

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

**I.A. No. 850 of 2021  
IN  
C.P. No. 3552 of 2018**

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

In the matter of

**Mahalaxmi TMT Pvt. Ltd.**

... Operational Creditor

V/s.

**Shree Siddhi – Vinayak Ispat Pvt.  
Ltd.**

... Corporate Debtor

**I.A. No. 850/2021**

**Mr. Fanendra Harakchand Munot**

...Applicant/Resolution Professional

Reserved for orders on: **16.12.2022**

Order pronounced on: **23.12.2022**

**Coram:**

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

Hon'ble Shri Satya Ranjan Prasad, Member (Technical)

***Appearance (through video conferencing):***

***For the Applicant:*** Mr. Nirman Sharma, Advocate a/w Mr. Aman

Kacheria, Advocate

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

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1. This is an Application filed under Section 30 and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant Mr. Prabhakar Devba Gharge, which was approved by 100% voting share of the members of the Committee of Creditors (hereinafter referred to as 'COC').
2. The facts leading to the Application are as under:
  - a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 14.10.2019 under section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Arun Kumar Gupta, was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors. The COC in its 1<sup>st</sup> meeting held on 26.12.2019. On 24.02.2020 the IRP was replaced and Mr. Fanendra Harakchand Munot (the applicant) was appointed as the Resolution Professional (RP). The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
  - b. The Applicant published a public announcement in Form A in accordance with Section 15 of the Code, on 28.11.2019, inviting claims from the creditors of the Corporate Debtor.
  - c. The Applicant submits the claims admitted by Resolution Professional as under:

<b>Summary of admitted Claims (Amount in Rs.)</b>			
<b>Sr. No.</b>	<b>Class of Creditor</b>	<b>Amount Admitted</b>	<b>Total</b>
<b>1</b>	<b>Financial Creditors (Secured)</b>		
A	Andhra Bank	154,57,64,518	

B	Bank of Baroda	51,48,50,031	
C	State Bank of India	46,91,10,680	<b>252,97,25,229</b>
<b>2</b>	<b>Financial Creditors (Unsecured)</b>		
A	Andhra Bank	113,77,00,465	
B	Punjab National Bank	83,98,02,169	
C	Oriental Bank of Commerce	53,19,19,263	<b>250,94,21,897</b>
<b>3</b>	<b>Operational Creditors</b>		
A	MSEDCL	29,64,909	
B	Akshar Ent	1,74,17,694	
C	Apex Rolls (I) Pvt Ltd	66,36,246	
D	Mahalaxmi TMT Pvt Ltd	6,86,18,556	
E	Kay Bouvet Engineering Limited	16,08,812	
F	Central GST (Excise Duty)	28,08,91,524	
G	Central GST Department	2,08,70,512	
H	VAT	1,01,13,28,188	
I	Mayura Gas Agency	46,620	<b>1,41,03,83,061</b>
<b>4</b>	<b>Name of Related Party</b>		
A	Anusuya International Pvt. Ltd.	1,18,39,622	
B	Jai Mata International Pvt. Ltd.	4,90,892.11	
C	Shree Bhimeshwari Ispat Pvt. Ltd.	52,30,07,481.65	
D	Ambey Vaishno Steels Pvt. Ltd.	10,58,955.88	<b>53,63,96,951.64</b>
	<b>Total</b>		<b>6,98,59,27,138.64</b>

- d. Thereafter, RP upon verification of the same, constituted the CoC. Pursuant to the public announcement RP received only 1 (one) Expression of Interest (EoI) and also had submitted the Plan within

the prescribed time schedule. Apart from the Resolution Applicant, the Resolution Professional did not receive any other Plans.

e. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

3. During the course of the Corporate Insolvency Resolution Process of the Corporate Debtor, to determine the fair value and liquidation value of the Corporate Debtor, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These valuers had submitted their reports. The Liquidation and Fair value of the Corporate Debtor is as follows:

<b>Sr. No.</b>	<b>Class of Assets</b>	<b>Name of Valuer</b>	<b>Fair Value (Rs. In Lakhs)</b>	<b>Average Fair Value of a Class of Assets (Rs. In Lakhs)</b>	<b>Liquidation Vale (Rs. In Lakhs)</b>	<b>Average Liquidation value of a class of Assets (Rs. In Lakhs)</b>
1.	Land & Building	Mr. Amol Bora	337	335	253	242
		Unmesh Mandlik	344		231	
2.	Plant & Machinery	Avinash Nighojkar	120	115	60	58
		Devang Shah	110		55	
3.	Securities & Financial Assets	Jigar Shah	25	25	25	25

