



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

**IA 2905 of 2022
IN
CP (IB) 2067/MB/C-I/2019**

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”) for approval of the resolution plan under the provisions of Section 31(1) of the code.

In the Application of

**Mr. Dushyant C Dave,
Resolution Professional of National Steel and Agro
Industries Limited**

Office: 1101, Dalamal Tower, B Wing, Free Press Journal Marg, Nariman Point, Mumbai, Maharashtra – 400021.

...Applicant/Resolution Professional

In the matter of

JM Financial Assets Reconstruction Co. Ltd.

7th Floor, Cnergy, Appasaheb Marathe Marg, Prabhadevi, Mumbai – 400025

...Financial Creditor

Versus

National Steel and Agro Industries Limited

[CIN: L27100MH1985PLC140379]

621, Tulsiani Chambers, Nariman Point, Mumbai – 400021

...Corporate Debtor

Order Delivered on : 19.05.2023

Coram:

Hon'ble Member (Judicial) : Mr. H. V. Subba Rao

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam



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Appearances:

For the Applicant : Sr. Adv. Chetan Kapadia, and Adv. Gautam Ankhad a/w Adv. Dhruvad Vaghani, Adv. Ajiz M K, Adv. Rishabh Sethi, and Adv. Payal Mehta i/b LEx Aeterna Practices

For the Resolution Applicant : Mr. Prateek Seksaria, Senior Adv a/w Mr. Animesh Bisht, Mr. Madhav Kanoria, Ms. Saloni Kapadia and Mr. Karan Sangani i/b Cyril Amarchand Mangaldas.

ORDER

Per Coram:

1. The present application is moved by Resolution Professional **Mr. Dushyant C Dave** (hereinafter called as “the Applicant”) **under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”)** for approval of the resolution plan under the provisions of **Section 31(1) of the code**, for the Corporate Debtor **National Steel and Agro Industries Limited** (hereinafter called as the “Corporate Debtor”) as approved by 100% voting share of the Committee of Creditors of the Corporate Debtor (hereinafter called as the “CoC”) pursuant to the ninth meeting of the CoC held on 06.10.2022.
2. That JM Financial Assets Reconstruction Co. Limited, a Financial Creditor of the Corporate Debtor, had filed an application under section 7 of the Code, read with rule 4 of the Insolvency and



Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of the corporate insolvency resolution process (**CIRP**) against National Steel and Agro Industries Limited (**Corporate Debtor**).

3. That the said application was admitted by this Tribunal, by its order dated 11th April 2022 (**Admission Order**), in terms of which, Mr. Dushyant C. Dave (Registration No. IBBI/IPA-003/IP-N00061/2017-18/10502), the Applicant herein, was appointed as the Interim Resolution Professional (**IRP**).

Brief facts:

4. The Applicant has filed this present Application seeking approval from this Tribunal with respect to Resolution Plan dated 06th September 2022 and amended up to 06th October 2022 ("Resolution Plan") submitted by JSW Steel Coated Products Limited (hereinafter referred to as the ("Successful Resolution Applicant"), as approved by the Committee of Creditors ("CoC") of the National Steel and Agro Industries Limited ("Corporate Debtor") in their 9th CoC meeting held on 06th October 2022, by a requisite majority of 100%.
5. The Applicant submits that the Corporate Debtor is presently undergoing corporate insolvency resolution process (CIRP") pursuant to Company Petition No. 2067 of 2019 filed by JM Financial Asset Reconstruction Co Ltd being the financial creditor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") which was duly admitted by this Tribunal vide its order dated 11th April 2022 ("Insolvency Commencement Date"). The



Applicant submits that by the said order, the Applicant was appointed as interim resolution professional ("IRP") of the Corporate Debtor.

