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IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Physical/Video – Conferencing/Hybrid Mode)

I.A. No.192 of 2022 in
CP (IB) No.196/BB/2020
U/s 30(6) r/w Section 60(5) of I&B Code, 2016

In the matter of IA No.192 of 2022:

Hari BabuThota
Resolution Professional for
Shree AAshraya Infra-Con. Limited. - Applicant / RP

In the matter of:

Shree AshrayaSouhard Credit Society Limited - Financial Creditor

Versus

Shree Aashraya Infra-Con. Limited - Corporate Debtor

Order delivered on: 01.10.2024

Coram: Hon'ble Shri. K. Biswal, Member (Judicial)
Hon'ble Shri.Manoj Kumar Dubey, Member (Technical)

PRESENT:
The RP / Applicant in
IA No.192 of 2022 : Shri.HariBabuThota
For the R.P. : Shri.C.K. Nandakumar, Sr. Counsel

O R D E R

Per: K. Biswal, Member (Judicial)

1. This Application is filed on 08.02.2022 by Mr. Hari Babu Thota (hereinafter referred to as 'Applicant/Resolution Professional') under Section 30 (6) read with Section 31 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking approval of the Resolution Plan as approved by the CoC Members.

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2. It is to be noted that the Corporate Debtor Shree Aashraya Infra-Con Limited was incorporated in the year 1995 and was registered as an MSME on 15.07.2021 as per the UDYAM Registration Certificate obtained by it. The main CP (IB) No. 196/BB/2020 filed by the Financial Creditor was admitted by this Tribunal vide order dt.06.04.2021 and the earlier Resolution Plan was submitted on 08.02.2022. Since the MSME Registration certificate was obtained much later than the date of initiation of CIRP, this Tribunal vide order dt.28.02.2023 rejected the resolution plan on the ground that the Resolution Applicants are not eligible under Section 29A read with 240A of IBC. The Tribunal observed that the Resolution Professional is required to verify the Resolution Plan before submission of the same to the CoC under the provisions of Regulation 39(2).

3. The Resolution Professional, thereafter went in appeal against the order of this Tribunal before Hon'ble NCLAT Chennai which was also disposed of vide order dt.02.06.2023 upholding the order of this Hon'ble NCLT dt.28.02.2023. An Appeal was filed before the Hon'ble Supreme Court against the order of Hon'ble NCLAT wherein the Hon'ble Apex Court observed that the intention of Section 240A of the Code is to carve an exception for micro, small and medium industries which excludes the MSMEs from disqualification under 29A (c) to (h) even if the Corporate Debtor has attained the status of MSME after the initiation of CIRP. The Supreme Court analysed Hon'ble NCLAT's view in ***Digamber Anand Rao Pingle v. Shrikant Madanlal Zawar & Ors***.[1] and held that the same is bad in law. Thus, the matter was restored to this tribunal for reconsideration vide order dt.29.11.2023

4. Brief facts pertaining to the instant application are perused hereunder:

   i. The main Company Petition bearing CP(IB) No. 196/BB/2020 filed by Financial Creditor i.e. M/s Shree AashrayaSouhard Credit Society Limited u/s 7 of the IBC for initiation of Corporate Insolvency Resolution Process ("CIRP") against M/s Shree Aashraya Infra-Con Limited having its registered office at 322, Audumbar Savali, Roy Road, Tilakwadi Belgaum - 590 006, Karnataka, India was admitted by this Tribunal vide order dt.06.04.2021 and the applicant was appointed as the Interim Resolution Professional (IRP); and he was

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[1] Comp. App. (AT) (Ins) No. 43-43A/2021.

directed to take necessary actions in accordance with relevant provisions of the Code and Regulations made there under.

ii. Consequent to the aforesaid appointment, the IRP had issued public announcement on 11.04.2021, calling upon various creditors of the Corporate Debtor to submit their claims. The IRP filed a report on 01.05.2021 certifying the constitution of the COC of the Corporate Debtor. CoC comprised of Financial Creditor and Home Buyers holding 100% of the voting share in its 1st meeting held on 07.05.2021 *inter*-alia resolved to appoint the aforesaid IRP as the RP of the Corporate Debtor. Accordingly, this Adjudicating Authority approved his appointment as the RP, *vide* order dated 13.08.2021.

