



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

IA-37/2024

In

CP(IB) - 639/PB/2018

IN THE MATTER OF:

National Asset Reconstruction Company Limited & Ors.

... Financial Creditor

VERSUS

Metenere Limited

... Corporate Debtor

AND

IN THE MATTER OF IA 37/2024:

Mr. Surendera Raj Gang,

Resolution Professional of Metenere Limited

... Applicant

Order Pronounced on: 04.10.2024

CORAM:

CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SHRI AVINASH K SRIVASTAVA

HON'BLE MEMBER (TECHNICAL)



Present:

- For the Applicant / RP : Sr. Adv. Sunil Fernandes, Adv. Vaijayant Paliwal, Adv. Akash Dikshit, Adv. Diksha Dadu
- For the SRA : Mr. Rahul Gupta, Adv.
- For NARCL : Mr. Niranjan Reddy, Sr. Adv. with Mr. Ankur Mittal, Ms. Yashika Sharma, Ms. Preety Choudhary & Mr. Saaketh Kasibhatlia, Advs.

ORDER

1. Preliminary

- 1.1. The present interlocutory application bearing **IA No.37 (PB) 2024** is moved on behalf of Mr. Surender Raj Gang, Resolution Professional ("**RP**" / "**Applicant**") of Metenere Limited (CIN: U27107DL1997PLC084906), under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as "**the Code**" or "**IBC**"] read with regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") for approval of the Resolution Plan in respect of Metenere Limited ("**Corporate Debtor**") and seeking following reliefs:

a. Pass an order approving the CoC Approved Resolution Plan (enclosed as Resolution Plan dated 08 July 2024 together with Executed LoI (attached as Annexure A-22(Colly.)) submitted by Orissa Metaliks Private Limited in respect of the Corporate Debtor under Section 31 (1) and declare that the same shall be binding on the Corporate Debtor and its employees, members, all creditors



(whether admitted or not including contingent or otherwise), guarantors and other stakeholders in the CIR Process of the Corporate Debtor;

b. Pass such other order/orders as it may deem fit and proper in the facts and circumstances of the case.

- 1.2. The underlying Company Petition CP (IB) No.639(PB)2018 filed by Financial Creditor, State Bank of India under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor (“**CD**”) was admitted by this Adjudicating Authority. The Admission order was pronounced on 25.09.2020 and delivered on 03.10.2020. Thereafter, vide order dated 15.10.2020, Mr. Surender Raj Gang (IBBI Registration No. IBBI/IPA-001/IP-P01066/2017-2018/1773 was appointed as IRP who was later confirmed as RP.
- 1.3. Corporate Debtor i.e. Metenere Limited is a public company engaged in manufacturing of non-ferrous products viz. Aluminium Flat Rolled Products (FRP) through recycling route. The CD has six manufacturing facilities at different locations.
Majority of fixed assets of CD are located at:
- a. Dantal (Himachal Pradesh) (Currently Operational)
 - b. Gandhidham (Gujarat) (Partly Operational)
 - c. Dadri (Noida UP) (Non-Operational)
- 1.4. As a part of CIRP, a resolution plan by one Jubilee Metal Private Limited (“**Jubilee**”) dated 09.06.2021 alongwith addendum dated 18.06.2021 duly approved by a majority vote of 92.45% of the CoC was submitted before this Adjudicating Authority for approval in the form of IA No. 4041 of 2021. Thereafter, due to change in the constitutional pattern of Jubilee, during the pendency of the adjudication of plan approval application the applicant moved an



application bearing IA No. 985/2023 seeking withdrawal of the plan approval application. This Adjudicating Authority vide order dated 21.11.2023 allowed the Applicant/RP to withdraw the plan approval application and allowed the RP to invite fresh resolution plans for the CD.

- 1.5. Further as prayed by applicant, this Adjudicating Authority also granted exclusion of time period from 05.02.2021 (the date on which first Form G inviting EOI and Resolution Plan was issued till 21.11.2023 i.e. the date of passing of order in IA-985/2023). Order dated 21.11.2023 was reaffirmed by Hon'ble NCLAT and Hon'ble Supreme Court vide their orders dated 22.12.2023 and 15.05.2024 respectively.
- 1.6. Thereafter, application was moved for amending the cause title of matter from **State Bank of India v. Metenere Limited to NARCL & Ors. v. Metenere Limited**. The said application IA No. 3301/2024 was allowed by this Adjudicating Authority on 01.07.2024 on account of the Assignment Agreement in which the Assignors assigned the entire outstanding debt owed to it by the CD in favour of NARCL.