		Rahul Satale	0		0	
			<b>Total Fair Value</b>	<b>475</b>	<b>Total Liquidation Value</b>	<b>325</b>

4. The Applicant states that the CoC in its Meeting decided that an advertisement for inviting EoI be issued. Form G inviting EoI was published on 16.03.2020. The last date for submission of expression of interest from prospective resolution applicants was 31.03.2020 and submission of plan was 08.05.2020.
5. The Applicant further suggested to the CoC to extend the time duration for submission of Plan till 03.06.2022. Due to the pandemic situation, the Resolution Applicant had sought till 31.07.2020 for submission of Resolution Plan. On 10.07.2020, CoC had ratified to extend the timeline for submission of resolution plans upto 31.07.2020.
6. On 26.08.2020, in the 5<sup>th</sup> CoC Meeting the Applicant shared the Resolution Plan received from the Resolution Applicant on 31.07.2020 and also addressed to queries raised by the CoC members regarding the eligibility of the Plan.
7. On 09.10.2020, in the 7<sup>th</sup> CoC Meeting since the Plan submitted by the Resolution Applicant was the only plan for consideration, CoC requested to revise the terms of payment and the Applicant agreed for the same.
8. On 21.10.2020, in the 8<sup>th</sup> CoC Meeting the addendum read with the Resolution plan was placed before the members of the CoC for purpose of voting. The Applicant further submitted that the Resolution Plan was received from Mr. Prabhakar Devba Gharge and CoC and

approved the plan before completion of 180 days with 100% majority as one CoC member had abstained from voting.

9. Thereafter, the Applicant issued compliance certificate in Form "H" was issued by the Resolution professional.

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

a. Mr. Prabhakar Devba Gharge, the "Successful Resolution Applicant" (SRA), the Resolution Applicant is an individual, having its Registered Office at B-52/3, Ganesh Chowk, Old MIDC, Satara, Maharashtra, 415004. The Resolution Applicant is an Industrialist who is into the business of Hotel/ Real Estate/ Renting Properties. The Resolution Applicant do have association with 7 (seven) companies.

b. The Shree Siddhivinayak Ispat Private Limited (the Corporate Debtor) is a private limited company, was incorporated in 17.08.2004 having CIN No: U27106PN2004PTC019639. The Company has its registered address at Office No. 3, 4<sup>th</sup> Floor, 'The Metropole', Bund Garden Road, Pune - 411001, Maharashtra, India / L-9, Additional MIDC, Satara, Maharashtra - 415004, India. The Company has been founded and owned by Mr. Ashok Kumar Jindal and Mr. Rohit Ashok Jindal.

c. **Formation of New Board:** Corporate Debtor shall be managed under the leadership and guidance of Resolution Applicant. Immediately after the Effective Date, all the existing Board of Directors shall cease to have effect and new board to be constituted having members as nominated by the Resolution Applicant in its sole and absolute discretion.

- d. **Cancellation of Existing Shareholding and Issue of fresh Equity Shares:** Immediately after Effective Date, all the existing shares of Corporate Debtor shall stand cancelled without any payment to existing shareholders. Corporate Debtor shall issue to the Resolution Applicant such number of equity shares as may be suitable on the basis of capital structure requirement of the Corporate Debtor. In terms of the circular (ref IBC/01/2017) dated 25<sup>th</sup> October, 2017, issued by the Ministry of Corporate Affairs, India, approval of the erstwhile shareholders of the Corporate Debtor to the transaction contemplated under the instant Resolution Plan, including the transfer/extinguishment of the entire existing share capital, shall deemed to have been given without any further act and deed immediately upon sanction of the Resolution Plan by the Adjudicating Authority.
- e. The appointment of Chief Executive Officer, Chief Operating Officer and Chief Financial Officer and Other Key personnel shall be decided at the appropriate time. The Resolution Applicant reserves the right to replace the key management personnel of the Company with the appropriate persons of its choice.
- f. **Monitoring and Implementation of Resolution Plan:**  
For successful implementation of Resolution Plan, an Implementation and Monitoring Committee (“**IMC**”) is being proposed by Resolution Applicant, which shall have following members:
- (a) One representative from consenting Secured Financial Creditor;
  - (b) One representative of Resolution Applicant and;
  - (c) Resolution Professional.