iii. It is submitted that the IRP appointed two registered valuers on 20.05.2021 as per Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to determine the fair value and the liquidation value of the CD. As per the valuation report, the average Liquidation value of the assets of the CD is Rs. 31,04,80,347.50 and the average Fair Market value of the same is Rs. 30,57,80,347.50. The RP further presented the draft Form-G to the Committee of Creditors that was prepared in accordance with Regulation 36A of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Evaluation Matrix was also presented before the Committee of Creditors and the same was approved by 95.65% voting share.

iv. Pursuant to Section 29 of the Code r/w Regulation 36 of the CIRP Regulations, an Information Memorandum ('IM') was prepared on 29.06.2021 by the RP in such form and manner as specified under the CIRP Regulations for formulating a Resolution Plan and the same has only been shared with the members who have provided a confidentiality undertaking as required under the Code and CIRP Regulations, and with the Prospective Resolution Applicants (PRAs).

v. It is stated that, the RP in consultation with CoC appointed Mazars Business Advisors Private Limited as Forensic Auditor to examine the

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books of accounts of the Corporate Debtor and upon verification submitted their final report to the RP.

vi. In the 3rd meeting held on 04.08.2021, the members of the CoC were requested to consider and approve re-issuance of invitation for Expression Of Interest (EOI) in Form G, and accordingly, re-issued Form G on 09.08.2021 and published the same in newspapers on 10.08.2021, wherein, the promoters of the Corporate Debtor submitted EOI for submission of resolution plan for revival of the Corporate Debtor.

vii. It is submitted that, on 23.10.2021, the resolution plan for revival of the Corporate Debtor was received from the promoters of an MSME and the same was opened on 25.10.2021 in the presence of CoC through video conference. Further, the RP reviewed the resolution plan and sought additional documents from the resolution applicant on 30.10.2021.The same was submitted by the resolution applicant on 02.11.2021, as addendum to the resolution plan.

viii. In the 4th CoC meeting held on 09.11.2021, *inter-alia* requested the members to approve Resolution Plan received from the promoters of the CD being an MSME, for the revival of the CD.

ix. It is submitted that, Writ Petitions were filed against the Corporate Debtor and Resolution Professional to as Respondent No.2 and Respondent No.3. Further, the petitioners filed a memo for withdrawal and at the hearing held on 01.02.2022 the, Hon'ble High Court of Karnataka rejected all the petitions.

x. It is stated that the Adjudicating Authority vide its order dated 10.11.2021 in IA NO. 257 of 2021, granted extension of CIRP time by 90 days beyond the statutory period of 180 days. Subsequently, the RP filed an IA for exclusion of CIRP for a period of 54 days from the date of 21.04.2021 to 14.06.2021, period during which the State Government of Karnataka had imposed lockdown due to Covid-19 pandemic, consequent to which the CIRP period was to conclude on 24.02.2022, instead of 01.01.2022 and the same is allowed *vide* order dated 07.03.2022.

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xi. It is stated that, the members of CoC discussed on the resolution plan at their 5th (adjourned) meeting held on 21.12.2021 and the financial terms were not acceptable to the CoC, members advised the resolution applicants to submit the revised terms, and the revised resolution plan was submitted on 19.01.2022.

xii. In the 6th CoC meeting held on 28.01.2022, the revised resolution plan was presented before the CoC, and after deliberations, the CoC approved the resolution plan with 100% voting share. The full text of the approved resolution plan submitted by the Resolution Applicant was annexed to the Application as 'Annexure 4'.

xiii. The List of financial creditors of the CD Shree Aashraya Infra-Con Limited being members of the CoC and distribution of voting share among them is as under:

SI. No.	Name of Creditor	Voting (%)	Voting for Resolution
1	Shree Aashraya Souharda Credit Society	88.66	Voted for
2	Jayshankar Society Kalkundrikar	6.99	Voted for
3	Ganesh K. Shirodhkar/Priya Ganesh Shriodkar/ Mangal Shirodkar	4.35	Voted for
TOTAL PERCENTAGE		**100%**	

xiv. The resolution plan for revival of the Corporate Debtor was received from the Promoters of the Corporate Debtor, namely, Mr.Guruprasad V. Hishobkar jointly with Ms. Laxmi V Hishobkar and Mr. Venkatesh A. Hiskobkar. The detail of the Resolution Plan is provided as under along with the detailed timeline.

