



**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

I.A. No. 2946 of 2021

IN

C.P. No. 956 of 2020

In the matter of an Application under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016.

In the matter of

Lokvikas Dairy Private Limited

...Operational Creditor

V/s.

Vaishno Devi Food Products Private Limited

... Corporate Debtor

I.A. No. 2946/2021

Mr. Fanendra H. Munot

...Applicant/Resolution Professional

Order Pronounced on: 31.03.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Chetan Kapadia a/w Mr. Kunal Chheda a/w Ms. Meghna Lakhyani i/b Narayani Associates

Per: Shri Kuldip Kumar Kareer, Member (Judicial)

**ORDER**

1. This is an Application filed under Section 30(6) 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 Sharda Construction Private Limited and Vikram Infratech Developers Private limited, 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 27.10.2020 under Section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as **‘the Code’**) (**Admission Order**) and Mr. Fanendra H. Munot, was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors. The COC in its 1st meeting held on 15.01.2021 appointed (**the present Applicant**) 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 11.11.2020, in English Newspaper Business Standard and one in Marathi Newspaper Lokmat, inviting claims from the creditors of the Corporate Debtor.
 - c. The Applicant submits the claims received and admitted by Interim Resolution Professional as under:

Sr. No.	Name of the Creditor	Amounts Claimed	Amount Admitted	Voting Share
1	Canara Bank	43,43,45,937.32	43,43,45,937.32	49.80%
2	Yes Bank (now J.C. Flower Asset Reconstruction Pvt. Ltd.)	20,00,90,136.61	20,00,90,136.61	23.46%
3	SIDBI Venture Capital Limited (Investment Manager to India Opportunities Fund)	10,53,63,013.70	10,53,63,014.70	12.35%
4	Tata Capital Financial Services Limited	8,36,99,341	8,17,68,839	9.60%
5	ICICI Bank	1,36,70,168	1,36,70,168	1.60%



6	Aditya Birla Finance Limited	81,27,311	81,27,311	0.95%
7	IDFC First Bank	60,77,779	57,65,573	0.68%
8	Indusind Bank Limited	60,10,529.50	54,42,200	0.64%
9	Axis Bank	50,85,788	44,60,789	0.52%
10	Bajaj Finance Limited	35,20,780.18	34,17,483.45	0.40%
	TOTAL		85,28,74,451	100%

d. The Applicant states that in the 2nd COC meeting, dated 05.02.2021, the COC approved with minimum eligibility criteria, Request for Resolution Plan (**RFRP**) and Form G for inviting Expression of Interest ("**EOI**") from Prospective Resolution Applicants as per section 25(2)(h) of the Code. Accordingly, Public announcement for inviting EOI was issued. Form G inviting EOI was published on 06.02.2021. The last date for receipt of Expression of Interest from Prospective Resolution Applicants was mentioned as 21.02.2021 and last date of submission of Resolution Plan was mentioned as 31.03.2021.

e. In addition to that, the members of the CoC appointed registered valuers for Plant & Machinery, Land and Building and Securities and Financial Assets to determine the fair value and liquidation value of the Plant & Machinery, Land and Building and Securities and Financial Assets, 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 Plant & Machinery, Land and Building and Securities and Financial Assets is as follows:

(i) Land and Building

Sr No	Particulars	Fair Value	Liquidation Value
	Mr. Amol Bora	16,64,00,000	11,64,80,000
	Mr. Ashutosh Kaushik	17,55,88,000	11,80,14,000
	Average	17,09,94,000	11,72,47,000

(ii) Plant and Machinery

Sr. No	Particulars	Fair value	Liquidation Value
	Mr. Sushant Agarwal	7,85,34,000	5,39,96,000



	Mr. Pranav Ambaselkar	8,29,70,000	5,67,30,000
	Average	8,07,52,000	5,53,63,000

(iii) Securities and Financial Assets

Sr. No	Particulars	Fair value	Liquidation Value
	CA Chirag Shah	-	-
	CA Rahul Satale	0	25,00,000
	Average		12,50,000
	Total Average	25,17,46,000	17,38,60,000