All major business decisions impacting the interest of Secured financial creditors shall be made by said committee in consultation with Resolution Applicant only. Examples of major decision include but not limited to, sale of assets, assuming of non-trade liabilities etc. Monitoring Committee shall decide about remuneration payable to the Resolution Professional, the frequency of reporting and meetings to have effective implementation and supervision of resolution plan. It is proposed that Resolution Applicant will bear the cost of Monitoring Committee.

- g. **Effective Date (E)**: “Effective Date” means the date on which the order approving this Resolution Plan by the Adjudicating Authority under section 31 of the Code, is received by the Resolution Applicant. In the event of an appeal being filed, then the Effective Date will be the date on which the appeal is finally disposed off whereby, the order passed by NCLT is confirmed in favour of Resolution Applicant and in the event no appeal is filed, then the Effective Date will be the date on which the statutory period of limitation for preferring the appeal is over.
- h. The Resolution Plan proposes a total Consideration of **Rs. 5,25,00,000.00/-** for the settlement of claims by the Resolution Applicant. Wherein the Resolution Applicant’s contribution is of **Rs. 2,50,00,000.00/-** and a Bank Finance of **Rs. 3,25,00,000.00/-** the sanction letter is attached with the Plan.

11. **The details of the proposed payments are as follows:**

**A) CORPORATE INSOLVENCY RESOLUTION PROCESS COSTS**

- i. The CIRP Costs are Rs. 40,00,000/- (Rupees Forty Lakh only).
- ii. The Resolution Applicant proposes that CIRP Costs be paid in full and in priority to any Claim of any other creditor, within 30 (thirty) days from the Effective Date.
- iii. CIRP considers Insolvency Resolution Process Costs which has been at an amount of Rs. 40,00,000/- (Rupees Forty Lakh only) approximate till date which includes payment to Interim Resolution Professional and/or Resolution Professional and all amount of expenses incurred by IRP and/or RP during the CIRP period, to the extent duly ratified or approved by the Committee of Creditors (COC) and shall be paid in priority to all other debts by Resolution Applicant after the approval of Resolution Plan by Adjudicating Authority.
- iv. The CIRP Cost will be paid in full and priority to any other debts of the Corporate Debtor at the time of approval of the resolution plan by authority.
- v. However, if CIRP cost duly approved by COC if exceeds Rs. 40,00,000/- (Rupees Forty Lakh only) such shortfall amount will be additionally paid by Resolution Applicants. The Resolution Applicants will infuse additional funds (if needed) to meet the CIRP Cost. Unutilized CIRP Cost remains if any out of provisions of Rs. 40,00,000/- (Rupees Forty Lakh only), such amount shall be distributed among financial creditors.

**B) PAYMENT TO FINANCIAL CREDITORS**

- i. The Applicant has submitted that the total claim of Rs. 252,97,25,229/- (Rupees Two Hundred Fifty Two Crores

Ninety Seven Lakhs Twenty Five Thousand Two Hundred and Twenty Nine only) was verified and admitted by the Applicant towards the claim of Secured Financial Creditors. The Resolution Applicant offers to pay Rs. 4,53,00,000/- (Rupees Four Crore Fifty Three Lakhs only) in the full and final settlement/ payment of the entire claim of the Secured Financial Creditors.

- ii. The Applicant has submitted that the total claim of Rs. 250,94,21,897/- (Rupees Two Hundred Fifty Crores Ninety Four Lakhs Twenty One Thousand Eight Hundred and Ninety Seven only) was verified and admitted by the Applicant towards the claim of Secured Financial Creditors. The Resolution Applicant offers to pay Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) in the full and final settlement/ payment of the entire claim of the Secured Financial Creditors.
- iii. Payment Schedule – Financial Creditors (Secured and Unsecured)

<b>Sr. No.</b>	<b>Name of Creditors</b>	<b>Amount Proposed</b>	<b>Within 30 days</b>	<b>Within 90 days</b>	<b>Within 180 days</b>
1	Andhra Bank	2,88,13,562.59	15,45,880.85	1,12,27,870	1,60,39,812
2	Bank of Baroda	92,19,462	1,37,376	37,39,682	53,42,404
3	Punjab National Bank	8,36,649.04	8,36,649.04	-	-
4	Oriental Bank of Commerce	5,29,922.11	5,29,922.11	-	-
5	State Bank of India	84,00,404	1,25,172	34,07,448	48,67,784
	<b>Total</b>	<b>4,78,00,000</b>	<b>31,75,000</b>	<b>1,83,75,000</b>	<b>2,62,50,000</b>