S.No	Payment Particulars	Amount (Rs)	Narration

1.	Payment towards CIRP costs (The CIRP cost more than the amount of Rs.50,00,000/- shall be reimbursed on actual basis)	50,00,000.00	Shall be paid in priority and in full
2	Upfront Payment towards outstanding employee dues	NIL	NIL
3	Payment to the Unsecured Financial Creditors: ***A:*** *Upfront cash recovery to financial creditors other than related parties (Shree Ashraya Souhard Credit Society Limited)* ***B:*** *Maximum balance payment to financial creditors other than related parties (Shree Ashraya Souhard Credit Society Limited)*	8,25,00,000.00 (2,00,00,000.00) (6,25,00,000.00)	Rs.2,00,00,000/- (Rupees Two Crore only) Shall be paid within 60 days from the date of receipt of order and the balance shall be settled within 6 months from the date of receipt of order
4.	Payment to Home buyers (As per the agreement of Sale)	99,21,889.00	The homebuyers shall be delivered completed properties as per the agreement for sale executed by the Corporate Debtor prior to CIRP commencement date within 1 year from the date of receipt of order of the Adjudicating Authority

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			approving the resolution plan
5.	Payment to the Operational Creditors	68,03,506.00	The operational creditors who have consented to continue with the Corporate Debtor and payment to the Operational Creditors shall be made during the ordinary course of business. The operational creditors who have not given the consent to continue shall be paid within 1 year from the receipt of order of the Adjudicating Authority approving the resolution plan.
6.	Payment to Shareholders	24,60,000.00	Out of sale proceeds of the properties of the Corporate Debtor and Net owned funds of the resolution applicant/out of borrowed funds of the resolution applicant within 1 year from the date of approval of resolution plan.
7.	Working Capital	25,00,000.00	Out of sale proceeds of the properties of the

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			Corporate Debtor and Net owned funds of the resolution applicant/out of borrowed funds of the resolution applicant
8.	Payment to Related parties	59,15,800.00	Related parties shall be made within 1 year from the date of receipt of the Order.
TOTAL Resolution Plan Amount		**11,51,01,195.00**	

xv. It is submitted that in accordance with Section 30(1) of the Code, the successful resolution applicant has submitted an affidavit dt.15.02.2024 vide diary no.1319 declaring that they are eligible under Section 29A of the Code to submit this Resolution Plan.

xvi. In Compliance with Regulation 36B (4A), the Resolution Applicant submits that the necessary performance security amount of Rs.15,000,000 vide account no.503008272941 along with Rs.60,00,000 bearing account no.50300829539366 has been deposited into the account of the Corporate Debtor on 16.02.2024 and a fixed deposit has been created which is subject to renewal from time to time. The Copy of the latest FD certificates have been furnished vide memo filed on 27.02.2024 vide diary no.1319 @Page 39-49 and the details regarding the security deposit is provided @Page 22 of Form-H dt.31.07.2024.

xvii. It is submitted that the Resolution Plan which provides for the management of the affairs of the Corporate Debtor as per Section 30(2) (d) after approval of the Resolution Plan states that the existing Board of Directors of the Corporate Debtor shall continue to manage and control the affairs of the Corporate Debtor during the term of the Resolution Plan.

xviii. The resolution applicant proposed to pay CIRP cost in full at actual and in priority to all other claimants/stakeholders, on actual basis

and pay 100% of the admitted claims of Secured Creditor of the Corporate Debtor. Further, the payment amounting to Rs.59,15,800/- to the related parties shall be made within one year from the date of receipt of the approval of resolution plan order. The details of related party and the amount distribution is provided @Page 169 Annexure R4 of the instant application.