- f. The Applicant submits that the upon publication of the Form-G, the applicant received two EoIs from Prospective Resolution Applicants (“**PRA**”) viz. Mr. Amareesh Gulati and DDN SFA Ltd. out of which the former had withdrawn his EOI and the latter failed to comply with one of conditions of the Request for Resolution Plan (“**RFRP**”). Thus, the CoC rejected the Resolution Plan submitted by DDN SFA Ltd. Under these circumstances the members of the CoC in 5th CoC meeting, decided to publish another Form-G, accordingly the Applicant published a fresh Form-G dated 09.07.2021 in two newspapers namely, Loksatta and Financial Express, wherein the last date to submit the Resolution Plan was mentioned as 02.09.2021.
- g. The Applicant submits that the members of the CoC in its 6th Meeting discussed the eligibility criteria, evaluation matrix and RFRP for evaluating the Resolution Plan.
- h. The Applicant submits that the 8th meeting of the CoC was convened on 03.09.2021 wherein the Applicant appraised the members of the CoC regarding submission of the Resolution Plans from two PRAs viz.,
1. Sharda Construction and Vikram Infratech Developers Pvt. Ltd. (Joint Resolution Applicants);
 2. Jai Sai Construction.



It was further appraised by the Applicant that the amounts pertaining to the Earnest Money Deposit (“**EMD**”) were received in full, from all the PRAs.

- i. The Applicant submits that the 11th CoC meeting was convened on 18.10.2021, wherein the members of the CoC discussed the revised Resolution Plan submitted by Sharda Construction and Corporation Private Limited and Vikram Infratech Developers Pvt. Ltd.(Joint Applicants)
- j. The COC, in its 11th meeting held on 18.10.2021, approved Resolution Plan submitted by Sharda Construction and Corporation Private Limited and Vikram Infratech Developers Pvt. Ltd (being Joint Applicants) with a voting share of 100%. Thereafter, the Applicant issued compliance certificate in Form “H” was issued by the Resolution Professional.

3. **THE SALIENT FEATURES OF THE RESOLUTION PLAN ARE AS UNDER:**

I. Brief Background of the Company / Corporate debtor

- i. Vaishno Devi Food Products Private Limited (CIN: U15201PN2003PTC017695), having registered office at: E-89,3rd floor, Padmavati Nagar, Dhankawadi, Pune 411043. The Corporate Debtor was incorporated on 11 December 2008. The authorized share capital of the corporate debtor is Rs. 11,00,00,000 and the paid-up capital of the corporate debtor is of Rs. 10,05,08,600. There are 45,00,000 fully paid-up shares of the Corporate Debtor having face value of Rs. 10/- per share. Corporate Debtor's last Annual General Meeting (AGM) was last held on 24th October 2019 and as per records from Ministry of Corporate Affairs (MCA), its balance sheet was last filed on 31stMarch 2019.
- ii. **Cause of Default:** The Corporate Debtor has faced various issues because of recession as well as adverse market conditions. The company was classified as NPA by Canara Bank and other lenders. The main reasons of stress in the company were:
 - a)High debt levels. Debt levels were rising faster than both incomes and assets.



- b) Low margin rates
- c) Liquidity crunch
- d) Competition in the market

II. Background of the Resolution Applicants

1. Sharda Construction & Corporation Private Limited (SCCPL)

Sharda Construction & Corporation Private Limited was established in 1994 as a Partnership Firm having 5 partners and later on was registered with Registrar of Companies (ROC) as a Private Limited Company in F.Y. 2009-10 under Indian Companies Act 1956.

2. Vikram Infratech Developers Private Limited (VIDPL)

Vikram Infratech Developers Private Limited was established on 31st August 2018 and primary aim of the formation was to take over proprietary concern M/s Vikram Infrastructure and avail the benefits of corporate structure. Formerly, M/s Vikram Infrastructure was a premier construction proprietorship firm of Vikram Gaikwad, engaged in the construction of Infrastructure Projects in Maharashtra.

