene any of the provisions of the law for the time being in force.

- viii. As per Section 30(2)(f) 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.
- ix. As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- x. The resolution applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- xi. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a. As per Regulation 38(1)(a) - The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.
 - b. As per Regulation 38 (1)(b) - The amount payable under a resolution plan to the Financial Creditors, who have right to vote under sub-section (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
 - c. As per Regulation 38(1A) - The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code.
 - d. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the

Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1B) of the Regulations.

- e. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - f. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company.
 - g. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - h. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
 - i. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
 - j. Provides for the management and control of the business of the Corporate Debtor during its term.
 - k. All the above factors demonstrate that the plan addresses the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
10. The Resolution Plan has been approved in the 10th COC meeting held on 19.09.2019 with 100% voting in accordance with the provisions of the Code.

11. In **K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150**) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

12. The Hon'ble Apex Court at para 42 in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online**, clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

"Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate

*Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

13. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.
14. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- i. The Miscellaneous Application No. 3479 of 2019 is allowed. The Resolution Plan submitted by **Dr. Gopal Agrawal**, is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.

- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of which are extracted herein below:

“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

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

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

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. 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.

- vii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- viii. The Miscellaneous Application No. 3479 of 2019 is accordingly **allowed** and **disposed of**.

Sd/-

MADHU SINHA
MEMBER (TECHNICAL)

Sd/-

H. V. SUBBA RAO
MEMBER (JUDICIAL)