**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AHMEDABAD BENCH**

**(COURT- II)**

**IA No. / 334 / AHM / 2021**

**In**

**CP (IB) No. / 98 / AHM / 2020**

[An Application for approval of Resolution Plan under Section 30(6) r.w. Section 31 of the Insolvency & Bankruptcy Code, 2016 r.w. Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons Regulations, 2016) along with Scheme of Amalgamation under Section 230-232 of the Companies Act, 2013]

**Mr. Kiran Shah**

**Resolution Professional of**

**M/s Vicor Stainless Private Ltd.**

Office at: 608, Sakar -1, Near Gandhigram

Railway Station, Ashram Road, Ahmedabad-

380009,(Gujarat) **…Applicant**

## MEMO OF PARTIES

**Mr. Kiran Shah**

**Resolution Professional of**

**M/s Vicor Stainless Private Ltd.**

Office at: 608, Sakar -1, Near Gandhigram

Railway Station, Ashram Road, Ahmedabad-

380009,(Gujarat) **…Applicant**

**Order Pronounced on: 26/07/2022**

**Coram:**

**DR. DEEPTI MUKESH,**
**HON'BLE MEMBER (JUDICIAl)**

**AJAI DAS MEHROTRA ,**
**HON'BLE MEMBER (TECHNICAL)**

**Appearance:**

**For the Applicant:** **Mr. Kiran Shah, RP in Person**

**For the CoC:** **Mr. Monaal Davawala, Adv.**

# ORDER

1. This application has been filed by Mr. Kiran Shah, Resolution Professional of M/s Vicor Stainless Private Ltd. under section 30(6) read with Section 31 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **IBC, 2016**) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as **"CIRP Regulations"**) for approval of the Resolution Plan along with the Scheme of Amalgamation as well as addendum(s) submitted by the Successful Resolution Applicant(hereinafter referred to as **"SRA"**).
2. The facts, in brief, are that vide order dated 12.03.2020 the Corporate Debtor was admitted into CIRP vide order dated 12.03.2020, in an application filed by the Operational Creditor, namely, M/s Banga Iron and Steel Private Ltd. u/s 9 of the IB Code, triggering moratorium under section 14 of the Code. Mr. Sunit Jagdishchandra Shah was appointed as Interim Resolution Professional (hereinafter referred to as "**IRP"**), who made a public announcement in Form-A on 18.03.2021. CoC was constituted on 13.06.2020. Thereafter, the Applicant had reconstituted the CoC on 14.08.2020 and 17.08.2020, respectively, based on claims received from the erstwhile IRP. The reconstituted CoC comprised of 6 Financial Creditors,

viz. Bank of Baroda, Indiabulls Consumer Finance Limited, IDFC First Bank Limited, HDFC Bank Ltd., Incred Financial Services Ltd., and Magma FinCorp Limited.

3. It is submitted by the applicant that the 1st CoC meeting was held on 01.07.2020, wherein the members of COC had resolved to replace the IRP Mr. Sunit Jagdischandra Shah with Resolution Professional -Mr. Kiran Shah (hereinafter referred to as **RP**). Vide order dated 30.07.2020, Mr. Kiran Shah was appointed as RP by this Authority. The erstwhile IRP had appointed two registered valuers each on 10.07.2020 for the valuation of the asset classes – Plant and Machinery and Securities / Financial Assets. However, the Applicant also appointed two registered valuers on 10.10.2020 for the valuation of the asset class – Land and Building.

4. It is further submitted that in 3rd CoC meeting held on 01.10.2020 the CoC members had approved the publication of Form G for the invitation of EOI and also approved the eligibility criteria for Prospective Resolution Applicants and the Evaluation Matrix for evaluation of the Resolution Plan. Accordingly, the invitation of EOI in Form G was published on 09.10.2020. The details of the final list of eligible resolution applicants were issued on 05.11.2020 and last date of submission of the Resolution Plan was originally fixed on 02.12.2020 (as per Form G), and thereafter no. of times extended the last date of submission of the Resolution Plan due to permitting the

revision of the resolution plan by CoC. It is submitted by the applicant that in compliance with the resolution passed in the 3rd CoC meeting, the applicant had filed an application seeking an extension of the CIRP period for 90 days beyond 180 days and exclusion of the lockdown period of 68 days and the said extension and exclusion was allowed by this Adjudicating Authority on 24.11.2020.