6. The Applicant submits that pursuant to his appointment, the Applicant constituted the CoC of the Corporate Debtor filed a report on 04th May 2022 certifying constitution of the CoC of the Corporate Debtor to this Tribunal. The Applicant submits as on the date of this Application, the CoC of the Corporate Debtor consists of a sole financial creditor being JM Financial Asset Reconstruction Co. Ltd.
7. In the 1st CoC meeting held on 11th May 2022, the members of the CoC confirmed Applicant as the resolution professional ("RP") of the Corporate Debtor. Pursuant to his appointment as the RP of the Corporate Debtor in accordance with the provisions of the Code the management of affairs of the Corporate Debtor vested with the Applicant. The Applicant has been performing his actions, duties and responsibilities as the RP of the Corporate Debtor in accordance with the provisions of the Code and the regulations framed thereunder. The Applicant has convened 9 CoC meetings as on the date of this application.
8. As on date of filing this Application, the Applicant has admitted total claims of INR 2462,21,59,136 (Indian Rupees Two Thousand Four Hundred Six-Two Crores Twenty-One Lakhs Fifty-Nine Thousand One Hundred Thirty-Six Only) filed by the creditors of the Corporate Debtor under the provisions of the Code and its applicable regulations.



9. The Applicant submits that, as approved by the members of the CoC in the 1st CoC meeting of the CoC held on 11th May 2022, appointed following two valuers, namely. Protocol Valuers Private Limited, and Kzen Valtech Private Limited (collectively referred to as the "Registered Valuers") as registered valuers of the Corporate Debtor. The Registered Valuers submitted their valuation reports on 18th July 2022 and 30th August 2022. As per the valuation reports, the average fair value is 560,14,96,316/- (Indian Rupees Five Hundred and Sixty Crores Fourteen Lakhs Ninety-Six Thousand Three Hundred and Sixteen Only) and average liquidation value is 334,56,81.116/- (Indian Rupees Three Hundred and Thirty-Four Crores Fifty-Six Lakhs Eighty-One Thousand One Hundred and Sixteen Only).
10. The Applicant submits that the members of the CoC had approved the eligibility criteria for the prospective resolution applicants ("PRAS") to submit their expressions of interest ("EoIs") for the Corporate Debtor during the 2nd meeting of the CoC held on 13th June 2022. Subsequently, the Applicant, pursuant to the approval of the members of the CoC published 'Form G' on 17th June 2022. for inviting EoIs from PRAS.
11. The Applicant submits that the Evaluation Matrix as per Regulation 36B of CIRP Regulations was approved by the CoC in the 3rd meeting of CoC held on 15th July 2022.
12. The Applicant submits that upon satisfaction of the eligibility criteria as prescribed in the detailed EoI and as approved by the member of the CoC, the Applicant during the 3rd CoC meeting held on 15th



July 2022 informed the CoC that 7 (Seven) PRAS had submitted their Eols. Accordingly, the Applicant issued the provisional list of PRAS on 11th July 2022 and final list of PRAS on 21 July 2022.

13. The Applicant submits as per Form 'G' dated 17th June 2022, the last date of submission of resolution plans by the PRAS was 19th August 2022, which was further extended to 06 September 2022 as per the request of the PRAS and upon approval of the CoC.
14. The Applicant was in receipt of 1 (one) resolution plan from JSW Steel Coated Products Limited. The Resolution Plan was opened in the 7th CoC meeting of the Corporate Debtor held on 07th September 2022.
15. The Bid Bond Guarantee ("BBG") of an amount of 25,00,00,000/- (Indian Rupees Twenty-Five Crores Only) in favour of the Corporate Debtor in accordance with the Request for Resolution Plan ("RFRP") was received on 06th September 2022.
16. As approved by the CoC, the Applicant appointed an independent agency namely, SignalX, for investigating on the eligibility of the Successful Resolution Applicant under Section 29A of the Code. The Report submitted by SignalX was received by the Applicant on 16th September 2022. The Report submitted by SignalX observed that the Successful Resolution Applicant is eligible under Section 29A of the Code. The Applicant submits that the Applicant has also conducted his own investigation upon the eligibility of the Successful Resolution Applicant under Section 29A of the Code and is satisfied on the eligibility.



