



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI, COURT- IV**

**IA. (IBC)(Plan) No. 44 OF 2024
IN
C.P (IB) NO. 1238/MB/2021**

*[Application under Section 30(6) of the Insolvency
and Bankruptcy Code, 2016.]*

Kamal Rajkumar Sharma

(Resolution Professional of Dunnimaa Engineers
and Divers Enterprises Private Limited)

...Applicant

In the matter of

Omkara Asset Reconstruction Pvt. Ltd.

... Financial Creditors

V/s.

**Dunnimaa Engineers and Divers Enterprises
Pvt. Ltd.**

...Corporate Debtor

Pronounced: 06.10.2025

CORAM:

**SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)**

**SHRI K.R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)**

Appearances: Hybrid

For Applicant/RP : Adv. Rohit Gupta i/b Adv. Manisha Bhatia a/w.
Adv. Suman Gupta.



ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This I.A. (IBC)(Plan) No. 44/MB/2024 has been filed by Mr. Kamal Rajkumar Sharma, the Resolution Professional (Applicant/RP) of Dunnimaa Engineers and Divers Enterprises Pvt. Ltd., (Corporate Debtor) under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (IBC/Code). The Application seeks approval of the Resolution Plan, submitted by 'M/s. Amphitrite Subsea Pvt. Ltd', the Successful Resolution Applicant (SRA), which was approved by 100% of the voting share of the members of the Committee of Creditors (CoC).

2. BACKGROUND

2.1. This Tribunal initiated the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor in C.P. (IB) No. 1238/MB/2021, filed by Omkara Asset Reconstruction Private Limited, the Financial Creditor under Section 7 of the Code, *vide* Order dated 24.11.2022. By the same order, the Applicant was appointed as the Interim Resolution Professional (IRP). The IRP caused public announcement in Form A, calling for the submission of claims from creditors for the constitution of the CoC.

2.2. The Applicant/RP approached the directors of the suspended board of the Corporate Debtor for the necessary information and documents required for the CIRP. However, there was considerable delay on their part in furnishing the requisite details. Despite numerous follow-ups and email reminders, the directors caused significant delays and only provided partial information, hindering the initial progress of the CIRP.

2.3. The 1st CoC meeting was convened by the IRP on 04.01.2023. During this meeting, the CoC appointed Applicant as the RP. On 18.05.2023, the Applicant/RP convened the 3rd meeting of the CoC. During that meeting, the CoC



passed the resolution to publish FORM G, inviting Expressions of Interest (EOIs) for submission of resolution plans in respect of the Corporate Debtor. Accordingly, FORM G was published on 23.05.2023, inviting EOIs from interested and eligible Prospective Resolution Applicants (PRAs) to submit resolution plans. Subsequently, two EOIs were received on 09.06.2023. The Applicant/RP informed the CoC about the EOIs at the 4th CoC meeting dated 19.06.2023.

- 2.4. At the 5th CoC meeting held on 11.08.2023, the CoC opened and circulated the two resolution plans received from the PRAs. During the 6th CoC meeting held on 11.09.2023, both resolution plans were explained and discussed with the CoC. All the financials were discussed during the 7th CoC meeting on 16.09.2023. Subsequently, compliances were carried out in both of the plans, and the same was submitted on 15.09.2023.
- 2.5. On 22.09.2023, an addendum to the resolution plans was submitted by both the PRAs recording certain changes/ clarifications. On the 8th CoC meeting held 21.09.2023, yet again the plans and reports received were discussed. As per the compliance report, both the PRAs have satisfied the requirements and complied with Section 29A of the Code. The resolution plans submitted by PRAs were then placed before the CoC for voting. By a 100% voting share, the CoC resolved to approve the resolution plan submitted by Amphitrite Subsea Private Limited, which emerged as the SRA.
- 2.6. The Applicant/RP had initially filed an I.A. No. 5281 of 2023 seeking approval of the resolution plan. However, certain additional details and clarifications were required for consideration and approval of the said resolution plan. Accordingly, *vide* order dated 12.12.2023, this Tribunal granted liberty to the Applicant to withdraw I.A. No. 5281 of 2023 and file a fresh application. Pursuant thereto, necessary corrections and amendments were incorporated into the resolution plan through an addendum dated 20.01.2024, wherein the requisite clarifications



were duly recorded. The CoC thereafter approved the amended resolution plan and communicated *vide* email dated 24.01.2024.