5. It is submitted that the 4th CoC meeting was held on 09.11.2020, wherein the applicant informed that one EOI was received from Prospective Resolution Applicant (hereinafter referred to as **"PRA"**), i.e., M/s Mangalam Worldwide Pvt. Ltd. in response to the publication of Form G. It is further submitted that in respect of the EOI received from the PRA, the Applicant found certain disqualification/ineligibility in terms of section 29 A of the IBC, 2016. One of the relatives of the promoter-directors of the said PRA had obtained the credit facilities/loan accounts with Bank of Baroda - the Secured Financial Creditor of the Corporate Debtor and a member of CoC, for which explanation was sought by the applicant.

6. It is submitted that the 5th CoC meeting was held on 12.11.2020 which was adjourned due to insufficient quorum and hence, the said adjourned meeting was held on 13.12.2020, wherein the Bank of Baroda, had submitted a letter dated 13.11.2020 which reflected removal of the name of the relative of the

PRA from the list of wilful defaulters as maintained by the said bank. Hence, it was found appropriate to consider the PRA as eligible.

7. It is submitted by the applicant that the 6th CoC meeting was held on 03.12.2020 wherein the Request for Resolution Plan (RFRP) was approved with 95.54 % voting**.** Accordingly, RFRP was issued and the last date for submission of the resolution plan was 07.01.2021. In response to RFRP, the Resolution Plan along with the Scheme of amalgamation was submitted on 05.01.2021 by the PRA, i.e., M/s. Mangalam Worldwide Private Limited.

8. It is further submitted that the above-said resolution plan was not found in compliance with the prescribed requirements of the IBC, 2016 and Regulations made thereunder and accordingly, the Resolution Plan was sent back for requisite revisions/modifications. Thereafter, the revised Resolution Plan was submitted by PRA on 09.02.2021 and again submitted on 13.02.2021.

9. It is submitted by the applicant that the 7th CoC meeting was held on 16.02.2021 wherein the resolution plan of the PRA was discussed at length but one of the secured financial creditor - Bank of Baroda having 89.25 % voting share was not satisfied with the amount offered in the plan and expressed to improve the amount offered by the PRA. In 8th CoC meeting on 19.02.2021, the PRA sought time to revise/modify its offer and in the same meeting, due to delay on account of revision/modification of the Resolution

Plan, the CoC approved the extension of the last date for submission of the Resolution Plan up to 15.03.2021 subject to permission granted by this Authority.

10. It is submitted by the applicant that the date of initiation of CIRP was 12.03.2020 and as per the compliance certificate, the date of filing of Resolution Plan before Adjudicating Authority is 19.04.2021. Hence, the present application for approval of the Resolution Plan is within 330 days after exclusion of the lockdown period,i.e., 68 days.

11. It is submitted by the applicant that the 11th CoC meeting was held on 16.03.2021, wherein an addendum to the previous revised/modified resolution plan was discussed whereby the Resolution plan amount was enhanced from Rs.4,50,00,000/- to Rs. 6,00,00,000/- but Secured Financial Creditor had raised some issues about the addendum to the revised/modified resolution plan on which PRA sought more time to resolve the said issues.

12. It is submitted by the applicant that in 12th CoC meeting held on 19.03.2021, an addendum dated 18.03.2021 to the revised/modified resolution plan as submitted by PRA was discussed and clarification was sought from PRA to the issues raised by the Secured Financial Creditor, which were clarified by PRA vide clarification letter dated 20.03.2021 and in the same meeting the CoC approved the extension of time for submission of the revised /modified

Resolution Plan. The applicant submitted the Resolution Plan, along with the Scheme of Amalgamation with Addendums before CoC.

13. It is further submitted by the applicant that in 13th CoC meeting held on 03.04.2021 wherein the PRA submitted a fresh addendum dated 30.03.2021 to the revised resolution plan after considering all the modifications as suggested by the members of CoC. The members of the CoC unanimously approved the resolution plan of M/s. Mangalam Worldwide Private Limited through e-voting, which was concluded on 08.04.2021. The Resolution Plan was approved with 91.02 % voting.

14. It is further submitted by the RP that the final Resolution Plan dated 20.02.2021 including the scheme of amalgamation along with addendum (s) dated 18.03.2021 and 30.03.2021, submitted by the PRA complies with provisions of Section 30(2) of IBC, 2016 and Regulation 38 (3A) of the CIRP Regulations. As per the valuation report, the average Fair value and the average liquidation value is Rs. 6,89,31,317 and Rs. 4,57,23,420/- respectively.