- iv. The Resolution Applicant shall pay an amount of Rs. 4,78,00,000/- (Rupees Four Crores Seventy Eight Thousand only) in total to all the admitted claims of the Secured and Unsecured Financial Creditors.
- v. The whole amount will be paid by the Resolution Applicant in three instalments as per above table.
  - Within 30 (thirty) days from the effective date an amount of Rs. 31,75,000/- (Rupees Thirty One Lakhs and Seventy Five Thousand only) will be paid to the Financial Creditors.
  - Within 60 (sixty) days from the effective date an amount of Rs. 1,83,75,000/- (Rupees One Crores Eighty Three Lakhs and Seventy Five Thousand only) will be paid to the Financial Creditors.
  - Within 90 (ninety) days from the effective date an amount of Rs. 2,62,50,000/- (Rupees Two Crores Sixty Two Lakhs and Fifty Thousand only) will be paid to the Financial Creditors.
- vi. In the event of the Resolution Applicant unable to remedy in the event of default, the Secured Financial Creditors will be entitled to take any and/or all measures as provided in IBC.
- vii. The Secured Financial Creditors will cease to have and release their all lien/ charges /encumbrances on the Non - Current Assets and Current Assets of the Company upon payment of Upfront amount of Rs. 4,78,000/- (Rupees Four Lakhs Seventy Eight Thousand only) and the Resolution Applicant will be entitled to offer all its Non-Current Assets for fresh borrowings for Term Loan / Working Capital including WCDL and or any fresh loan for

funding cost of Corporate Debtor. Further all title deeds and other documents (including charge documents, if any) held by the Financials Creditors or on their behalf shall be immediately returned to the Company on effective date.

**C) PROPOSAL FOR WORKMEN/EMPLOYEE OF CORPORATE DEBTOR**

- i. The Applicant has submitted that no amount is due to the workmen/employee of the Corporate Debtor.
- ii. Upon sanction of Resolution Plan by Adjudicating Authority all the workmen and/or Employee will cease to be Workmen and/or Employee of Corporate Debtor. Their Claim (including Gratuity and other Liability) will be limited to the entitlement of each workmen and/or Employee calculated and provided in the amount as decided in by the CoC, the Resolution Applicant and the Resolution Professional.
- iii. All balance dues and claims of the workmen and other employees against the corporate debtor other than one proposed to be paid in above Para shall stand waived in terms of Regulation 37(f) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

**D) PROPOSAL FOR OPERATIONAL CREDITOR, OTHER CREDITORS, RELATED PARTY OF CORPORATE DEBTOR AND STATUTORY DUES**

- i. The amount due to the Operational Creditors, Other Creditors, related party and Statutory Dues of Shree Siddhi Vinayak Ispat Private Limited as provided in

Information Memorandum dated 14.10.2019 is tabulated  
below:

<b>Sr. No.</b>	<b>Name of Operational Creditor</b>	<b>Amount Admitted (Rs)</b>	<b>Amount Proposed (Rs)</b>	<b>Payment Schedule</b>
<b>1</b>	MSEDCL	29,64,909	1,051	Within 30 days of order date
<b>2</b>	Akshar Ent	1,74,17,694	6,175	Within 30 days of order date
<b>3</b>	Apex Rolls (I) Pvt Ltd	66,36,246	2,353	Within 30 days of order date
<b>4</b>	Mahalaxmi TMT Pvt Ltd	6,86,18,556	24,326	Within 30 days of order date
<b>5</b>	Kay Bouvet Engineering Limited	16,08,812	570	Within 30 days of order date
<b>6</b>	Central GST (Excise Duty)	28,08,91,524	99,580	Within 30 days of order date
<b>7</b>	Central GST Department	2,08,70,512	7,399	Within 30 days of order date
<b>8</b>	VAT	101,13,28,188	3,58,530	Within 30 days of order date
<b>9</b>	Mayura Gas Agency	46,620	17	Within 30 days of order date
	<b>Total</b>	<b>1,41,03,83,061</b>	<b>5,00,000</b>	

- ii. The Applicant has submitted that the total claim of Rs. 1,41,03,83,061/- (Rupees One Hundred Forty One Crore Three Lakhs Eighty Three Thousand Sixty One only) was verified and admitted by the Applicant towards the claim of Operational Creditors. The Resolution Applicant offers to pay Rs. 5,00,000/- (Rupees Five Lakhs only) in the full

and final settlement/ payment of the entire claim of the Employees and Workmen.