III. Payments by the Resolution Applicant

Sl. No	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed (Rs. in lacs)	Amount Admitted (Rs. in lacs)	Amount Provided under the Plan# (Rs. in lacs)	Amount Provided to the Amount Claimed (%)
1	Secured Financial Creditors		5,227.37	5,112.30	1500	29.3
2	Unsecured Financial Creditors		3,432.54	3,416.45	271.19	



3	Operational Creditors	(i) Government	2,880.22	1,162.40	90.90	3.16
		(ii) Workmen	21.48	21.48	6.30	29.34
		(iii) Employees	51.31	25.10	2.51	4.89
		(iv) Milk Suppliers	2,069.99	1,475.75	113.73	5.49
		(v) Other Suppliers	1,592.85	1,083.06	86.36	5.42
		Total			3767.79	299.8
4	Other debts and dues	Contingent liabilities	Nil	Nil	3.0	Nil
Grand Total			15,275.76	12,296.54	2133.99	Nil

- I. This Resolution Plan contemplates a total resolution plan amount of Rs.19,08,99,999/- (Rupees Nineteen Crore Eight lakhs Ninety nine thousand nine hundred and ninety nine only) payable and/or to be contributed/ invested in accordance with the terms set out in this Resolution Plan. Except the amount payable to various Creditors as per the terms of this Resolution Plan, the Claims of all other Creditors and stakeholders of the Corporate Debtor including but not limited to penalties, interest, fines or any other dues, whether admitted or not, due or contingent, whether claim has been filed or not by such Person in respect of such dues, for the period prior to the Trigger Date, shall stand abated, settled and extinguished and neither the Corporate Debtor nor the Resolution Applicant shall be liable to pay any amount against such demand. All proceedings pending against the Corporate Debtor with respect to any such Claims and dues owed, on the Trigger Date relating to the period prior to the Trigger Date, shall stand terminated and all consequential liabilities, if any, stand abated and shall be considered to be not payable by the Corporate Debtor or the Resolution Applicant.

a. Total Outlay

- i. The proposed total outlay by the Resolution Applicant as part of the Resolution Plan to revive operations of the Corporate Debtor is as under:



Sr. No.	Forms of Fund	Proposal for settlement (Amount in lakhs)
1.	CIRP Costs	60.00
2.	Workmen / employee	5.50
3.	Secured Financial Creditors	1,278
4.	Unsecured Financial Creditors	271.19
5.	Dissenting Financial Creditors	Liquidation value
6.	Operational Creditors and Statutory Dues	289.31
7.	Existing Shareholders	NIL
8.	Contingent liability	5.00
	(A)	1,908.99
	Investment in corporate debtor	
9.	Working Capital	2,000.00
	(B)	2,000.00
	Total (A) + (B)	3,908.99

b. Upfront Cash

- i. Upfront Cash: On the Trigger Date, the Resolution Applicant or its Nominees shall contribute an amount of Rs. 6,48,99,999/- (Rupees Six Crores forty eight lakhs ninety nine thousand nine hundred ninety nine) as Upfront Cash, which will be utilised in the following order of priority set out below.

Sr. No.	Use of Upfront Cash Amount (in Rs.)	Notes
1.	Payment of Outstanding CIRP Costs.	In an event that the CIRP Costs is outstanding, the same shall be paid at actuals by the Resolution Applicant from the upfront cash amount.
2.	Payment to the Workmen /Employees*	The Resolution Applicant proposes a whole sum amount of Rs. 5,50,000 to settle the dues of Workmen



		and Employees. The same to be distributed in the proportion of their claims admitted. Hence, a lump sum amount is proposed.
3.	Payment to the Other Operational Creditors towards discharge of their Operational Debt in full and final settlement thereof. This amount shall be distributed among the Other Operational Creditors in proportion to their admitted claims.	Higher of the following: (a) RA proposes a settlement proposal of 8% towards claim admitted claims of Operational creditors i.e. Rs. 2,89,30,506/- (Rupees Two crores eighty nine lakhs thirty thousand five hundred and six); or (b) the amount to be paid to such creditors in the event of a liquidation of the Corporate Debtor under Section 53 of the IBC; or (c) the amount that would have been paid to such creditors, if the amount to be distributed under this Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53 of the IBC.
5.	Payment towards unsecured Financial Creditors	RA proposes a settlement proposal of 8% towards claim admitted of Operational creditors that is Rs. 2,71,19,493/- (Rupees Two crores seventy one