15. The payment structure in the Resolution Plan read with the addendum(s) in tabular form is represented below:

| **Sr. No** | **Category of the Stakeholder** | **Amount of Claim Admitted** | **Amount Payable Amount (INR)** |
|---|---|---|---|

| | | Amount (INR) | |
|---|---|---|---|
| 1. | Secured Financial Creditor | 14,44,65,510 | 6,27,00,000 (Against Assets of Corporate Debtor : 3,27,00,00; Against Land of Director –Mr. Suresh Binjraj Agarwal: 3,00,00,000 |
| 2. | Unsecured Secured Financial Creditors | 1,74,07,414 | 5,00,000 |
| 3. | Operational Creditors | 43,15,087 | 3,00,000 |
| | Total Amount | 16,61,88,011 | 6,35,00,000 |

**Note:** The CIRP cost will require to be paid in priority to other stakeholders. As per the information provided in the IM and information received from the RP, the CIRP cost incurred till date(i.e., as on 20.02.2021) is Rs. 8,68,196 and the same is being met from the balance available with the Corporate Debtor. Any additional cost over and above the amount already incurred would also be met from the said account. However, if the said additional amount is not met from the balance available with the Corporate Debtor then any unmet CIRP cost would be proportionately adjusted against the payments to be made to Financial Creditors so that the overall financial obligation of the Resolution Applicant remains unchanged.

16. Total Resolution Plan is for Rs. 635 lakhs.

| **Sources of Funds** | **Amount (Rs. in Lakhs)** |
|---|---|
| Fresh Equity | 25.00 |
| Loan from Group Companies and other Bodies Corporate | 610.00 |
| **Total** | 635.00 |
| **Distribution of Funds** | **Amount (Rs. in Lakhs)** |
| Secured Financial Creditors | 627.00 |

| | |
|---|---|
| Unsecured Financial Creditors | 5.00 |
| Operational Creditors | 3.00 |
| **Total** | 635.00 |

17. The indicative timeline for implementation of the proposed Resolution Plan is as follows:

| Particulars | Indicative Actions | Amount (Rs. in Lakhs) | Time Line |
|---|---|---|---|
| Operational Creditors | Payment in Designated account | 3.00 | Within 30 days from the approval of the Resolution Plan by Adjudicating Authority. |
| Unsecured Financial Creditors | Payment in Designated account | 5.00 | Within 30 days from approval of |

| | | | |
|---|---|---|---|
| | | | the Resolution Plan by Adjudicating Authority. |
| Secured Financial Creditors | Payment in Designated account | 300.00 | Within 90 days from approval of Resolution Plan by Adjudicating Authority and simultaneous execution of sale deed for land. |
| Secured Financial Creditors | Payment in Designated account | 327.00 | Within 90 days from a payment made for land. |

18. It is further submitted by the applicant that the valuation reports are received from the two Registered Valuers for each of the classes of the assets of the Corporate Debtor. Further, submitted that it is proposed by the PRA(in short MWPL) for the amalgamation of the Corporate Debtor with the subsidiary company of the PRA, namely, M/s. Mangalam Saarloh Private Limited (in short MSL) on sanction of Resolution Plan by this AA. The promoters of MWPL would therefore directly be in control of the MSL with whom the Corporate Debtor would get merged with effect from the Settlement date, i.e., the date which the last payment is made as per the Resolution Plan. The existing Board of Directors of MSL would therefore be in control and management of the Corporate Debtor.

19. It is further submitted by the applicant that in compliance with Regulation 39(4) of the CIRP Regulations, the RP filed the Compliance Certificate in Form H.

20. The Resolution applicant, to demonstrate the financial viability and arrangement made by it to implement Resolution Plan, has furnished a Performance Security of an amount of INR 1,27,00,000/- (Rupees One Crore Twenty Seven Lakhs Only) which is 20 % of the Resolution Plan, within 1

(One) business day, of the issuance of LOI by the COC or such other extended date as may be notified by the RP in prior consultation with the COC.

21. PRA prayed that notwithstanding anything contained in this Resolution Plan or otherwise, on and from settlement Date, all the claims of the Corporate Debtor shall stand extinguished, abated, satisfied and settled in the manner set forth in Schedule-4.

22. PRA prayed that all government authorities to give additional period of 12 months starting from the day following the Appointed date to regularise any non-compliance and breaches of the Applicable Laws and waive the non-compliance, if any of the Corporate Debtor prior to the Appointed Date without levying any fee, penalty or additional duty.

23. PRA prayed that all government authorities to grant all relief, concession or dispensation as may be required for the implementation of the Resolution Plan in accordance with the terms and conditions approved by the Adjudicating Authority.

24. PRA prayed that Upon approval of the Resolution Plan by the Adjudicating Authority, the Income Tax Department shall be deemed to have waived the Corporate Debtor from levy or payment of income tax on waiver of principal and interest by Banks/Institutions.