xix. Further, the Resolution Applicant immediately on approval of the Resolution Plan shall make payment towards following stakeholders by the Resolution Applicant:

a) CIRP Cost – 100%
b) Financial Creditor – Shree Ashraya Souhard Credit -100%
c) Operational Creditor -100%
d) Homebuyers – 100% as per the terms of the agreement of sale executed between the homebuyers and Corporate Debtor prior to CIRP commencement date. The details of the homebuyers are provided @Page 12 of Form-H dt.31.07.2024.
e) Equity Shareholders – the resolution applicant to make payment to two shareholders and acquire shares from them. The remaining shareholders shall continue to have their existing stakes in the Corporate Debtor.

xx. As per Regulation 36A (8), the RP has also performed due-diligence and provided the report @Page 34 of the Compliance Memo vide diary no.3935 filed on 08.07.2024.

xxi. It is submitted that all requirements under the Code and CIRP Regulations have been duly complied with and that the Resolution Plan may be approved in accordance with law.

5. Further, for the implementation of the Resolution Plan the source of funds is as under:

a) Out of sale proceeds of the properties of the Corporate Debtor (Corporate Debtor (Corporate debtor being functioning in real estate sector, after refurbishment and repair of the inventories of the Corporate Debtor OR as is where is basis, the sale process shall be carried out); OR
b) Net owned funds of the resolution applicant

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c) Out of borrowed funds from financial institutions or NBFCs/takeover of FC liability by third party/ investor in any other mode, subject to compliance of applicable laws to the CD.

The Resolution Applicant along with members of the monitoring committee, shall open an escrow account to receive the sale proceeds of properties of the CD. Further in compliance Affidavit diary no.1319 filed on27.02.2024, the Net Worth of the Resolution Applicants as per the computation given is Rs.1173.95 lakhs as on 7.02.2024 which is attached @Page 37 of the compliance affidavit. Additionally, the Resolution Applicant has also attached In-Principle Approval of Loan for the amount of Rs.15 crores@ Page 6 of Memo filed vide diary no.4656 dt.05.08.2024.

6. It is further clarified that the resolution plan does not envisage any claims put forth by the dissenting financial creditor and hence there is no payment made to that effect under the provisions of Section 30(4) of the Code.

7. It is also clarified by the Resolution Applicant that as per Regulation 38(1) (b) the provision relating to the amount due to the Operational Creditors shall be given priority in payment over financial creditors.

8. The term and the implementation schedule as per Regulation 38(2)(a) is given as 14 months which is enunciated in the table below:

Action	Timeline
Reciept of order of the AA approving the resolution plan	X
Upfront payment of CIRP Cost and financial creditors (Shree Ashraya Souhard Credit Society Limited)	X +60 days
Payment to Operational Creditors	X+1 year
Payment to Homebuyers	X + 1 year
Balance Payment to financial creditors (Shree Ashraya Souhard Credit Society Limited)	X + 6 months

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9. It is proposed to form a monitoring committee during the resolution plan implementation with the following members:

a) Resolution Professional

b) The member of Committee of Creditors with highest voting share

c) Representative of the consortium of Resolution Applicants

10. In addition to overseeing the implementation of the resolution plan, the monitoring committee shall perform the following activities:

a) The resolution applicant along with members of the monitoring committee shall open an escrow account to receive the sale proceeds of properties of the Corporate Debtor;

b) The monitoring committee members shall be signatories of the said escrow account;

c) The sale proceeds received shall be released in the following manner from the escrow account:

-70% of the sale proceeds towards payment to Shree Ashraya Souhard Credit Society Limited

-30% of the sale proceeds towards working capital requirement of the Corporate Debtor

11. It is submitted that in accordance with Section 30(2) (e) of the Code the Resolution Plan does not contravene any of the provisions of the law for the time being in force.

12. Further as per the provisions set out in Regulation 38(1A)(a) of the CIRP Regulations, the Resolution Plan confirms that it has considered interests of all stakeholders and has provided for payment/settlement/repayment schedule described above keeping in view the objective of keeping the company as a Going concern and confirms that neither the Resolution Applicant nor any related parties have either failed or ever contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past in accordance with Regulation 38(1B) of the CIRP Regulations.

13. This Tribunal vide order dt.02.02.2024 allowed the RP to file amended Form-H in light of the subsequent modification of various Regulation to the Form-H along with necessary documents in support of the Resolution Plan regarding sources of funds and Bank Guarantee etc.