2. Public Announcement by RP and conducting of CoC meetings

- 2.1. The Applicant/RP has submitted that the public announcement in FORM-A was published on 16.12.2020 in Financial Express (English), Navshakti (Marathi) and Business Standard Newspaper (English and Hindi) and in terms of Regulation 6 (2) (c) of CIRP Regulations, the last date for submission of proof of claim was specified as 29.12.2020.
- 2.2. The RP submits that a total of 35 (Thirty-Five) CoC meetings have been held during CIRP period:



3. **Valuation of Corporate Debtor**

As Per Form-H annexed with the application as **Annexure A-20**, the liquidation value of the CD is **Rs. 261,19,32,889/-** (Rupees Two Hundred Sixty-One Crores Nineteen Lakhs Thirty-Two Thousand and Eight Hundred and Eighty-Nine) and fair value of the CD is **Rs. 422,26,18,049/-** (Rupees Four Hundred Twenty-Two Crores Twenty-Six Lakhs Eighteen Thousand and Forty-Nine only).

4. **Evaluation and voting**

4.1. The Applicant / RP submits that in line with the directions given by this Adjudicating Authority vide order dated 21.11.2023, the RP issued a fresh Form-G dated 02 December 2023, inviting expression of interest ("**EoIs**") with respect to the submission of a resolution plan for the CD. Subsequent to this, the RP received EoIs from 19 prospective resolution applicants (PRAs) which was informed to the CoC in the meeting dated 26 December 2023.

4.2. Basis the total of 19 EoIs received, the RP prepared a provisional list of 12 eligible PRAs which cleared the eligibility criteria. Additionally, the CoC was further informed that EoIs had also been received from the following 7 PRAs:

- a. Teneron Limited
- b. Hampton Sky Realty Limited
- c. Findoc Finvest Private Limited
- d. Consortium of Arcade Casters and Nand Kishore Agarwal
- e. Consortium of HR Commercials Private Limited
- f. Sunrise Industries and Crown Steels
- g. Consortium of Real Value Infotech Projects Private Limited
- h. Taranjot Resources Private Limited

However, of these 7 PRAs, Hampton, Teneron and Findoc were



excluded from the provisional list of eligible PRAs on account of being found to be potentially connected parties under Section 29A of the Code and the other 4 were also found ineligible.

4.3. It is submitted that Hampton Sky Realty Limited and Findoc Finvest Private Limited also submitted their EOIs on 22.12.2023. Basis a review of the details provided by Hampton and Findoc in their respective Eols alongwith other information available on various public forums, the RP in order to undertake an adequate and proper assessment of the eligibility of the said entities under Section 29A of the Code to submit a resolution plan for the CD, sought certain further details from Hampton and Findoc. Thereafter, after noting the response received from Hampton and Findoc and basis an analysis of the documents available publicly, the RP formed a prima facie view that the said entities were ineligible under Section 29A of the Code and intimated to them such prima facie view of the RP by way of the email dated 10.01.2024.

4.4. Thereafter, both Hampton and Findoc were not included in the final list of PRAs. The final list of PRAs in accordance with Regulation 36A of the CIRP Regulations was thereafter issued on 14.01.2024, which comprised of the following entities: (a) Asset Reconstruction Company (India) Ltd; (b) Blue Rays Solar Private Limited; (c) Capri Global Holdings Private Limited; (d) Gravita India Limited; (e) MS Agarwal Foundries Private Limited; (f) Orissa Metaliks Private Limited; (g) Planetfirst Recycling Private Limited; (h) RKG Fund I, A Scheme of RKG Trust; (i) Sasra Alu Green Limited (Super Shakti); (j) Shyam Metaliks and Energy Ltd.; (k) The Kutch Salt and Allied Industries limited (1) Vedanta Limited; (m) Consortium of Real Value Infotech Projects Private Limited and Indian Securities Private Limited; and (n) Taranjot Resources



Private Limited.

- 4.5. Thereafter, on 18.01.2024, the request for resolution plan ("RFRP") was issued to the final list of PRAs, as per which, the last date for submission of resolution plans was 17.02.2024. On 18.01.2024 the evaluation matrix and information memorandum was issued to the final PRAs who had submitted the signed Non-Disclosure Agreement.
- 4.6. Both Hampton and Findoc approached this Adjudicating Authority by filing IA No. 638/2024 and IA No. 504/2024 seeking for setting aside the decision of RP declaring them ineligible and praying for an order directing the RP to not place the resolution plans received till 17.02.2024 before the CoC.
- 4.7. Subsequently, as the RFRP contemplated the last date for submission of resolution plans as 17.02.2024, on account of the PRAs requiring more time to conduct their due diligence on the CD and in the interest of resolution of the CD, the CoC in its meeting dated 12.02.2024 proceeded to resolve on an extension of the date to submit resolution plans from 17.02.2024 till 09.03.2024.
- 4.8. As on 09.03.2024, two resolution plans were received by the RP, one being from the Successful Resolution Applicant and another being an unsolicited resolution plan from Findoc. However, as Findoc was not included in the final list of prospective resolution applicants on account of being held ineligible under Section 29A of the Code by the RP and the existing CoC, the CoC was not inclined to open its resolution plan on account of the matter at that time being sub-judice before this Adjudicating Authority.
- 4.9. Thereafter, during the hearing on 01.05.2024 Ld. Counsel Mr. Ankur Mittal for the CoC on instructions submitted that both Hampton and Findoc can submit their resolution plans which will



be then scrutinized by CoC on all aspects.