iii. The Resolution Applicant offers to pay Rs. 5,00,000/- (Rupees Five Lakhs Only) in the full and final settlement/ payment of the entire claim of the Operational Creditor, within 30 (thirty) days from the Effective Date of Resolution Plan.

iv. Dues to Related Party of Corporate Debtors are as follows:

<b>Sr. No.</b>	<b>Name of Related Party</b>	<b>Amount of debt due to the Company</b>	<b>Amount Proposed (Rs)</b>
<b>1</b>	Anusuya International Pvt. Ltd.	11,839,622.00	-
<b>2</b>	Jai Mata International Pvt. Ltd.	490,892.11	-
<b>3</b>	Shree Bhimeshwari Ispat Pvt. Ltd.	523,007,481.65	-
<b>4</b>	Ambey Vaishno Steels Pvt. Ltd.	1,058,955.88	-
	<b>Total</b>	<b>53,63,96,951.64</b>	-

v. In terms of IBC, Resolution Plan should provide for the payment of dues of Operational Creditors in such manner as may be specified by the Board which shall not be less than the amount to be less than the amount to be paid to such Operational Creditors in the event of a liquidation of the Company under Section 53 of the IBC or 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 or priority in sub section (i) of section 53.

vi. The Information Memorandum does not specify the liquidation value due to the Operational Creditors the Resolution Applicant propose above amount.

**E) PROPOSAL FOR CONTINGENT LIABILITES OF CORPORATE DEBTOR**

- i. The Applicant submits that as on 14.10.2019, the Applicant ascertained various litigation are Pending with different courts, tribunals, government authorities which are as follows:

<b>Sr. No.</b>	<b>Petitioner</b>	<b>Authority</b>
1	Akshar Enterprises	NCLT
2	Apex Enterprises	Civil Courts Malerkotla
3	Apex Rolls India Pvt Ltd	NCLT
4	Maaruti Udyog	Advocate legal notice
5	MVAT – Kolhapur	MVAT - Kolhapur Appeal 14-15
6	MVAT- Kolhapur	MVAT - Kolhapur Appeal 13-14
7	MVAT – Satara	MVAT- Satara Form 301 F. Y. 17-18
8	Central GST Division Pune	Order
9	Central GST Division Pune	Order
10	TDS department	Total TDS due on penalty, late fees, & interest pending is Rs. 15,13,217.18. Few of the current notices enclosed.
11	Income tax	Order show cause notice F. Y. 2017-18.
12	Income tax	F. Y. 2018-19. Hearing notice.

- ii. To fully settle the contingent liability, RA offers Rs. 2,00,000/- (Rupees Two Lakh only). It extends the rights to management committee for the payment of the amount to contingent liabilities.

- iii. Any Liabilities arise if any from the outcome of the pending litigations, shall be stand extinguished and no amount shall be payable by the Resolution Applicant once the resolution plan is approved the Adjudicating Authority.

**F) PROPOSAL FOR SHAREHOLDERS OF CORPORATE DEBTOR**

- i. On the effective date and with effect from the appointed date, all existing Issued, subscribed and paid up share capital comprises of 1,42,50,000 equity shares of Rs. 10 each amounting to Rs. 14,25,00,000/- shall stand cancelled without any further act or deed. Such share capital of the corporate debtor shall stand extinguished without any payment (including any cancelled value of the said equity share) to the shareholders of the corporate debtor holding such exiting share capital. Any other equity – linked securities/warrants, securities/warrants convertible into or exchangeable. With equity snares of the corporate debtor and all other securities of the corporate debtor, if any, shall also stand cancelled and extinguished without any payment and /or further action.
- ii. On the effective date and with effect from the appointed date, equity shares of the corporate debtor having an aggregate face value equal to the Subscription amount (“New Equity Shares”) will be issued and allotted by the corporate debtor to the Resolution Applicant or its nominees in consideration of subscription amount.