- 2.7. The Applicant/RP submits that the Resolution Plan approved by the CoC is in compliance with the legal requirements mandated under the Code, viz., Sections 30(1), 30(2)(a), 30(2)(b), 30(2)(c), 30(2)(d), 30(2)(e), 30(2)(f) of IBC, read with Regulations 37 and 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations).

3. **Extensions of the CIRP Period of the Corporate Debtor**

The Applicant/RP initially filed IA No 3959 of 2023 seeking extension of 90 days in the CIRP period of the Corporate Debtor from 24.05.2023 till 22.08.2023. This IA was pending before the Tribunal for approval. Subsequently, the RP filed another IA No. 807 of 2025, seeking exclusion of 53 days from 22.10.2023 to 12.12.2023, and extension of 209 days from 24.05.2023 to 21.10.2023 (151 days), and also from 13.12.2023 to 08.02.2024 (58 days), which was allowed by this Tribunal on 06.05.2025. As a result, IA No 3959 of 2023 became infructuous and was accordingly disposed of on the same date. The Applicant/RP filed this Application for approval of the Resolution Plan on 08.02.2024, i.e., within the CIRP period, as allowed.

4. **Profile of Successful Resolution Applicant**

It is submitted that the SRA, Amphitrite Subsea Private Limited is a private limited company having Corporate Identification Number U74999MH2020PTC342701. The company was established in 2020, and it provides new-age Diving Services, Water/Air Sports, and Adventure Sports Activities.

5. **Feasibility, Viability of Business Plan**

The SRA submitted the plan with the objective of reviving the business of the Corporate Debtor. The SRA has the competency and wherewithal to revive the operations of the Corporate Debtor in the minimum possible time. The SRA



proposes to retain all the assets of the Corporate Debtor and to develop the same so that the revival and growth of the business of the Corporate Debtor can be achieved.

6. Financial Proposal of Resolution Plan

6.1 Treatment of CIRP cost

The Resolution Plan provides for payment of the unpaid CIRP cost at actuals within 30 days of NCLT approval, in priority to payment of other debts of the Corporate Debtor.

- a. Cash flows, if any, generated by the Corporate Debtor during the CIRP period, will be used to pay the CIRP Costs as approved by the CoC, and the balance CIRP Costs will be paid from the funds infused by SRA.
- b. The SRA will use any surplus funds generated during the CIRP Period for the operations of the Company.
- c. The CIRP cost will be paid on actual basis.

6.2 Treatment of Secured Financial Creditors

The RP has not received claims on behalf of any Secured Financial Creditor. Therefore, no amount is proposed to be paid to them.

6.3 Treatment of Unsecured Financial Creditors

The admitted claim of unsecured financial creditors is Rs.36,03,32,203.98/-. The SRA has proposed an amount of Rs.11,61,918/- against the entire admitted amount.

6.4 Treatment of Operational Creditors

- There are no claims of operational creditors (other than Workmen and Employees and Government. Dues), hence no amount is required to be paid.
- There are no claims with respect to operational creditors (statutory dues, other than PF and Gratuity), and hence, no amount is required to be paid.



- There are no claims with respect to Workmen and Employee, hence no amount is required to be paid.

6.5 Treatment of Provident Fund dues

- The Provident Fund filed its claim of Rs.38,56,174/- consisting of Rs.20,15,856/- towards PF dues; and Rs.6,22,226/- towards interest and Rs.12,18,092/- towards penalty. Since the claim was filed after the CoC approved the Plan, it was not considered in the Resolution Plan. However, the same is added in lieu of an addendum to the Resolution Plan dated 09.11.2024.
- The SRA proposed to pay Rs.20,15,856/- towards the dues of PF and Rs.6,22,226/- towards the interest. The SRA will approach the competent authority for waiver of the penalty. However, in case the request for waiver is rejected, then the SRA undertakes to pay the amount of the penalty.