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14. The RP vide order dt.06.03.2024 filed compliance memo vide diary no.1319 dt.27.02.2024 and the same was taken on record.

15. This Tribunal vide order dt.12.07.2024 allowed the applicant to file a brief note and also pointed out that "on the next date of hearing, the compliance of provisions of Section 30(2) of the IBC, and the Regulations specified in Section 30(2) (f) of the Code will be examined." The Brief Note was filed on 05.08.2024 vide diary no.4656 in which the Net Worth Certificate of the Resolution Applicant and In-Principle Loan Approval for Rs.15 crore was filed.

16. Heard learned counsel for the RP and carefully perused the pleadings on record.

17. The Corporate Debtor herein, namely, M/s Shree Aashraya Infra-Con Limited incorporated in 1995 is an MSME registered on 15.07.2021. The CIRP proceedings were initiated against the Corporate Debtor by this Tribunal vide order dt.6.04.2021 passed in CP (IB) 196/BB/2020. The present application is filed for approval of the Resolution Plan submitted by Mr.Guruprasad V.Hishobkar jointly with Ms.Laxmi V.Hishobkar and Mr.Venkatesh A. Hishobkar. The approval has been sought under the provisions of Section 31(1) of the Code.

18. It is submitted that a certificate by the IRP in Form H of the CIRP Regulations to certify that the resolution plan as approved by the CoC meets all the requirements of the IBC and its Regulations has been filed wherein the details of the payment to the secured financial creditor and the distribution of voting share for the Resolution Plan is provided. However, it is to be noted that the different Form-H's have been filed by the applicant on 27.02.2024 and 31.07.2024. Therefore the final Form-H dt.31.07.2024 is taken on record. As per Regulation 38(1A) of the CIRP Regulations, the amount provided to all the stakeholders under the Resolution Plan is given @Para 7 of Form-H which is produced hereunder:

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided	Amount Provided to the

					under the Plan#	Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		Total[(a) + (b)]	NIL	NIL	NIL	NIL
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21 (**Related Parties***)	50,59,000	19,34,000	50,59,000	100%
		(b) Other than (a) above:	-	-	-	-

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		(i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan				
		a.Shree Ashraya Souhard Credit Society Ltd**	14,32,53,359	7,75,00,000	8,25,00,000	57.59%
		b.Home-buyers***	99,21,889	99,21,889	99,21,889	100%
		Total[(a) + (b)]	**15,90,91,048**	**9,33,37,689**	**9,33,37,689**	**61.81%**
3	Operational Creditors	(a) Related Party of Corporate Debtor ****	6,97,800	6,97,800	8,56,800	122.79%
		(b) Other than (a) above:				
		(i)Government	NIL	NIL	NIL	NIL
		(ii)Workmen	NIL	NIL	NIL	NIL
		(iii)Employees	NIL	NIL	NIL	NIL
		(iv) Others*****	53,09,005	38,14,380	68,03,506	128.15%
		Total[(a) + (b)]	**60,06,805**	**45,12,180**	**76,60,306**	**127.53%**
4	Other debts and dues	NIL	NIL	NIL	NIL	NIL
Grand Total			**16,42,41,053**	**9,38,68,069**	**10,51,41,195**	**64.02%**

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The compliance of the Resolution Plan is as under as per Para @ 9 of Form-H:

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	The CoC at their 2nd meeting held on 29th June 2021 has fixed the criteria that the resolution applicant shall have net worth of Rs.10 Crore. The Resolution Applicant has submitted the networth certificate which depicts sufficient net-worth and the latest net-worth certificate has been submitted by the resolution applicant (after restoration of IA for approval of resolution plan) which has been submitted to the Hon'ble NCLT vide compliance memo on 27th February 2024 vide diary no.1319 (page no.37-38 and also on 8th July 2024 vide diary no.3935 (page no.17-18).	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	Separate affidavit has been furnished by the Resolution applicants under Section 29A of the Code and the	Yes