17. The CoC during its 9th CoC meeting held on 06th October 2022 deliberated on the resolution plan, its feasibility and viability, and the manner of distribution to the creditors under the resolution plan.
18. In addition to the aforesaid, during the 9th CoC meeting of the Corporate Debtor held on 6th October 2022, the CoC has deliberated on (i) provisions of Regulation 39(3B) of CIRP Regulations; (ii) feasibility and viability of the plans; and (iii) evaluation matrix and the same was voted by the COC in the said meeting (iv) Regulation 39B, Regulation 39C and Regulation 39D of CIRP Regulations. Accordingly, the resolution plan submitted by the Successful Resolution Applicant was put for voting in the 9th CoC meeting held on 06th October 2022 and the CoC, with requisite majority, has approved the resolution plan dated 06th September 2022, as amended from up to 06th October 2022 submitted by JSW Steel Coated Products Limited.
19. The Applicant submits that a transactional auditor, namely M/s Ernst & Young LLP ("Transactional Auditor") was appointed by the Applicant as approved by the CoC in order to determine the transactions covered under Sections 43, 45, 50, and 66 of the Code. The Applicant has also addressed a letter dated 26th August 2022 to Insolvency & Bankruptcy Board of India ("IBBI") wherein, the Applicant apprised IBBI that no avoidance transactions have been identified by the Applicant. Accordingly, as on the date of this Applicant, no avoidance application has been filed by the Applicant before this Tribunal.



20. The Applicant submits that pursuant to the approval of the Resolution Plan by the COC, the Applicant issued a Letter of Intent dated 07th October 2022 ("Lol") in favour of the Successful Resolution Applicant. The Successful Resolution Applicant accordingly, accepted the Lol issued by the Applicant in accordance with the RFRP on 07th October 2022 and along with the Lol, as required under the RFRP, remitted a sum of INR 100,00,00,000 (Indian Rupees One Hundred Crores Only) into the account of JM Financial Asset Reconstruction Co. Ltd towards performance security as per the RFRP.
21. The prescribed time period for the completion of the CIRP of the Corporate Debtor ends on 08th October 2022. The Applicant further submits that this Application for the approval of the Resolution Plan is being filed before the expiry of the period of CIRP provided in Section 12 of the Code.
22. The Applicant submits that the Resolution Plan of the Successful Resolution Applicant has been prepared in compliance of the Code and all the requisite Regulations which was been approved by the required majority of the CoC. The Resolution Plan was approved by 100% voting share of the 9th CoC Meeting on 06th October 2022 after considering the feasibility, viability and manner of distribution of the Resolution Plan. An extract of the resolution passed in this regard by the CoC is set forth hereinbelow:

“RESOLVED THAT, pursuant to section 30(2), 30(3), 30(4) of Insolvency & Bankruptcy Code, 2016, as amended (“code”) and Regulation 37, 38, 39(1), 39(2) and 39(3) of the Insolvency and Bankruptcy Board of India (Insolvency Regulations Process for



Corporate Persons) Regulation 2016, as amended (“CIRP Regulations”) approval of the members of the Committee of Creditors be and is hereby accorded to the Resolution Plan submitted by M/s JSW steel Coated Products Limited”

A copy of the voting results in relation to the ninth meeting of the CoC is annexed with application as Annexure B.

23. The Applicant further submits that the Resolution Plan submitted is in compliance **with Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations**. The RP has provided a compliance certificate in “FORM H” as mandated under the Code for seeking approval of the Resolution Plan.
24. The Applicant has also filed the Form H, as per Regulation 39(4) of the CIRP Regulations, 2016 with the Insolvency and Bankruptcy Board of India (IBBI). FORM H is annexed as “**Exhibit - K**” which is as follows:

**FORM H
COMPLIANCE CERTIFICATE**

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India
(Insolvency Resolution Process for Corporate Persons) Regulations, 2016

I, Dushyant C Dave, an insolvency professional enrolled with Insolvency Professional Agency of Institute of Cost Accountants of India and registered with the Board with registration number IBBI/IPA-003/IP-N00061/2017-18/10502, am the resolution professional for the corporate insolvency resolution process (CIRP) of National Steel and Agro Industries Limited (“CD”).