4.10. It is submitted that, during the pendency of the CIRP, certain members of the CoC i.e., (i) State Bank of India, (ii) Bank of Baroda (except for claim related to the corporate guarantee provided by Metenere Limited for the loan given to Met Trade UAE FZC by Bank of Baroda), (iii) Punjab National Bank, (iv) IDBI Bank, (v) Canara Bank, (vi) Bank of India, (vii) DBS Bank India Ltd., (viii) EXIM Bank, and (ix) Axis Bank (except for claim related to the corporate guarantee provided by Metenere Limited for the loan given to Met Trade UAE FZC by Axis Bank) (collectively, 'Assignors'), executed an Assignment Agreement dated 28.03.2024 in favour of the NARCL. By way of this Assignment Agreement, the Assignors assigned the entire outstanding debt owed to them by the CD, and the financial assets along with underlying security interests, pledge of shares, guarantee, receivables etc. charged for such financial assistances granted by them to the CD, in favour of NARCL. In view of this development, the newly constituted CoC stood as below:


S.No	Name of the Financial Creditor	Voting Share
1.	National Asset Reconstruction Company Limited	95.39%
2.	Indian Bank	1.06%
3.	Axis Bank Limited	0.93%
4.	Bank of Baroda	2.62%
TOTAL		= 100%



Note: Since no proposal is given in the Resolution Plan concerning how Bank of Baroda and Axis Bank will enforce their Corporate Guarantee given by CD for the loan given to Met Trade UAE FZC, therefore we are not dealing with the same.

4.11. In the 35th meeting of the CoC on 11 July 2024, the terms of all resolution plans received by the Applicant/RP were duly considered and evaluated by the CoC in terms of their feasibility, viability and commercial soundness. Different values had been proposed by the three different resolution applicants, as a total package for payments towards various costs and creditors as well as investment for the envisaged turnaround of the CD. The members of CoC highlighted that an independent legal opinion was sought basis which it is found that Hampton was ineligible under Section 29A of the Code. Moreover, Hampton had also not deposited the earnest money of INR 2 Crore, along with the submission of plan, as required in accordance with the terms of RFRP. The CoC decided not to consider the plan submitted by Hampton.

4.12. The resolution plan of Findoc and Orissa Metaliks were put to vote in the 35th CoC meeting dated 11.07.2024. The voting line for the approval of the resolution plans of Findoc and Orissa Metaliks was open from 16 July 2024 and was open till 23 July 2024 and was thereafter extended till 24 July 2024. Thereafter, the CoC approved Resolution Plan of Orissa Metaliks Private Limited by a majority of 98.94% of the CoC and passed the following resolution.



“RESOLVED THAT pursuant to Section 30(4) of the Insolvency and Bankruptcy Code, 2016 read with the relevant rules and regulations framed thereunder, as amended, the Resolution Plan dated 08 July 2024 submitted by Orissa Metaliks Private Limited, be and is hereby approved by the Committee of Creditors of Metenere Limited, as the Successful Resolution Plan”

“Resolved Further That the Resolution Professional of Metenere Limited be and is further authorized to take all necessary steps and execute all necessary documents as may be required from time to time for the aforesaid purposes”

4.13. Pursuant to Regulation 36B sub-regulation 4A of the CIRP Regulations, the Successful Resolution Applicant (SRA) has submitted a Performance Security for Rs.25,00,00,000/- (Rupees Twenty-Five Crores) on 26.07.2024 in favour of NARCL (NARCL Trust-0011). Copy of Performance security and the voting results of the 35th CoC meeting has been attached as **‘Annexure-2’** and **‘Annexure-3’** of the affidavit dated 26.09.2024 as filed with this Adjudicating Authority.

4.14. Pursuant to Regulation 39(4) of the CIRP Regulations, a Compliance Certificate from RP in Form-H is annexed to the application as **‘Annexure A-20’**.

4.15. **IA-504/2024** and **IA-638/2024** filed by “Findoc” and “Hampton Sky Realty” being the unsuccessful resolution applicants were dismissed as having become infructuous by this Adjudicating Authority on 04.09.2024 and the following order was passed:

The prayer made in these two IAs is for



*inclusion of “Findoc” and Hampton Sky Realty” in the final list of PRAs. Now, that the CoC has taken a call to select one of the PRAs as Successful Resolution Professional, this relief has become infructuous by the changed circumstances. **Accordingly, IA-504/2024 & IA-638/2024 stand dismissed as having become infructuous.***

4.16. Pursuant to section 30(6) of Insolvency and Bankruptcy Code, 2016 read with Regulations 37 to 39 of the CIRP Regulations, Resolution Professional by filing the present application has prayed for approval of the Resolution Plan submitted by Orissa Metaliks Private Limited as approved by the Committee of Creditors of the Corporate Debtor with 98.94% voting under section 30(4) of IBC, 2016.