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	Adjudicating Authority?	same has been submitted vide compliance memo vide diary no.5261 (page no.8 to 49) Further, the latest affidavit has been submitted by the resolution applicants (post restoration of the IA) which has also been submitted to the Hon'ble NCLT vide compliance memo on 27th February 2024 vide diary no.1319 page no.34 to 39.	
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit under Section 29A has been submitted vide compliance memo vide diary no. 5261 (page no.8-49)	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs?	Para VI(1) of the resolution plan provides for Rs.50 Lakhs payment towards outstanding CIRP Cost. Further the plan also provides that entire CIRP cost shall be paid on actual basis upfront within 60 days of approval of the resolution plan by NCLT (page no-108 of the IA No.192/2022)	Yes
	(b) provides for the payment to the operational creditors?	Para II(1) and VI(4) The resolution plan provides for 100% payment to the	Yes

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		Operational Creditors as per the books of accounts of the Company without considering if the operational creditor has submitted the claim form or not. (page no.97 and page no.109 of the IA). Further, XIII (1) of the resolution plan provides that the priority shall be given to the operational creditors as required u/r 38(1)(b) (page no.114 of the IA).	
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	As mentioned in Para VI(2) of the resolution plan, the resolution applicant has proposed more than 100% of the admitted claim, to the financial creditor and the resolution plan has also been approved by the CoC with 100% voting shares. Further, the resolution applicant vide their affidavit dated 4th July 2024 stated the fact that as more than 100% of the claim admitted was proposed to the financial creditors, there was no separate proposal has been	Yes

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		made to the dissenting financial creditors. (para J at page no.11 of compliance memo filed on 8th July 2024 vide diary no.3935)	
	(d) provides for the management of the affairs of the corporate debtor?	Para XIII(3) (page no.114 of the IA)	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Para XIII(4) (page no.114 of the IA)	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	No	
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC?	Yes	
	(b) has been approved by the CoC with 66% voting share?	Approved by 100% voting share	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	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?	XIII(1)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	IX and X (Page no.110 and 111 of the IA)	Yes

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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.	None of the Resolution Applicants and its related parties submitted any resolution plan in the past in any matter and a separate affidavit in this regard has been submitted by the resolution applicant. (Para 2 in page no.54 vide diary no.5261)	No
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	None of the Resolution Applicants and its related parties submitted any resolution plan in the past in any matter. (Para 2 in page no.54 vide diary no.5261)	No
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule?	XIII(2) (Page no 114 of the IA)	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	XIII(3) (Page no 114 of the IA)	Yes
	(c) adequate means for supervising its implementation?	XIII(4) (Page no 114 of the IA)	Yes
38(3)	Whether the resolution plan demonstrates that –	IV and affidavit by the	Yes

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	(a) it addresses the cause of default?	Resolution Applicants dated 4th July 2024 (Page no.106 of the IA and para N of page no.12 of the Compliance Memo filed on 8th July 2024 vide diary no.3935)	
	(b) it is feasible and viable?	VIII & XI The resolution applicants have submitted 5 year's projection as Annexure-R8, which is enclosed at page no.177 of the IA	Yes
	(c) it has provisions for its effective implementation?	XIII(2) and (4) (Page no.114 of the IA)	Yes
	(d) it has provisions for approvals required and the timeline for the same?	The resolution applicant did not mention the need for approvals. However, certain waivers and reliefs are sought at para XIV. Further, the resolution applicants have affirmed to get the approval, if any needed, within 1 year from the date of approval of resolution plan by the Hon'ble NCLT. (para P in page no.14 of	Yes

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		compliance memo filed on 8th July 2024 vide diary no.3935)	
	(e) the resolution applicant has the capability to implement the resolution plan?	III (Annexure-R7 has been enclosed at page no.174 to 176)	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	The application was filed vide IA No.26 of 2022 and the same was dismissed vide order dated 30th April 2024.	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Yes - Resolution Applicants transferred the performance security amount to the CIRP account of the CD. Fixed deposit has been created and the same is being renewed time to time#. Copy of the latest FD certificates have been furnished vide memo filed on 27th February 2024 vide diary no.1319 (page no.39 to 49).	

19. It is submitted by the Resolution Professional that the COC in its 6th CoC meeting held on 28.01.2022 has approved the Resolution Plan with 100% voting share and the conditions provided for Section 30(4) of the Code are satisfied.