		lakhs nineteen thousand four hundred and ninety three); or (b) the amount to be paid to such creditors in the event of a liquidation of the Corporate Debtor under Section 53 of the IBC; or (c) the amount that would have been paid to such creditors, if the amount to be distributed under this Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53 of the IBC.
6.	Payment towards secured Financial Creditors (excluding the Dissenting Financial Creditors)	The balance of the Upfront Cash from total payment of Rs. 6,48,99,999/- (Rupees Six Crores forty eight lakhs ninety nine thousand nine hundred ninety nine)(i.e., after payment of amounts as contemplated above) shall be payable by the Resolution Applicant/ Nominees. Total Rs. 6,48,99,999/- (Rupees Six Crores forty eight lakhs ninety nine thousand nine hundred ninety nine)
	Total	Rs. 6,48,99,999/- (Rupees Six Crores forty eight lakhs ninety



		nine thousand nine hundred ninety nine)
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- ii. The Upfront Cash shall be infused by the Resolution Applicant as a mix of Equity Share Capital or Preference Share Capital or loans or other instruments as the Resolution Applicant its nominees may deem fit.
- iii. The Upfront Cash will be infused into the Corporate Debtor on or before the Trigger Date.

c. Deferred Cash to the Financial Creditors:

- i. In addition to the Upfront Cash, the Financial Creditors (including Dissenting Financial Creditors) will be paid the remaining amount of Rs. 12,60,00,000/- (Rupees Twelve Crores Fifty-two lakhs only) ("Deferred Cash"), which shall be payable over a period of 12 months from the Trigger Date in four equal instalments of 3 months each.

IV. Terms of the Resolution Plan and its Implementation Schedule

- i. The list of activities to be undertaken as part of the resolution process and the indicative timelines for implementation of this Resolution Plan upon becoming effective is as set out in the table herein below:

Particulars	Amount (Rs. In Lacs)	Timeline Total Days	Total Days
Receipt of Certified Copy of Order of NCLT Approving the Resolution Plan 1. Notice on the Company's Website 2. Intimation to MCA, RBI, Tax authorities and various other statutory authorities (as applicable) 3. Intimation to all Creditors, and	-	-	T



other stakeholders of the Company			
Payment of CIRP Costs as approved by CoC	60,00,000/-	Within 60 days from Trigger Date	T+60
Payment to Operational Creditors	2,89,30,506/-	Within 60 days from Trigger Date	T+60
Employees	5,50,000/-	Within 60 days from Trigger Date	T+60
Upfront Payment to Dissenting Financial Creditors, if any	Not more than respective Liquidation value	Within 60 days from Trigger Date	T+60
Upfront Payment unsecured to Financial Creditors	2,71,19,493/-	Within 60 days from Trigger Date	T+60
Upfront Payment secured to Financial Creditors	The balance of the Upfront Cash from total payment of Rs. 6,48,99,999/- (Rupees Six Crore forty Eight lakhs Ninety nine thousand nine hundred and ninety nine only) (i.e., after payment of amounts as contemplated above) shall be payable by the Resolution Applicant/ Nominees.	Within 60 days from Trigger Date	T+60
First Trench to Financial Creditors	3,19,50,000/-	At the end of 3 month from the trigger date	T+90



Second Trench to Financial Creditors	3,19,50,000/-	At the end of 6 month from the trigger date	T+180
Third Trench to Financial Creditors	3,19,50,000/-	At the end of 9 month from the trigger date	T+270
Fourth Trench to Financial Creditors	3,19,50,000/-	At the end of 12 month from the trigger date	T+360
Total	Rs.19,08,99,999/- <i>(Rupees Nineteen Crore Eight lakhs Ninety nine thousand nine hundred and ninety nine only)</i>		