5. Details of Resolution Applicant and Payment Schedule

5.1 The Successful Resolution Applicant (“SRA”) Orissa Metaliks Private Limited (“OMPL”) was incorporated on July 29 2006 having its registered office at 1, Garstin Place, Orbit House, 3rd Floor, Room No.-3B, Kolkata-700001 West Bengal. It is submitted that the SRA is one of the leading iron and steel companies in India and a part of the multi-dimensional business conglomerate viz. Rashmi Group. It has huge expansion plans in both backward and forward integration across the entire value chain. It has varied units across the value chain viz. pellet unit, sponge iron unit, steel melting shop, wire drawing, captive power plant and an iron ore beneficiation plant. OMPL has achieved a turnover of around INR 12,581 Crores in financial year 2021-22. On 05 March 2024, CRISIL has reaffirmed ‘CRISIL AA-/ Positive’ ratings to the bank facilities of the Company.



OMPL's net worth was INR 6,047 Crore and had fixed deposits with Banks of INR 260 Crores as of 31 March 2023.

6. Compliance of the successful Resolution Plan with various provisions:

6.1. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to are as follows:

Compliance with Section 30(2) of the Code:

Clause of sec. 30(2)	Requirement	How dealt with in the Plan
(a)	Plan must provide for the Payment of CIRP Cost in priority to repayment of other debts of CD	Clause 2 of Part II and Clause 3 of Part III read with Clause 2 of Schedule 2 of the Resolution Plan provides that CIRP costs shall be paid in full and in priority to all other debts of the CD
(b)	(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or (ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which	Clause 3 of Part II and Clause 4 of Part III read with Clause 3 of Schedule 2 of the Resolution Plan provides that payment to such creditors shall be paid in priority and in terms of Section



Clause of sec. 30(2)	Requirement	How dealt with in the Plan
	<p>shall be not less than 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.</p> <p>(iii) Plan must provide for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in priority 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, and such amount shall not be less than the amount to be paid to such creditors in accordance with sub-section</p>	<p>30(2)(b) of the Code. However, certain applications have been filed by vendors, employees and service providers of the CD praying for direction to include their claim amount as a part of CIRP cost which will be adjudicated post the approval of the plan and for which the amount claimed by applicants in these applications (IAs) will be kept in a separate account. This has been agreed by all concerned parties in the proceedings dated 10.09.2024. Hence there is no impediment for proceeding with this Application.</p> <p>Clause 4 of Part II read with Clause 4.2 read with Clause 4.3 of Schedule 2 of Resolution Plan provides that payment to such creditors shall be made in priority and in terms of Section 30(2)(b) read with Section 53 of the Code and Regulation 38(1)(b) of the CIRP Regulations. However, sole</p>



Clause of sec. 30(2)	Requirement	How dealt with in the Plan
	(1) of section 53 in the event of a liquidation of the CD	<p>dissenting Financial Creditor Indian Bank has filed IA 4275/2024 which by consent will be adjudicated post approval of the plan and for which the amount claimed by Indian Bank will be kept in a separate account. This has been agreed by all concerned parties in the proceedings dated 10.09.2024.</p> <p>Hence there is no impediment to proceed with this application.</p>
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 6.1 and Clause 10 of Part II of the Resolution Plan provides that in order to ensure that the business of the CD continues a going concern and operate in its ordinary course of business prior to Closing Date, the management of the CD between the NCLT Order date approving the resolution plan and the Closing Date (defined in Para 8(a) of this order) shall be carried out by constitution of a



Clause of sec. 30(2)	Requirement	How dealt with in the Plan
		monitoring committee comprising of 1 (one) representative of the secured assenting financial creditors, 1 (one) representative of the Resolution Applicant, and the RP, who shall be the chairman of Monitoring Committee.
(d)	Implementation and Supervision of Resolution Plan.	Clause 5,6 and 10 of the Part II read with Schedule 2 and Schedule 7 of the Resolution Plan. The CoC approved Resolution Plan provides for term, implementation schedule and effective implementation of the Plan during the period between the approval of the Plan and the Closing Date.
(e)	Plan does not contravene any of the provisions of law for the time being in force.	Clause 8 of Part II of the Resolution Plan provides for declaration that the Resolution Plan is not in contravention of the provisions of any applicable law for the time being in force.
(f)	Conforms to such other requirements as may be	Clause 12.1 of Part II of the Resolution Plan provides for a



Clause of sec. 30(2)	Requirement	How dealt with in the Plan
	specified by the Board.	declaration that the Resolution Plan is in compliance with the requirements set out under applicable laws and as specified by the IBBI.