25. PRA prayed that Upon approval of the Resolution Plan by the Adjudicating Authority, all beneficiaries of guarantees issued by the Company and all liabilities of the Corporate Debtor with respect to such guarantees shall stand extinguished and such recipients shall not thereafter be entitled to raise any Claims against the Corporate Debtor.

26. PRA prayed that Upon approval of the Resolution Plan by the Adjudicating Authority, all matters/litigation pending before various judicial and quasi-judicial authorities shall stand disposed of as the claims under litigation are deemed to have been settled or extinguished on account of approval of the Resolution Plan and Corporate Debtor and/or Resolution Applicants shall not liable to make any payment including any penalty, damages cost or otherwise.

27. We have heard learned counsel for the applicant and perused the material available on record. It is noted that Form H has been filed by Resolution Professional giving details of compliances as required under provisions of section 30r.w. 31 of the Code. The Resolution Applicant has proposed to pay the Secured Financial Creditor Rs.6,27,00,000/- against its total admitted claim of Rs.14,44,65,510/-. The Resolution Applicant has also proposed to pay the Unsecured Financial Creditor Rs.5,00,000/- against its total admitted claim of Rs.1,74,07,414/-.The amount of Rs. 3,00,000/- has been proposed in

the Resolution Plan to pay to the Operational Creditor against the total admitted claim of Rs.43,15,087.

28. It is further noted that an affidavit as regard to the eligibility of the resolution applicant under Section 29A along with the undertaking of the resolution applicant to this effect has been filed. We have also perused the contents of the resolution plan, we are of the view that Regulations 36 to 39 of CIRP Regulations, 2016 have been complied with. We further noted that the resolution plan complies with all requirements under Section 30(2)(b) of IBC, 2016. We also find that the resolution plan also contains measures to run the Corporate Debtor in future and that the resolution plan is both feasible and viable as held by CoC and it also contains provisions for its effective implementation. Accordingly, we being satisfied, approve the resolution plan and pass the following order:

  **I.** The approved 'Resolution Plan' shall become effective from the date of passing of this order.

  **II.** The order of moratorium dated 12.03.2020 passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of this order.

  **III.** The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.

**IV.** The monitoring committee as proposed in clause 6.3 of the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.

**V.** The Resolution Professional, Mr. Kiran Shah, shall be released from the duties of the Resolution Professional of the Corporate Debtor as per the provisions of the IBC, 2016 and rules/regulations made thereunder from the date of this order.

**VI.** The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

**VII.** As regards to various reliefs and concessions which are being sought, we hereby grant the following reliefs and concessions only as against reliefs and concessions claimed by the resolution applicant:

**a)** After the payment of the dues to the creditors, as per the resolution plan, all the liabilities/claims of the said stakeholders shall stand extinguished and other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan.

**b)** From the date of this order, all claims against the Corporate Debtor, except those provided in the plan of the Corporate Debtor stand extinguished.

**c)** From the date of this order, all encumbrances on the assets of the Corporate Debtor before the plan shall stand extinguished.

**d)** For reliefs and concessions sought from the Government/Statutory Authorities, we direct the resolution applicant to approach the concerned Authorities. The concerned Authorities to consider and decide the matter as per applicable provisions of law for effective implementation of the Resolution Plan.

**e)** As regard to reliefs prayed under various provisions of the Income Tax Act, 1961, the Corporate Debtor/ Resolution Applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the resolution applicant in accordance with the provisions of Income Tax Act, 1961.

**f)** The Resolution Applicant shall be entitled to review, revise or terminate any appointments/agreements/understanding entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements/MoUs/contracts;

**g)** The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the resolution applicant for the proper running of the operations /business of the Corporate Debtor;

**h)** The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;

**i)** The Resolution Applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan vide this order or within such period as provided for in such law, as the case may be;

**j)** All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the resolution plan as regard to the restructuring of capital shall be binding on them.

**k)** With respect to the grant of license/ Government approval, if the license or approval is terminated, suspended and revoked, the resolution applicant may approach the concerned Department/ Authorities for such approval/ renewal and Government Authorities may consider the request of the resolution applicant as per applicable provisions of law for effective implementation of the resolution plan.

29. Accordingly, this application is allowed as per the above directions and stands disposed of.

30. Certified copy of this order be issued to all concerned parties upon compliance of all requisite formalities.

S/d- S/d-

**AJAI DAS MEHROTRA**
**MEMBER (TECHNICAL)**

**DR. DEEPTI MUKESH**
**MEMBER (JUDICIAL)**

RAHUL/LRA