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	National Steel and Agro Industries Limited
2	Date of Initiation of CIRP	April 11, 2022



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3	Date of Appointment of IRP	April 11, 2022
4	Date of Publication of Public Announcement	April 13, 2022
5	Date of Constitution of CoC	May 03, 2022
6	Date of First Meeting of CoC	May 11, 2022
7	Date of Appointment of RP	May 18, 2022
8	Date of Appointment of Registered Valuers	May 27, 2022
9	Date of Issue of Invitation for EoI	June 17, 2022
10	Date of Final List of Eligible Prospective Resolution Applicants	July 21, 2022
11	Date of Invitation of Resolution Plan	July 20, 2022
12	Last Date of Submission of Resolution Plan	September 06, 2022 (Last date for submission of resolution Plan was extended from August 19, 2022 to September 06, 2022 by CoC)
13	Date of Approval of Resolution Plan by CoC	October 07, 2022
14	Date of Filing of Resolution Plan with Adjudicating Authority	October 08, 2022
15	Date of Expiry of 180 days of CIRP	October 08, 2022
16	Date of Order extending the period of CIRP	-
17	Date of Expiry of Extended Period of CIRP	-
18	Fair Value	5,601,496,316
19	Liquidation value	3,345,681,116
20	Number of Meetings of CoC held	9

3. I have examined the Resolution Plan received from Resolution Applicant M/s JSW Steel Coated Products Limited and approved by Committee of Creditors (CoC) of National Steel and Agro Industries Limited.

4. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the Resolution Applicant M/s JSW Steel Coated Products Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.



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(iv) The voting was held in the meeting of the CoC on October 06, 2022 where all the members of the CoC were present.

5. The list of financial creditors of the National Steel and Agro Industries Limited being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	JM Financial Asset Reconstruction Company Limited	100%	100% (Voted for)

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

7. The amounts provided for the stakeholders under the Resolution Plan is as under:
(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	0 169,339.16	0 168,663.08	0 61,238.51	0
		Total [(a) + (b)]	169,339.16	168,663.08	61,238.51	
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0
		(b) Other than (a) above:	0	0	0	0



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		(i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	0	0	0	0
		Total [(a) + (b)]	0	0	0	0
3	Operational Creditors	(a) Related Party of Corporate Debtor	973.10	0	0	
		(b) Other than (a) above:				
		(i)Government	57,356.35	20,103.93	220.12	
		(ii)Workmen	83.61	83.61	83.61	
		(iii)Employees	395.21	219.94	219.94	
		(iv) Other than Workmen, Employees and Government	190,38.24	132,74.96	337.81	
		Total[(a) + (b)]	768,73.41	336,82.44	861.49	
4	Other debts and dues	0	0	0	0	0
Grand Total			246,212.57	202,345.52	621,00.00	

*If there are sub-categories in a category, please add rows for each sub-category.

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No.	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	4,45,00,000	0	100	0
2	Preference	55,01,022	0	0	0

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	-	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution	Compliance, Page 1	Yes



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	Professional or Order, if any, of the Adjudicating Authority?		
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Compliance, Page 1	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?	Part B, Section 1.1.1 and 1.1.3 Part B, Section 1.3.4 and 1.3.5 Part B, Section 1.2.2 Part B, Section 2 Part B, Section 2 Part B, Section 1.13.4 and 1.18.5	Yes Yes Yes Yes Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	-	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	-	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	No Avoidance Transactions reported	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Section 1.3.5 of Part B (Financial Proposal)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all	Part B, Section 1.7	Yes



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	stakeholders?		
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	(i) Part B, Section 1.13.2 (ii) N.A.	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	(a) Part B, Section 1.18 (b) Part A, Section 2 (c) Part B, Section 2	Yes Yes Yes
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	(a) Part A, Section 3.1 (b) Part A, Section 3.2 (c) Part A, Section 3 (d) Part A, Section 3 (e) Credit rating report	Yes Yes Yes Yes Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	-	-
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	-	Yes, Performance Bank Guarantee of Rs. 100 Crore

10. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	April 11, 2022
Regulation 6(1)	Publication of Public Announcement	T+3	April 13, 2022