Mandatory contents of Resolution Plan in terms of Regulation 38 of CIRP Regulations:

Regulation	Requirement	How dealt with in the Plan
38(1 A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Clause 7 of Part II of the Resolution Plan provides that the resolution applicant has taken into account the interest of all stakeholders of the CD, including the FCs and OCs as set out in Part III of the plan laying the Settlement Proposal of the Resolution Applicant
38(1 B)	A resolution plan shall include a statement giving details of the resolution applicant or any of its related parties has 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.	In Clause 11 of Part II of the Resolution Plan, the Resolution Applicant confirms that neither it nor any of its related parties has ever failed to implement or contributed to the failure of implementation of any other resolution plan approved by any Adjudicating Authority under Section 31 of the Code at any time in the past.
38(2)	A resolution plan shall provide:	



Regulation	Requirement	How dealt with in the Plan
	<p>(a) The term of the plan and its implementation schedule;</p> <p>(b) The management and control of the business of the corporate debtor during its term; and</p> <p>(c) Adequate means for supervising its implementation</p>	<p>Clause 5 of the Resolution Plan provides that the term of Resolution Plan is from the date of submission of the Resolution Plan till the closing date.</p> <p>Clause 6 of the Resolution Plan provides that the management of the CD during the Interim term i.e. between the NCLT Order date approving the resolution plan and the Closing Date (defined in Para 8(a) of this order) shall be carried out by constitution of a monitoring committee comprising of 1 (one) representative of the secured assenting financial creditors, 1 (one) representative of the Resolution Applicant, and the RP, who shall be the chairman of Monitoring Committee.</p> <p>Clause 10 of Part II of Resolution Plan provides that the Resolution Applicant, CD, Monitoring Committee, Monitoring Agent (acting on the instructions of the Monitoring Committee) and all other relevant stakeholders of the CD shall take all relevant actions as may be required for achieving effective implementation of the Plan.</p>



Regulation	Requirement	How dealt with in the Plan
	(d) For the manner in which proceedings in respect of avoidance transactions, fraudulent or wrongful trading transactions will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.	Clause 12.8 of Part II read with Clause 4.7 of Schedule 2 of the Resolution Plan deals with the treatment of PUFEE transactions. Para 9 of this order elaborates the same.
38(3)	A resolution plan shall demonstrate that-	
	(a) it addresses the cause of default;	In Clause 12.3 of Part II of the Resolution Plan, the resolution applicant submits that it would be able to assess and analyse the exact reasons of the CD's default only post acquisition of the CD. However, from the information provided it appears that the following are the reasons for the default: a. Heavy Govt. Dues b. Non-Release of Working Capital by Banks c. Change in Govt. policies.
	(b) it is feasible and viable;	Clause 12.4 of Part II of the Resolution Plan provides that the resolution plan is feasible and viable. The CoC has tested it on its terms and we find no reason to differ.
	(c) it has provisions for its effective implementation;	Clause 12.3 and Clause 10 of Part II of the Resolution Plan provides that the resolution



Regulation	Requirement	How dealt with in the Plan
	(d) it has provisions for approvals required and the timeline for the same; and	<p>plan has provisions for effective implementation.</p> <p>In Clause 12.6 of the Resolution Plan it is stated that the plan has provisions for approvals required and timelines for the same. Other than the approval of this Adjudicating Authority, no approval of any other authority is required for the implementation of the Plan.</p> <p>However, in Schedule 3 of the Resolution Plan, the SRA has stated that granting of assistance and reliefs and concessions are not a condition precedent to implementation of this Plan and further this Resolution Plan is not a conditional plan.</p>
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 12.2 of Part II read with Schedule V of the Resolution Plan provides that the resolution applicant has the necessary demonstrable financial resources available for the purpose of implementation of the resolution plan. This is a factor weighed by the CoC and we have no reason to differ.



6.2. The Applicant submits that the successful Resolution Applicant has submitted an affidavit dated 02 July 2024 confirming its eligibility under Section 29A of the Code. Further, Part II Clause 9.1 of the Resolution Plan also deals with the compliance with Section 29A of the code, same is extracted as under:

9. Compliance with Section 29A of the Code

9.1. The Resolution Applicant confirms that:

An Affidavit has been submitted to the Resolution Professional along with the Plan stating therein that the Resolution Applicant is eligible under Section 29A of the Code as on the date of submission of this Plan.

6.3. The RP submits that he conducted a preliminary examination and investigations basis the details of the shareholders, directors, connected parties, ongoing litigations, proceedings, regulatory proceedings of the SRA with publicly available details. In view of there being around 300 connected parties of the SRA, the Applicant on 11.03.2024 also appointed an independent professional firm being Signal X, for a detailed Section 29A compliance verification. On the basis of the responses received from the SRA on the observations/queries of the Applicant, the report from Signal X and the Affidavit dated 02.07.2024, the SRA was considered compliant under the provisions of section 29A of the Code.

7. Details of Resolution Plan/ Payment Schedule

7.1. The Applicant submits that the application of funds under the Resolution Plan as approved by CoC is tabulated as under:



(Amount in INR Crore)

Class of Creditors	Claims Admitted	Amount Payable under the Resolution Plan
Unpaid Insolvency Process Costs (CIRP costs) (on actuals)		17.04
Assenting Secured Financial Creditors	3006.67	269.64
Dissenting Secured Financial Creditors	33.36	2.63
Assenting Unsecured Financial Creditors	112.02	0.01
Secured Operational Creditors (Govt.)	230.18	5.61
Operational Creditors- Employees & Workmen	0.62	0.05
EPFO	0.1495611	0.1495611
Operational Creditors- other than Govt. and Employees and	137.60	0.01



Workmen		
Operational Creditors- Govt. dues unsecured	151.94	0.01
Total	3,672.39	295.1495611

The Resolution plan size is ₹295,14,95,611/- (Rupees Two Hundred Ninety-Five Crores Fourteen Lakhs Ninety-Five Thousand Six Hundred and Eleven).