20. At this juncture, it is necessary to refer to Section 30(2). The Provisions of Section 30(2) of the I&B Code, 2016 are as follows:

"The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –

a) *provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the 3 [payment] of other debts of the corporate debtor;*

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b) *provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*

i. *the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*

ii. *the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,*

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) *where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;*

(ii) *where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*

(iii) *where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;*

c) *provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;*

d) *The implementation and supervision of the Resolution Plan;*

e) *does not contravene any of the provisions of the law for the time being in force*

f) *Conforms to such other requirements as may be specified by the Board."*

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21. The compliance of Section 30(2) of the Code is given in Para no.9 of the revised Form-H (supra). The same is being further examined as under:

a) **Section 30(2)(a):** The Resolution Plan in Point No.4.3 provides for the payment of Insolvency resolution process costs. An amount of Rs.50, 00, 000 is admitted as the CIRP Cost (CIRP Cost till the completion of CIRP period).The cost will be paid in full.

b) **Section 30(2)(b):** The Resolution Plan provides for 100% payment to the Operational Creditors as per the books of accounts of the Company without considering if the operational creditor has submitted the claim for or not. The same is provided at Page @97 and 109 of the instant application.

c) **Section 30(2)(c):** Chapter XIII @Page 114 of the Resolution Plan I.A. deals with the management and control of the CD during the term of the Resolution Plan and it states that, from the date of Insolvency commencement date, the Moratorium is declared by the Adjudicating Authority under Section 14 of the Code and the powers of the Board of Directors get suspended. On approval of the resolution plan by the Adjudicating Authority under Section 31(3) of the Code, the Moratorium declared ceases to have effect as provided under section 31(3) of IBC. Consequently, the powers of the Board of Directors will get restored and shall vest upon the Resolution Applicant. The Resolution Applicant shall be in control and management of the affairs of the company and the business of the company shall be carried on by the existing management only.

d) **Section 30(2)(d):**The Resolution Plan in Chapter-XIII at Page 114 of the Resolution Plan deals with implementation and supervision of the Resolution Plan. The Resolution Applicant shall form Monitoring Committee which shall supervise the implementation and which shall consist of Resolution Professional, the Member of the CoC with highest voting share, and the Representative of the consortium of Resolution Applicants.

e) **Section 30(2)(e):**The Resolution Plan does not contravene any of the provisions of the law for the time being in force, as has been declared in Chapter 5 of the Resolution Plan.

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f) **Section 30(2)(f):**It is submitted that the Resolution Plan complied with Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency process for Corporate Persons) Regulations, 2016, which are as follows:

(1) **Regulation 38(1):** As per Regulation 38(1) of the insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors.

(2) **Regulation 38(1A):** It is submitted that the Resolution Applicant confirms that in Chapter 9 of the Resolution Plan it has considered interests of all stakeholders and has provided for payment / settlement/ repayment schedule described above keeping in view the objective of keeping the company as a Going Concern and adhering to the requirements and provisions set out under the code.

(3) **Regulation 38(1B):**As mandated under Regulation 38 (1B) of the CIRP Regulations, the Resolution Applicant confirms that neither the Resolution Applicant nor any of his related parties have either failed or ever contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.

(4) **Regulation 38(3)(a):** The Resolution Applicant has not mentioned the cause of default in the Resolution Plan, however the same has been filed as a compliance memo vide diary no.3935 on 08.07.2024. At page no.12 Para N of the Compliance Memo, the cause of default has been from the dispute between the Corporate Debtor and Shree Ashraya Souhard Credit Society Ltd in connection with crystallization of amount outstanding and the matter was pending before the Karnataka State Sahakari Federation Souhard Court, Malleshwaram Bengaluru Karnataka. As there was a dispute with respect to crystallization of amount payable by the Corporate Debtor to the Society (Financial Creditor and applicant who initiated CIRP), the CD did not make the payment to the financial creditor. Meanwhile, the Society (i.e. Financial Creditor), an application under Section 7 of the IB Code was also filed by the Society for initiation of CIRP of the Corporate Debtor.

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(5) **Regulation 38(3)(b):** The Resolution Applicant, through resolution plan shall demonstrate that the Resolution is feasible and viable as stated in Chapter VIII & IX along with Annexure-R8 which is enclosed at Page 177.