12. The treatment of various stakeholders of the Corporate Debtor is represented below in tabular form:-

<b>Sr. No.</b>	<b>Types of Creditors</b>	<b>Class of Creditors</b>	<b>Amount Admitted</b>	<b>Total amount to be paid under Resolution Plan</b>
1	CIRP Cost		40,00,000	40,00,000
2	Financial Creditors			
	A	Secured Financial Creditors	252,97,25,229	4,53,00,000
	B	Unsecured Financial Creditors	250,94,21,897	25,00,000
3	Operational Creditors			
	A	Operational Creditor, Other Creditor, Related Party and Statutory Dues	1,41,03,83,061	5,00,000
4	Contingent Liability		NIL	2,00,000
5	Equity shareholders		14,25,00,000	NIL
	<b>Total</b>		<b>6,59,60,30,187</b>	<b>5,25,00,000</b>

**13. SOURCES OF FUNDS:**

The Resolution Applicant through his own contribution as he has sufficient net worth and liquid assets to finance the Resolution Plan. And the Resolution Applicant had already secured a Bank Finance the sanction letter has been attached with the Resolution Plan.

In order to implement the Resolution Plan, Resolution Applicant has following liquid asset available at disposal;

<b>Sr. No.</b>	<b>Sources</b>	<b>Amount (In Rupees)</b>

1.	Resolution Applicant's Own Contribution	Rs. 2,50,00,000.00
2.	Bank Finance (Sanction Attached with the plan).	Rs. 3,25,00,000.00
	<b>Total</b>	Rs. 5,75,00,000.00

14. The indicative Repayment Tenure towards various creditors in the events for implementation of Resolution plan from approval date is as follows:-

Particulars	Claims admitted (Rs)	Proposed payment amount (Rs)	Upfront Payment (Rs)	Deferred payment (Rs)	Proposed Payment Structure
CIRP cost	40,00,000	40,00,000	40,00,000	-	Upfront i.e. within 30 days of the approval of Resolution plan by AA
Secured Financial Creditors	252,97,25,229	4,53,00,000	6,75,000	4,46,25,000	Within 30 days- 6,75,000 Within 90 days- 1,83,75,000 Within 180 days- 2,62,50,000
Unsecured Financial Creditors	250,94,21,897	25,00,000	25,00,000	-	Upfront i.e. within 30 days of the

					approval of Resolution Plan by AA.
Operational Creditors including Government / Statutory Authorities	1,41,03,83,061	5,00,000	5,00,000	-	Upfront i.e. within 30 days of the approval of Resolution Plan by AA.
Contingent Liability	-	2,00,000	2,00,000	-	Upfront i.e. within 30 days of the approval of Resolution Plan by AA.
Equity shareholders	14,25,00,000	-	-	-	Existing equity share capital shall be transferred to resolution applicant, person acting in concert at Rs. NIL upon approval of

					resolution plan by AA.
<b>TOTAL</b>	<b>6,59,60,30,187</b>	<b>5,25,00,000</b>	<b>78,75,000</b>	<b>4,46,25,000</b>	

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

**16. OBSERVATIONS AND FINDINGS:**

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay operational creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has agreed to meet the cost of project from existing resources including infusion of equity/debt through the parent company, from sale of unsold inventories and if required from raising finance through external sources.
- iv. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor. The Respondent has

proposed to liquidation value to unsecured financial creditors who dissent from the plan.

- v. Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- vi. Provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d)& Regulation 38(2)(c).
- vii. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- viii. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - please include a statement to this effect in the Resolution Plan as per Section 30(2) (e)
- ix. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- x. As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- xi. The resolution applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- xii. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:

- a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
- b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
- c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
- d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
- e. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under subsection (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.

- h. Provides for the management and control of the business of the Corporate Debtor during its term.
  - i. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
  - j. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
  - k. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).
17. The Resolution Plan has been approved in the 8<sup>th</sup> COC meeting held on 21.10.2020 with 100% voting in accordance with the provisions of the Code.
18. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and

no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

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

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

20. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an

untouched-matter.

21. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

**ORDER**

- i. The Interlocutory Application No. 850 of 2021 is allowed. The Resolution Plan submitted by **Mr. Prabhakar Devba Gcharge**, is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in

***Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited***, the relevant para's of which are extracted herein below:

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

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

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

*(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the*

*resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”*

- iii. We shall clarify here that any amount recovered under any avoidance applications relating to the Corporate Debtor being allowed by the Adjudicating Authority would enure unto the benefit of the Resolution Applicant.
- iv. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- v. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vi. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- vii. 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.

- viii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- ix. The Interlocutory Application No. 850 of 2021 is accordingly **allowed** and **disposed of**.

**Sd/-**  
**SATYA RANJAN PRASAD**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**H. V. SUBBA RAO**  
**MEMBER (JUDICIAL)**