Further, in the Resolution Plan the SRA also proposes to infuse a sum of INR 300,00,00,000 (Rupees Three Hundred Crores) as Additional Infusion towards operational requirements, working capital requirements and/or capital expenditure requirements of the CD within 6 months of Payment Date. Therefore, the value of the Plan would be around ₹595,14,95,611/- (Rupees Five Hundred Ninety-Five Crores Fourteen Lakhs Ninety-Five Thousand Six Hundred and Eleven).

Note: In the Resolution Plan it is stated that the timing and quantum of the additional infusion to be made by the SRA may be modified at any time in the sole discretion of SRA depending on the needs and requirements of the CD. Further, no stakeholder of CD shall be entitled to appropriate or make any claim for any part of the Additional Infusion proposed by the SRA.

7.2. The applicant/RP submits that with respect to the dues payable to operational creditors, an approx. amount of INR 382.12 Crores has been admitted in the CIRP of the CD. Out of the said admitted



claims, the admitted claims of State Tax Department Gujarat is for an amount of INR 230 Crores approximately.

7.3. Further in terms of the judgement of the Hon'ble Supreme Court in the matter of **State Tax Officer v. Rainbow Paper Mills** (Civil Appeal No. 2568 of 2020) read with judgement of Hon'ble NCLAT in Commissioner of **State Tax Department v. Ramchandra Dallaram Chaudhary Liquidator of M/s Anil Limited** (Comp. Appeal (AT) (Ins) No. 34 of 2024), the admitted claims of State Tax Department under the Gujarat Value Added Tax Act, 2003 amounts to INR 62,64,71,285 as a secured operational debt. Therefore, the payout to State Tax Department Gujarat for the said claim would be equivalent to the payout to a secured operational creditor.

7.4. It is submitted that though the Resolution Plan made a provision of INR 1 lakh only towards government dues, since the dues up to an amount of INR 62,64,71,284 of State Tax Department Gujarat is a secured operational debt, it was agreed to enhance the payment to State Tax Department Gujarat from INR 1 Lakh to INR 5.62 Crores during the deliberation of 34th CoC and 35th CoC meetings dated 03.07.2024 and 11.07.2024 respectively and consequently the amounts originally payable to the assenting financial creditors would be proportionately reduced.

7.5. The applicant/RP submits that Indian Bank holding a voting percentage of 1.06% dissented to the Resolution Plan and accordingly assumed the status of a dissenting financial creditor. The Resolution Plan provides an amount of INR 2.63 Crores as payable to the sole dissenting financial creditor i.e. Indian Bank. Consequently, an amount of INR 269.64 Crores (equivalent to 8.92% of their claimed amount) is payable to secured assenting



financial creditor after deducting the amount of INR 2.63 Crores payable to dissenting financial creditor and the amount of INR 5.62 Crores payable towards the government dues from INR 277.88 Crores (being the amount earmarked for secured financial creditors under the Resolution Plan).

TRANSACTION STRUCTURE

7.6. The SRA, for the purposes of making payments to the creditors under the COC Approved Resolution Plan and acquiring equity shares of the CD, proposes to infuse-

- A. Equity Component- INR 1,00,00,000 towards subscription of 10,00,000 fresh equity shares of the Corporate Debtor at face value ("RA Shares") to be issued and allotted by the Corporate Debtor to the Successful Resolution Applicant and/or its nominees.
- B. Debt Component- INR 294,00,00,000 as unsecured debts at such interest which is commensurate with the prevailing yield of such Govt. Security
- C. Immediately upon issuance of the RA Shares, the entire equity shares of the CD, other than the RA Shares, shall be cancelled and extinguished at NIL value. Further, the share certificates or shares issued in dematerialized form, in respect of cancelled equity share capital of the CD held by their respective holders shall also be deemed to have been cancelled or extinguished.

TREATMENT OF AVAILABLE CASH

7.7. It is submitted that cash, cash equivalents, bank balances, deposits (including bank and term deposits) available with the CD which are free from encumbrance/attachment of any nature



whatsoever as on the “**Closing Date**” (i.e. the date when the board of the CD will be reconstituted after making payments to various stakeholders) shall not form part of the assets of the CD and would be apportioned in accordance with the waterfall mechanism as provided in Section 53 of the Code.

7.8. The applicant/ RP has stated in its affidavit dated 26.09.2024 as filed with this Adjudicating Authority that the total amount of cash, cash equivalents, bank balances, deposits (including bank and term deposits) available with the Corporate Debtor which are free from encumbrance/attachment of any nature as on 24.09.2024 is equivalent to Rs. 49,889 (Rupees Forty-Nine Thousand Eight Hundred and Eighty-Nine).