(6) **Regulation 38(3)(c):** It is submitted that in Chapter VIII of the Resolution Plan states that the implementation of the Resolution Plan will be 14 months for completion of the project and will commence from the effective date.

(7) **Regulation 38(3)(d):**. The time line for approval of Resolution Plan is as stated in chapter XIII of the Resolution Plan.

(8) **Regulation 38(3)(e):** with regard to the capability of the resolution applicant to implement the resolution plan, the RA has submitted Compliance Affidavit diary no.1319 dt.27.02.2024, the Net Worth Certificate of the Resolution Applicants Shri Guruprasad v. Hisobkar & Shri Venkatesh A.Hisobkar as per the computation given is Rs.1173.95 lakhs as on 07.02.2024 attached at Page 37.

(9) This Tribunal notes that the Resolution Plan is in accordance with Regulation 38(3) of the CIRP Regulations, and it demonstrates that it (a) addresses the cause of default; (b) it is feasible and viable; (c) it has provisions for its effective implementation; (d) it has provisions for approvals required and the timeline for the same; and (e) the resolution applicant has the capability to implement the Resolution Plan.

22. It is observed that in Para 4 of Form H, the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force. Further, the resolution applicant has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit Resolution Plan. The content of the said affidavit are in order. The affidavits are attached as Annexure 1 to diary no.1319 dated 27.02.2024. It is further certified that the Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its

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feasibility and viability and other requirements specified by the CIRP Regulations.

23. Further, This Tribunal observes that the Resolution Applicant has filed diary no.4656 dt.05.08.2024 demonstrating the Source of Funds vide: a) Copy Letter issued by the channel partner of the financial institutions in connection with the long-term loan of Rs.15 crores; b) Copy of certificate issued by the Chartered Accountant in connection with the networth certificate which has been submitted to this Hon'ble NCLT vide diary number 1319, stating that the assets of Mrs. Laxmi Hishobkar are now transferred to Mr. Guruprasad V. Hishobkar and Mr. Venktatesh A. Hishobkar and accordingly the assets are merged with the networth of Mr. Guruprasad V. Hishobkar and Mr.Venkatesh A. Hishobkar.

24. The Tribunal also takes the note of the Compliance Affidavit filed by the Resolution Applicant vide diary no.1319 dt.27.02.2024 to demonstrate the compliance of Performance Bank Guarantee whereby the Copy of FD Certificate created in the CIRP bank account of the CD depicting payment of performance security is attached @Page 39-49.

25. In Chapter XIV of the Resolution Plan titled Waivers, Reliefs & Exemptions, the Resolution Applicant prays for exemption of compliance under the Statutory Laws from this Tribunal in relating to Companies Act, 2013, Taxes (Direct & Indirect) & Stamp Duty as well as Specific Laws and other Government Approvals as applicable to the Corporate Debtor. This Tribunal has considered the prayer of the Resolution Applicant, but cannot provide a blanket exemption or waiver except to state that any such reliefs and exemptions if any has to be allowed by the respective statutory authorities only.

26. In the circumstances and for the aforesaid reasons, the incumbent application bearing **I.A. No.192 of 2022** is allowed and accordingly,

(i) The Resolution Plan dt.19.01.2022 ('Revised Resolution Plan')(Annexure - 4) is hereby approved.

(ii) Moreover, it is clarified that this order should not be construed as an order granting exemption from payment of stamp duty, taxes or any charges, if any, payment is due or required in accordance with law or in

respect to any permission/compliance with any other requirement which may be specifically required under any law for the time being in force.

(iii) The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan.

(iv) Under the provisions of section 31(3) of the Code, we also direct as under:

a. The moratorium imposed vide order dated 6.04.2021 in the main CP shall cease to have effect from the date of communication of this order.

b. The resolution professional shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Board to be recorded on its database.

(v) Further, the Resolution Professional is directed to handover the management, control and all the assets, documents/records in physical and/or digital form to the Resolution Applicant immediately and the resolution professional will cease to be resolution professional.

27. The approved Resolution Plan shall be effective from date of passing of this Order.

S/d
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

S/d
(K. Biswal)
MEMBER (JUDICIAL)

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