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Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	April 25, 2022
Regulation 13(1)	Verification of Claims	T+21	May 02, 2022
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	-
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	May 03, 2022
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	May 11, 2022
Regulation 35A	Determination of fraudulent and other transactions	T+115	August 04, 2022
Regulation 27	Appointment of two Registered Valuers	T+47	May 27, 2022
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54	
Regulation 36A	Invitation of EoI	T+75	June 17, 2022
	Publication of Form G	T+75	June 17, 2022
	Provisional List of Resolution Applicants	T+100	July 11, 2022
	Final List of Resolution Applicants	T+115	July 21, 2022
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	July 20, 2022
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	October 7, 2022
Section 31(1)	Approval of Resolution Plan	T=180	October 7, 2022

11. The time frame proposed for obtaining relevant approvals is as under: Not Applicable

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1				

12. The Resolution Plan is not subject to any contingency.

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):



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Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	Submission of CIRP-3 within 7 days of issuing IM to the CoC	IBBI/CIRP/023/2019	Due to technical error in IBBI systems	Yes

14. The Resolution Plan is being filed **on last** day of the period of CIRP provided in section 12 of the Code.

15. Provide details of section 66 or avoidance application filed / pending. – Not applicable

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	NA	NA	NA
2	Undervalued transactions under section 45	NA	NA	NA
3	Extortionate credit transactions under section 50	NA	NA	NA
4	Fraudulent transactions under section 66	NA	NA	NA

15A. The committee has approved a plan providing for contribution under regulation 39B as under: **Not Applicable**

- Estimated liquidation cost: Rs.....
- Estimated liquid assets available: Rs.....
- Contributions required to be made: Rs.....
- Financial creditor wise contribution is as under:

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1		
Total		

15B. The committee has recommended under regulation 39C as under: **Not Applicable**

- Sale of corporate debtor as a going concern: Yes / No
 - Sale of business of corporate debtor as a going concern: Yes / No
- The details of recommendation are available with the resolution professional.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D: **Not Applicable**



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16. I Dushyant C Dave hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

Dushyant C Dave

IP Registration No: IBBI/IPA-003/IP-N00061/2017-18/10502

Address as registered with the Board: 1101, Dalamal Towers,
Nariman Point, Mumbai - 400021 INDIA

Email id as registered with the Board: dushyant.dave@decoderesolvency.com

AFA Registration: March 28, 2023

25. The applicant submits that while the full text of the Resolution Plan has been annexed to Application as Exhibit “A”, providing hereinbelow the salient features of the Resolution Plan, mandatory contents, business plan and the distribution mechanism:
- i. The Successful Resolution Applicant proposes to provide a sum of INR 621,00,00,000/- (Indian Rupees Six Hundred and Twenty-One Crores Only) (“**Total Resolution Amount**”) as the total resolution amount. A summary of the financial proposal of the Resolution Plan and the manner of distribution of the receivables under the Resolution Plan is as follows:

Sr. No.	Category	Amount Admitted (INR)	Amount Proposed (INR)	Relevant clause and Page No.
1.	CIRP Cost	NA	In full (100%)	Section 1.1.1 and 1.1.3 of Part B of the Resolution Plan (Financial Proposal) at Pg. No. 61 of the present Application



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2.	Secured Financial Creditors	16, 86, 63, 08, 288.28	612, 38, 50, 817 (Estimated Value)	(Section 1.2 of Part B(Financial Proposal) of the Resolution Plan at Pg. No. 61 of the present Application)
3.	Unsecured Financial Creditors	NIL	NIL	NA
4.	Dissenting Financial Creditor	NIL	NIL	NIL
5.	Workmen Dues	83, 61, 713	83, 61, 713 (100%)	(Section 1.3.8 of Part B (Financial Proposal) of the Resolution Plan at Pg. No. 71 of the (Present Application)
6.	Employees Dues	2,19,94,156	2,19,94,156 (100%)	(Section 1.3.8 of Part B (Financial Proposal) of the Resolution Plan at Pg. No. 71 of the present Application.)
7.	Operational Creditors (other than the Workmen and	329,84,32,292	(a) Admitted Other Operational Creditor Debt of less than or equal to INR 1	Section 1.3.9 (a)(i) of Part B (Financial Proposal) of the Resolution