Timeline for Implementation of the Resolution Plan

#	Event	Timeline
1	NCLT Order Date	X
2	Constitution of Monitoring Committee	X+2 Days
3	RA Infusion (i.e. the amount to be paid by RA in the form of Debt Infusion and for RA Equity) and allotment of the RA Shares & cancellation/ reduction of the entire pre-CIRP equity shares of the Corporate Debtor, other than the RA Shares	X + 30 Days
4	Payment of (unpaid) IRP Costs	
5	Payment to Operational Creditors and Other Creditors (Form F)	
6	Conversion of the balance OC Admitted Debt into OD Shares, followed by immediate cancellation.	
7	Payment to Dissenting Financial Creditors	
8	Payment towards Assenting Financial Creditors	



#	Event	Timeline
9	Conversion of the balance Admitted Debt of Secured Financial Creditors and the Admitted Debt of Unsecured Financial Creditors into the Unsustainable Debt Equity Shares, followed by immediate cancellation.	This will be dealt with as per Law as prescribed
10	Change of registered office of the Corporate Debtor	
11	Reconstitution of Board of Directors of the Corporate Debtor with nominees of the Resolution Applicant and dissolution of Monitoring Committee	
12	Reconstituted Board of Directors to take effective Control of the Corporate Debtor and dissolution of Monitoring Committee.	
13	Merger of Corporate Debtor into the Resolution Applicant	

Only Serial No. 1 to 8 of the above timelines (payments being made to creditors) are relevant for the purpose of adjudication of Resolution Plan. Other Points are not relevant for the purpose of adjudication of Resolution Plan. These will be dealt with as per law as prescribed.

8. **Details on Management/Implementation and Reliefs as per the Resolution Plan**

The Resolution Plan also provides for-

- a) Term of the resolution plan at Clause 5, Part II @Page 23 of the Resolution Plan. The term of the Resolution Plan is from the date of submission of the Resolution Plan till the Closing Date.

The Resolution Plan defines Payment Date and Closing Date as follows:

#Payment Date shall mean any date on or prior to the 30th day from the NCLT order approving the Resolution



Plan.

#Closing Date means the same date as the payment date, but closing date is later in the same date.

b) Supervision of the Resolution Plan, Mechanism regarding management and control of the affairs of the CD is in Clause 6, Part II of the Resolution Plan which provides for:

- Constitution of Monitoring Committee on the NCLT Order Date approving the resolution plan, which shall comprise of:
 1. One (1) Representative of the secured assenting financial creditor
 2. One (1) Representative of the Resolution Applicant
 3. Resolution Professional, who shall be Chairman of the Monitoring Committee.
 4. Monitoring Agent- During the Interim Term of the Plan i.e. from the NCLT order approving the plan till the closing date, the RP or any other Insolvency Professional shall be appointed as the Monitoring Agent by the remaining members of the monitoring committee who will also be the ex-officio chairman of the Monitoring Committee.

Further on and after the Closing Date but with effect from the Appointed Date for Amalgamation, the CD shall be merged into and with the SRA Orissa Metaliks Pvt Ltd.



9. Details on fraudulent and avoidance transaction

- 9.1 It is submitted that any proceeds received by the RP, SRA or CD from avoidance litigations shall accrue to the benefit of the financial creditors forming part of the CoC in ratio of their admitted claims and shall be paid to the financial creditors forming part of the CoC within 10 (ten) days from the receipt of such amount(s).
- 9.2 It is further submitted that all or any costs and expenses in relation to pursuing such avoidance applications post approval of the Resolution Plan by this Adjudicating Authority shall be borne by the CoC. The SRA further authorizes CoC or representative of CoC to pursue the avoidance applications.

10. Waivers, Reliefs and Concessions

- 10.1 The SRA has sought various waivers, reliefs and concessions as enumerated in Schedule 3 of the resolution plan. However, in Schedule 3 of the Resolution Plan, the SRA has stated that granting of assistance and reliefs and concessions are not a condition precedent to implementation of this Plan and further this Resolution Plan is not a conditional plan.
- 10.2 The reliefs, waivers and concessions prayed for by SRA and as enumerated under the Resolution Plan shall be dealt with strictly as per law. Further, the SRA shall be legally authorized to seek appropriate orders from respective authorities/ courts/ tribunals for renewal of licenses/ withdrawal/ dismissal or abatement of the proceedings as the case may be, as per law.