7. Performance Security

The SRA had undertaken in the Resolution Plan to pay the CoC Performance Guarantee of Rs. 5,00,000/- upon approval of the resolution plan by CoC, within the required timeline as provided in RFRP. Accordingly, SRA has paid the said amount into the CIRP bank account on 03.08.2023.

8. Implementation Timelines

Sr. No.	Action	Indicative Timeline
1.	Approval of the Plan by NCLT (effective date)	X
2.	Appointment of Monitoring Agency	X+ 7 Days
3.	Equity Infusion and Capital Reduction	X+30 Days
4.	Allotment of Fresh Equity to Resolution Applicant	X+30 Days
5.	Payment of CIRP Cost	X+30 Days
6.	Final Payment to Financial Creditors	X+30 Days



9. **Monitoring Committee**

A Monitoring Committee shall be appointed for the Corporate Debtor. The Monitoring Committee shall comprise of the following members:

- (i) Nominee of the Resolution Applicant;
- (ii) Nominee of the Financial Creditor;
- (iii) Resolution Professional, who will act as the Chairman.

10. **Preferential/Fraudulent/Undervalued Transactions**

Upon perusal of Form H, it has been observed that an avoidance application under Section 43 of the Code is currently pending before the NCLT. The Resolution Plan explicitly provides that any benefits derived by the Corporate Debtor from such transactions, if realised, shall be transferred to the FC or dealt with in such manner as may be directed by the CoC and communicated to the Resolution Applicant.

11. **Share Capital**

- The entire existing paid-up equity share capital of the Corporate Debtor will be cancelled and extinguished without any liability or amount payable to the existing shareholders.
- Upon approval of the Resolution Plan, the authorised capital of the Corporate Debtor shall be Rs.3,00,00,000/- divided into 30,00,000 equity shares of Rs.10/- each.
- Initially the Corporate Debtor shall subscribe to 3,80,000 equity shares amounting to Rs.38,00,000/-.

12. **Confirmation of eligibility of SRA under Section 29A**

The SRA, viz., Amphitrite Subsea Private Limited, has confirmed that it is eligible to submit the Resolution Plan as per Section 29A of the Code, and has annexed an affidavit dated 04.08.2023.



13. Valuation

Registered Valuers were appointed to conduct the valuation of the Securities and Financial Assets of the Corporate Debtor. As per the Applicant/RP, the averages of the Fair Value and Liquidation Value as determined by the Registered Valuers, are as under: -

Average Fair Value : Rs.27,22,000/-

Average Liquidation Value: Rs.26,81,000/-

14. Form H Certificate

The Applicant/RP submits that the Resolution Plan approved by the CoC complies with the legal requirements mandated under IBC, viz., Sections 30(1), 30(2)(a), 30(2)(b), 30(2)(c), 30(2)(d), 30(2)(e), 30(2)(f) of IBC, 2016, along with Regulation(s) 37 and 38 of the CIRP Regulations. The RP has annexed a certificate in Form H to the Application under Regulation 39(4) of the CIRP Regulations, certifying that the Resolution Plan, as approved by the CoC, meets all the requirements of the IBC and the Regulations.

15. Reliefs and Concessions

The SRA has sought various reliefs and concessions based on the 'clean slate concept' laid down by the Hon'ble Supreme Court in various judgements, i.e., reliefs which are necessary to keep the Corporate Debtor as going concern; release from any and all liabilities/proceedings; disputes and noncompliance prior to the NCLT Approval Date; and any extended period for renewal or revival of licences for running the business of the Corporate Debtor.

16. Approvals sought

In the circumstances mentioned hereinabove, the Applicant/RP seeks approval of this Tribunal on the Resolution Plan, submitted by the SRA, i.e., Amphitrite Subsea Private Limited, stating that the Plan is in accordance with Section 30(2) and other provisions of the Code.



17. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for:
 - a. Payment of CIRP Cost as specified under Section 30(2)(a) of the Code;
 - b. Repayment of debts of Operational Creditors as specified under Section 30(2)(b) of the Code;
 - c. The management of the affairs of the Corporate Debtor, after the approval of the Resolution Plan, as specified under Section 30(2)(c) of the Code; and
 - d. The implementation and supervision of the Resolution Plan by the RP and the CoC as specified under Section 30(2)(d) of the Code.
18. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) and 38(3) of the CIRP Regulations.
19. The RP has filed a Compliance Certificate in Form H along with the Plan. On perusal of the same, it is found to be in order. The Resolution Plan has been approved by the CoC in the 8th Meeting of the CoC held on 21.09.2023, with 100% voting share.
20. In the case of *K. Sashidhar v. Indian Overseas Bank & Others* [(2019) ibclaw.in 08 SC], the Hon'ble Supreme Court held that if the CoC approves the resolution plan by the 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. On receipt of the plan approved by the CoC, the Adjudicating Authority is required to satisfy itself that the plan, as approved by the CoC, meets the requirements specified in Section 30(2) of the IBC. The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. It further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 of the IBC 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) of the Code when the resolution plan does not conform to the stated requirements.

21. In *Essar Steel India Limited v. Satish Kumar Gupta and Ors* [(2020) 8 SCC 531], the Hon'ble Supreme Court clearly laid down that the Adjudicating Authority would not have the power to modify the resolution plan, which the CoC, in their commercial wisdom, have approved. In para 42, the 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).”

22. 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 CIRP 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 deserves to be approved.

ORDER

In view of the above, **IA-44/2024 in C.P.(IB) No. 1238/MB-IV/2021 is allowed.** The Resolution Plan, dated 04.08.2023, along with the **addendum dated 20.01.2024** submitted by Amphrite Subsea Private Limited, as annexed to the Application, is hereby **approved**. It shall become effective from the date of this Order and shall form part of this Order.



- a. The Resolution Plan shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- b. In terms of the judgment of the Hon'ble Supreme Court in *Ghanshyam Mishra And Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited*, [(2021) ibclaw.in 54 SC], on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the plan. Accordingly, no person, including the Central Government, any State Government or any local authority, guarantors and other stakeholders, will be entitled to initiate or continue any proceedings in respect of a claim prior to CIRP which is not a part of the Resolution Plan.
- c. The approval of the Resolution Plan shall not be construed as a waiver of any future statutory obligations/liabilities of the Corporate Debtor and shall be dealt with by the appropriate authorities in accordance with law. Any waiver sought in the Resolution Plan relating to the period after the date of this order, more particularly licences and approvals for keeping the Corporate Debtor, shall be subject to approval by the authorities concerned and this Tribunal will not deter such authorities from dealing with any of the issues arising after effecting the Resolution Plan. This Tribunal, however, recommends due consideration of the revival of the Corporate Debtor.
- d. The Memorandum of Association (MoA) and Articles of Association (AoA) of the Corporate Debtor shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. However, if any approval of shareholders is required under the Companies Act, 2013 for the implementation of actions under the

Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

- e. 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. Any benefit that arises from statutes other than the Code is subject to approval by the respective authorities under that statute.
- f. The Resolution Applicant is at liberty to approach competent Authorities for any exemption as sought in relation to Income Tax Returns, waivers from the applicability of any section under the Income-tax Act, 1961, the Central Goods and Services Tax Act, 2017, and other indirect taxes arising out of the implementation of the Resolution Plan.
- g. In accordance with Section 32A of the Code, the liability of the Corporate Debtor for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process shall cease, and the Corporate Debtor shall not be prosecuted for such an offence committed prior to the commencement of Corporate Insolvency Resolution Process from the date of this order.
- h. The moratorium under Section 14 of the Code shall cease to have effect from the date of this Order.
- i. The Applicant/RP shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- j. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with a copy of this Order for information and record.
- k. The Applicant shall forthwith send a certified copy of this Order to the CoC and the SRA, respectively, for necessary compliance.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – IV

I.A. (IBC)(Plan) No. 44/MB/2024
IN
C.P(IB) No.1238/MB/2021



The **IA-44/2024 in CP (IB) No.1238/MB-IV/2021**, stands **allowed** in terms of the above.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Siddhi, LRA

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)