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	Employees Dues)		Crore to be paid INR 2,30,39,385.00 (100%) (b) Admitted Other Operational Creditor Debt of more than INR 1 Crore to be paid INR 3,27,53,929. (1%)	Plan at Pg. No. 73-74 of the present Application Section 1.3.9 (a)(ii) of Part B (Financial Proposal) of the Resolution Plan at Pg. No. 73-74 of the present Application
8.	Other Debt and Dues	NIL	NIL	NIL

(Summary of the financial proposal is provided at Section 1 of Part B (Financial Proposal) of the Resolution Plan at Pg. No. 59 – 60 of the present Application)

- ii. Out of the Total Resolution Amount, Successful Resolution Applicant proposes to infuse a sum equivalent to and for the payment of (a) Unpaid CIRP Costs; (b) Other Operational Creditors; and (c) Excess Interim Management Cost, which shall not be more than the Total Resolution Amount by way of an interest-bearing unsecured loan and/or convertible debentures or any other convertible instrument or a combination thereof (“**RA Loan**”) (**Definition of RA Loan at Schedule 1 of the Resolution Plan at Pg. No. 110-111 of the present Application**)
- iii. The Unpaid CIRP Costs as on the NCLT Approval Date shall be paid out of the Cash Balance of the Company as on the



NCLT Approval Date. If the Cash Balance of the Company are not sufficient to pay the entire Unpaid CIRP Cost, then the balance Unpaid CIRP Costs shall be paid in full and in priority to any other creditor of the Corporate Debtor out of the Total Resolution Amount from the proceeds of the RA Loan. **(Section 1.1.1 and 1.1.3 of Part B (Financial Proposal) of the Resolution Plan at Pg. No. 60 and 61 respectively of the present Application)**

- iv. The Successful Resolution Applicant proposes to pay Workmen and Employees in full as per the admitted amount against the dues of Workmen (INR 83,61,713/-) and Employees (INR 2,19,94,156/-). **(Section 1.3.8 of Part B (Financial Proposal) of the Resolution Plan at Pg. No. 71 of the present Application).**
- v. The Resolution Applicant proposes to make payment towards Admitted Other Operational Creditors Debt (other than workmen and employees) in the following manner:
 - a. The Successful Resolution Applicant proposes to pay the Admitted Other Operational Creditor Debt to all those Other Operational Creditor whose Admitted Other Operational Creditors Debt is less than or equal to INR 1,00,00,000 (Indian Rupees One Crore Only) in full which amounts to INR 2,30,39,385/-. **(Section 1.3.9 (a) (i) of Part B (Financial Proposal) of the Resolution Plan at Pg. No. 73 of the present Application).**
 - b. For the Other Operational Creditors whose Admitted Other Operational Creditors Debt is more than INR



1,00,00,000 (Rupees One Crore Only), the Successful Resolution Applicant proposes to pay 1% of their respective Admitted Other Operational Creditor Debt which amounts to INR 3,27,53,929/-. (**Section 1.3.9 (a) (ii) of Part B (Financial Proposal) of the Resolution Plan at Pg. No. 74 of the present Application**).

- c. If any additional claims are admitted such that the Admitted Other Operational Creditor Debt in each of the category exceeds, then the proposed payment in each category shall be taken as a whole and re-distributed on a pro-rata basis between all such Other Operational Creditors in each category respectively. (**Section 1.3.9 (a) (i) and Section 1.3.9 (a) (ii) of Part B (Financial Proposal) of the Resolution Plan at Pg. No. 73 & 74 of the present Application**).
- vi. The Successful Resolution applicant proposes to pay the financial creditors a sum remaining after reduction of the RA Loan from the Total Resolution Amount which is estimated to be INR 612,38,50,817/- subject to the actual amount of RA Loan. (**Section 1.2.4 of Part B (Financial Proposal) of the Resolution Plan at Pg. No. 62 of the present Application**).
- vii. There are no dissenting financial creditors for the Resolution Plan in the present scenario, however, any dissenting financial creditor shall be given the minimum amount as prescribed under Section 30(2) of the Code and the relevant Regulations. (**Section 1.3 of Part B (Financial Proposal) of the Resolution Plan at Pg. No. 61 of the present Application**).