11. Analysis and Findings

- 11.1. On hearing the submissions made by the Ld. Counsel for the Resolution Professional and after perusing the record, we find that the Resolution Plan of Orissa Metaliks Private Limited was approved by 98.54% of voting share by the CoC members voting in favour of the Resolution Plan. As per the resolution of the CoC, the Plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Adjudicating Authority.
- 11.2. We take note that in the present case various applications have been filed by vendors and employees of the CD praying for a direction to include their claim amount as a part of CIRP Cost. Further, Indian Bank being the sole dissenting financial creditor has also filed an application bearing IA No. 4275/2024 challenging the manner of distribution of amount under the Resolution Plan. In this application the interest of Indian Bank is at best at a maximum amount of Rs. 18.6 Crores (Rupees Eighteen Crores and Sixty Lakhs approximately).
- 11.3. During the course of hearing on 10.09.2024, the members of CoC represented by Ld. Sr. Counsel Mr. Niranjana Reddy and Ld. Counsel Mr. Ankur Mittal along with Ld. Counsel for the SRA Mr. Rahul Gupta submitted that in the present case entire plan amount can be kept aside in a separate interest bearing account until final adjudication of these applications. All have consented to the above. Para 7 to 12 of the order dated 10.09.2024 is extracted below:



7. In so far as IA-4275/2024 is concerned the Ld. Counsel for the Indian Bank states that at best their ultimate interest and their claim is in terms of their share which is ₹18.68 Crores approx which is denied by the other CoC members. Primarily the Counsel for the Indian Bank relied upon para 5.5 & 5.6 of the plan to say that the entitlement as a dissenting financial creditor is in an amount of ₹18.68 Crores. Therefore, their interest should be secured assuming the plan application is approved. They have no objection to proceed on the plan application.

8. On this issue we note that the COC members against whom the prayer is sought have not been impleaded. Applicant bank - Indian Bank is hereby directed to implead other CoC members and prosecute this matter.

9. The members of the CoC represented by Mr. Niranjana Reddy, Ld. Sr. Counsel and Mr. Ankur Mittal, Ld. Counsel fairly state that the entire plan amount may be kept aside in an interest bearing account. All applications including claims of Operational Creditors can be decided separately. The Application for approval of the Resolution Plan should be decided. The claim amount as adjudicated should be distributed to them as per the order of the Adjudicating Authority. In terms of the Resolution Plan the balance will go to the benefit of the CoC members as per their entitlement.

10. In view of the above, the suggested course of action of depositing the plan amount in a separate interest bearing account is accepted, as agreed by parties. The plan Application will be heard



and proceeded with. This will also ensure that the SRA will be able to run the Corporate Debtor if the Plan is approved.

11. By consent, the applications of Indian Bank, the employees and vendors and the service provider will be considered separately after the plan application is decided.

12. Accordingly, these IAs will be taken up separately as per the consent obtained from all Ld. Counsels appearing both physically and on VC, who have agreed to this course of action.

11.4. In this view as and when the plan amount is tendered, we direct the RP to deposit the entire plan amount of **Rs. 295,14,95,611/-** (Rupees Two Hundred Ninety-Five Crores Fourteen Lakhs Ninety-Five Thousand Six Hundred and Eleven) in a high interest-bearing account to be opened with State Bank of India, CGO Complex, New Delhi. The claim amount as and when adjudicated in favour of the applicants in these pending applications will be distributed to them in terms and as per orders of this Adjudicating Authority and the balance if any will go to the benefit of the CoC members. We only confirm what has been agreed by the members of CoC and applicants, as submitted by their counsels in our proceedings dated 10.09.2024.

11.5. Adopting this course of action will also ensure that the Resolution Plan goes forward and the plan amount is deposited and SRA is in a position to run the CD as well. This will also ensure better implementation of the Resolution Plan.

11.6. On perusal of the pleadings, the events and proceedings of CoC and the documents on record, we are satisfied that the Resolution Plan is in accordance with provisions of Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI



(Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- 11.7. The reliefs, concessions and waivers sought by the SRA will be dealt with strictly as per law even if not specifically indicated.
- 11.8. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the SRA is permitted to do the same within one year as prescribed under section 31(4) of the Code or within such period as provided for in such law, whichever is later.
- 11.9. In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the Performance Security, already paid by the SRA.

12. Orders

- 12.1. Subject to the observations made in this Order, the Resolution Plan size of Rs. 295,14,95,611/- (Rupees Two Hundred Ninety-Five Crores Fourteen Lakhs Ninety-Five Thousand Six Hundred and Eleven) as payment towards CIRP costs and towards claims of Creditors (Resolution Plan CIRP), AND Rs. 300,00,00,000 (Rupees Three Hundred Crores) (Additional Infusion for running of CD) as additional infusion towards working capital CAPEX and operational requirements as per para 7.1 *ibid* is hereby **approved. The Resolution Plan shall form part of this Order.**
- 12.2. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Debtor Company shall come into force with immediate effect.
- 12.3. The Moratorium imposed under section 14 of the Code shall cease



to have effect from the date of this order.

12.4. Accordingly, **IA No.37/2024** is allowed and disposed of.

12.5. Liberty is hereby granted for moving appropriate application if required in connection with the implementation of this Resolution Plan.

12.6. A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.

12.7. The Resolution Professional is further directed to hand over all records, premises/ factories/documents and all other relevant records, available with it to the Resolution Applicant to finalize and co-operate on the further line of action required for starting the operation and implementation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalize the further course of action required for starting and running the operations of the Corporate Debtor.

12.8. The Registry is directed to send copies of the order forthwith to IBBI, all the parties and their Ld. Counsels for information and for taking necessary steps.

12.9. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

**RAMALINGAM SUDHAKAR
PRESIDENT**

Sd/-

**AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)**