Monitoring Committee

- ii. Monitoring Committee shall comprise of the Insolvency Professional, one representative of the COC and one member nominated by the Resolution Applicant. The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall be required and entitled to do all such acts, deeds, matter and things as may be necessary, desirable or expedient in order to supervise implementation of this Resolution Plan and shall act under the supervision of the NCLT up to the Trigger Date.
- iii. The Monitoring Committee shall file all the forms that will be required for implementation of the Resolution Plan and will sign or cause the relevant officers of the Corporate Debtor to sign all applications on behalf of the Corporate Debtor that are proposed to be made to any other Governmental Authorities including ROC for smooth implementation of this Resolution Plan within the timelines set out herein below:

PHASE III – IMPLEMENTATION OF PROPOSED RESOLUTION PLAN		
1.	Management of Company • Re-constitution of Board of Directors • Setting up of management team and control systems	T+30



	• Identification of contractors and execution of documents	
2.	Obtaining requisite approvals and completing all the necessary filings before the Trigger Date, wherever required	T+60
3.	Restarting the operations of the Corporate Debtor	T+90
4.	(i) Payment of Deferred Cash; (ii) Release of Existing Security and issuance of no dues/no objection certificate; (iii) Execution of Assignment Agreement (at the option of the Resolution Applicant/its Nominees) (iv) Release of PBG. The timelines shall stand adjusted in case of prepayment of the Deferred Cash at the option of the Resolution Applicant in its sole discretion as per the terms of the Resolution Plan.	T+180 <i>(or such earlier timeline in case of prepayment)</i>

V. **Sources of Funds**

a) **Summary of the Sources of Funds**

- i. The Upfront Cash and any subsequent working capital infusion shall be brought in by the Resolution Applicant/ Nominees and shall be contributed to the Corporate Debtor as a mix of equity capital or preference capital or loans or internal accruals by the Resolution Applicant / Nominees/ its Affiliates and/or as otherwise provided in the Resolution Plan, in its sole discretion.
- ii. The Resolution Applicant shall be entitled to raise monies from banks and/ or financial institutions as it may deem fit from time to time to meet the requirement of funds for the payments to stakeholders or for raising working capital or meet the capex requirements of the Corporate Debtor, as set out in the Resolution Plan.
- iii. The Resolution Applicant proposes that the Deferred Cash will be paid by the Corporate Debtor from its internal accruals as given in the financial projections attached herewith. However, the Resolution



Applicant shall be entitled to raise monies from own sources/ group companies / banks and/ or financial institutions as it may deem fit from time to time to meet the requirement of funds for the payment and/or prepayment of Deferred Cash.

b) Earnest Money Deposit (“EMD”)

- i. The Resolution Applicant shall provide the Earnest Money Deposit of Rs1,00,00,000/- (Rupees one crore Only) either in the form of demand draft or money order or Cheque or Bank guarantee as deemed fit in favour of Corporate Debtor along with the Resolution Plan.
- ii. In case where Resolution Plan of present Resolution Applicant is approved, present EMD of Rs. 1,00,00,000/- (Rupees one crore Only) as well as amount of Rs. 5,00,000/- (Five Lacs) paid as EMD along with EOI shall be adjusted toward the upfront cash payment.
- iii. In case where Resolution Plan of present Resolution Applicant is rejected, the amount of present EMD of Rs. 1,00,00,000/- (Rupees one crore Only) as well as amount of Rs. 5,00,000/- (Five Lacs) paid as EMD along with EOI shall be refunded within two working days.

c) Performance Bank Guarantee (“PBG”)

- i. The Resolution Applicant shall provide the Performance Bank Guarantee of an amount equal to 10% of the proposal submitted either in the form of Bank Guarantee or in any other mode as deemed fit in favour of Corporate Debtor after NCLT’s approval of the Resolution Plan in accordance with the RFRP.
- ii. Simultaneously with payment of the final instalment of the Deferred Cash or any prepayment thereof, the PBG shall be released to the Resolution Applicant.
- iii. In the event, the PBG is encashed, the PBG shall be adjusted towards the payment of the last tranche of Deferred Cash by the Resolution Applicant.

d) Manner of Payments

- i. The Resolution Applicant shall make payment of various components to the Financial Creditors in such mode / manner and in such bank account as may be required by the COC/RP.