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- viii. The Resolution Applicant proposes to infuse funds in one or more tranches, for an amount of INR 20,00,00,000/- (Indian Rupees Twenty Crores Only) as equity (by way of subscription to equity shares and/or compulsorily convertible debentures), quasi equity and/or other securities and/or shareholder debt and/or deposits, third party debt or a combination thereof (as may be determined by the Resolution Applicant in its sole discretion) into the Company towards de-bottlenecking capex of the Corporate Debtor. (**Section 1.1.4 of the Executive Summary of the Resolution Plan at Pg. No. 46 of the present Application**).
- ix. **The source of fund for the Resolution Plan:**

Particulars	INR	Source of Funds
Workmen and Employees	3,03,55,869	RA Loan
Other Operational Creditors including Government and Statutory Authorities (other than Workmen and Employees)	5,57,93,314	RA Loan
Financial Creditors Payment	612,38,50,817	Internal sources of the Successful Resolution Applicant
Total Use of Funds	621,00,00,000	

(Schedule 3 of the Resolution Plan (Source and Use of Funds) at Pg. No. 120 of the present Application)

- x. The implementation schedule of the Resolution Plan has been provided under the Resolution Plan at **Schedule 2 (Resolution Plan Steps) of the Resolution Plan at Pg No. 113 of the present Application.**



- xi. A detailed track record of the successful Resolution Applicant has been in detail provided under the Resolution Plan at **Annexure 1 of the Resolution Plan at Pg No. 121 of the present Application.**
 - xii. The Interim Board consisting of Two nominees of the steering Committee and One nominee from the Successful Resolution Applicant shall be bound to undertake the actions required for the implementation of this Resolution Plan. Further, the monitoring Agent appointed by the Interim Board shall be responsible for the supervision and implementation of the Resolution Plan. **(Section 2.1.1 of Part A (Business Plan) of the Resolution Plan at Pg. No. 48 of the present Application).**
 - xiii. The business plan and financial projections by the Successful Resolution Applicant is stated in **Section 3 of Part (Business Plan) of the Resolution Plan at Pg. No. 55 of the present Application.**
 - xiv. Affidavit confirming that the eligibility under Section 29A of the Code is attached as **Annexure XI to the Resolution Plan at Pg. No. 192 – 208 of the present Application.**
26. The Applicant submits that the Applicant has preferred this present application in furtherance of the Applicant's duties as the Resolution Professional of the Corporate Debtor and the Applicant submits that the Applicant has complied with all the applicable regulations towards discharge of his functions as the Resolution Professional of the Corporate Debtor. The Applicant further submits that the Resolution Plan of the Successful Resolution Applicant has been



prepared in compliance of the Code and all the requisite Regulations which was been approved by the required majority of the CoC.

27. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
28. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 37, 38, 39, 39B, 39C and 39D of the CIRP Regulations.
29. Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan,
- a) 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;
 - b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than,



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

Explanation - For the purpose of this section –

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and
 - (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).
- c) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;



- d) The implementation and supervision of the resolution plan;
- e) Does not contravene any of the provisions of the law for the time being in force;
- f) Confirms to such other requirements as may be specified by the Board.

30. Section 30 (4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.

31. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.



32. The RP has filed Compliance Certificate in Form-H in support of the Resolution Plan by way of additional affidavit. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38 (1A) of The Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.
33. The Resolution Plan has been approved by the CoC in the 9th meeting held on 06.10.2022 with 100% votes.
34. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) 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.



35. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar(supra).”

36. Further, the Creditors are at liberty to proceed against the Personal Guarantors. The approval of the Resolution Plan does not bar the Creditors to proceed against the Personal Guarantors.
37. 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 same needs to be approved. Hence ordered.
38. The Application IA No. 2905 of 2022 in CP 2067 of 2022 be and the same is allowed. The Resolution Plan annexed to the Application is



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hereby approved. It shall become effective from this date and shall form part of this order.

- i. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii. Further in terms of the Judgment of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited v/s Edelweiss Asset Reconstruction Company Limited*, 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 a part of the Resolution Plan.
- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra 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.



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- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and 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 certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)
19.05.2023

SAM

Sd/-

H. V. SUBBA RAO
Member (Judicial)