- ii. The Upfront Cash shall be utilised in the order of priority set out in Paragraph 3 of the Resolution Plan.

VI. Compliances

Provision	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 Professional or Order, if any, of the Adjudicating Authority?		Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		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?	Chapter 3	Yes Yes Yes Yes Yes No



	(f) contravenes any of the provisions of the law for the time being in force?		
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?		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?		Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?		Yes
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?		No NA
Regulation 38(2)	Whether the Resolution Plan provides:	Chapter 6	Yes



	<p>(a) the term of the plan and its implementation schedule?</p> <p>(b) for the management and control of the business of the corporate debtor during its term?</p> <p>(c) adequate means for supervising its implementation?</p>		
38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default?</p> <p>(b) it is feasible and viable?</p> <p>(c) it has provisions for its effective implementation?</p> <p>(d) it has provisions for approvals required and the timeline for the same?</p> <p>(e) the resolution applicant has the capability to implement the resolution plan?</p>		Yes
Regulation 39(2)	<p>Whether the RP has filed applications in respect of avoidance transactions observed, found or determined by him?</p>		No
Regulation 39(4)	<p>Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.</p>		Resolution Applicant will provide a Performance Bank Guarantee of 10% of total amount proposed under the resolution plan. Resolution applicant has provided Bank



			Guarantee of Rs. 1 Crore at the time of submission of EOI.
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4. **OBSERVATIONS AND FINDINGS:**

- i. As per IBC Code 30(2)(a), Resolution Plan provides payment of Insolvency Resolution Process Costs in priority to all other debts.
- ii. As per Section 30(2)(b), Resolution Plan for the Operational Creditors provides Higher of the following:
 - (a) RA proposes a settlement proposal of 8% towards claim admitted of Operational creditors that is Rs. 2,89,30,506/-
or
 - (b) the amount to be paid to such creditors in the event of a liquidation of the Corporate Debtor under Section 53 of the IBC;
 - (c) the amount that would have been paid to such creditors, if the amount to be distributed under this Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53 of the IBC.
- iii. The Resolution Plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan as per Section 30(2)(c).
- iv. Resolution Plan provides proposal for Management and control of business of corporate debtor as per Section 30(2)(c) & regulation 38 (2)(b).
- v. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- vi. The Resolution Applicant declares that this Resolution Plan is not in contravention of the provisions of any applicable laws for time being in force as per Section 30(2) (e)



- vii. 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).
- viii. 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.
- ix. 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 as per Regulation 38(1).
 - b. The Resolution Plan has provided for 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. The Resolution Plan 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 Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant that the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
 - f. 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.
 - g. The Resolution Plan provides for a monitoring committee for supervision of the Resolution Plan.
 - h. The Resolution Plan addresses the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
 - i. 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(1B) of the Regulations.

- j. The Resolution Plan includes a statement as to how it has dealt with the interests of all the stakeholders, including financial creditors and operational creditors, of the Corporate debtor. This is in compliance of Regulation 38 (1A)
5. The Resolution Plan has been approved in the 11th COC meeting held on 18.10.2021 with 100% voting in accordance with the provisions of the Code.
6. 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.
7. In ***India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)*** the Hon'ble Apex Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly



situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

8. 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).”*

9. 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.
10. 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. 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. It is accordingly approved in the following terms:

ORDER

- a) The Interlocutory Application No. 2946 of 2021 is **allowed**. The Resolution Plan submitted by **Sharda Construction and Vikram Infratech Developers Pvt. Ltd. (Joint Resolution Applicants)**, 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.

- b) We shall clarify here that any amount recovered under any avoidance applications relating to the Corporate Debtor allowed by the Adjudicating Authority would enure unto the benefit of the Resolution Applicant.
- c) 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.
- d) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- e) 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.
- f) 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.
- g) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.



- h) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- i) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- j) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- k) The Interlocutory Application No. **2946 of 2021** is accordingly **allowed** and **disposed of**.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)