

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)

I.A. No.132 of 2020 in
 CP (IB) No.228/BB/2018
U/s 60 r/w Section 30(6) and 31 of IBC, 2016 &
Regulation 39 of IBBI (CIRP Regulations), 2016

In the matter of IA No.132 of 2020:

Mr. Shivadutt Bannanje
 Resolution Professional of
 Bhuwalka Steel Industries Ltd. - Applicant / RP

In the matter of:

Indu Corporation Pvt. Ltd. - Operational Creditor/
 Petitioner

Versus

Bhuwalka Steel Industries Ltd. - Corporate Debtor/
 Respondent

Order delivered on: 24th June, 2022

Coram: 1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)
 2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

The RP / Applicant in
 IA No.132 of 2020 : Shri Shivadutt Bannanje
 For the R.P. : Shri A. Murali, Adv.
 For Canara Bank : Ms. Chitra Nirmala, Adv.

ORDER

Per: Ajay Kumar Vatsavayi, Member (J)

1. This Application has been filed by Shri Shivadutt Bannanje (hereinafter referred to as 'Applicant / Resolution Professional') under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 ('IBC/Code') seeking approval of the Resolution Plan submitted by Starteck Finance

Limited for the revival of the Corporate Debtor, which is annexed and marked as Annexure-26 to the Application.

2. Brief facts of the case are given hereunder:

- (a) The main Company Petition bearing CP (IB) No.228/BB/2018 filed by the Operational Creditor i.e. Indu Corporation Private Limited u/s 9 of the Code for initiation of the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor, namely, M/s.Bhuwalka Steel Industries Limited, was admitted by this Adjudicating Authority, vide order dated 08.04.2019, and the CIRP of the Corporate Debtor was initiated by appointing Mr. Shivadutt Bannanje as the Interim Resolution Professional and he was directed to take necessary actions in accordance with relevant provisions of the Code and Regulations made thereunder.
- (b) Pursuant to Regulation 6 of the IBBI (IRP for Corporate Persons) Regulations, 2016, the IRP had issued public announcement in Form-A in '*Financial Express*' (English) and '*Vishwavani*' (Kannada) on 18.04.2019 calling upon various creditors of the Corporate Debtor to submit their claims with proof on or before 29.04.2019.
- (c) During the 1st Committee of Creditors (CoC) meeting held on 06.05.2019, it was informed that the Committee is constituted with two Financial Creditors based on the claims received i.e. Canara Bank (68.72% voting share) and IDBI Bank (31.28% voting share). The other claims received from creditors were also placed in the meeting and noted.
- (d) A 2nd meeting of the CoC was conducted on 18.06.2019 to confirm the appointment of the said IRP as the Resolution Professional (RP). In the same meeting, it was also decided to appoint the Registered Valuers and the Forensic Auditor to carry out valuation and the forensic audit for the Corporate Debtor. Further, Form G – invitation of Expression of Interest as prescribed under Regulation 36A of the IBBI (IRP for Corporate Persons) Regulations, 2016 was placed and approved in the meeting. The RP published Form G in the aforesaid

newspapers on 27.06.2019, with the last date for submission of the Expression of Interest (EoI) for the Corporate Debtor being 15.07.2019. As on the last date, eight (8) EoIs were received in respect of the Corporate Debtor.

- (e) The CoC in its 3rd meeting held on 14.08.2019 decided to invite the Resolution Plans from those eight Applicants who's EoI was received. The last date for submission of the Resolution Plan for the revival of the Corporate Debtor was 13.09.2019. As on the said last date, no Resolution Plans were received, however, only requests from some of the Prospective Resolution Applicants (PRA) to extend the time for submission of the Resolution Plan.
- (f) Thereafter, CoC in its 4th meeting held on 16.09.2019 discussed the issue of granting an extension of time for submission of Resolution Plan since no Plan had been received as on last date and directed the RP to file an application with the Tribunal seeking extension of CIRP period by a further period of 90 days with effect from 04.10.2019. Further, the Evaluation Matrix placed before the Committee was also approved along with the re-constitution of the Committee which is as follows:

Sr. No.	Name of the Financial Creditor	Voting Percentage
1.	Canara Bank	65.80%
2.	IDBI Bank	29.95%
3.	SBI Global Factors Limited	4.25%

- (g) The Adjudicating Authority, vide order dated 20.09.2019, extended the CIRP for further period of 90 days from 04.10.2019. The time limit for submission of the Resolution Plan was also extended till 04.10.2019 and thereafter till 22.10.2019.
- (h) The two Valuers appointed as per Regulation 27 determined the fair value and the liquidation value for the Corporate Debtor under Regulation 35 of the CIRP Regulations. The average liquidation value of the Corporate Debtor as arrived at by the registered Valuers is

Rs.91.25 Crores and the fair market value is Rs.131.25 Crores. Copy of the valuation report has been annexed as Annexure-8.

- (i) It is stated that 5th meeting of the CoC was conducted on 31.10.2019, where the Committee was re-constituted as under:

Sr. No.	Name of the Financial Creditor	Voting Percentage
1.	Canara Bank	65.69%
2.	IDBI Bank	29.89%
3.	SBI Global Factors Limited	4.24%
4.	Indian Overseas Bank	0.18%

In the said meeting, the time limit for submission of the Resolution Plan was further extended upto 06.11.2019. However, the RP informed the Committee that one Resolution Plan had been received. The Committee directed the RP to keep the same under seal and to inform the concerned Resolution Applicant that they are free to submit the revised Resolution Plan, if any, before the due date.

- (j) In the said meeting, the RP placed the two new EoIs received from M/s.Saligram Power & Steel Pvt. Ltd. and G.K. Ispat Pvt. Ltd. on 30.10.2019 and 29.10.2019, respectively, before the Committee for their perusal and the Committee rejected these EoIs on the grounds that at this stage it will be too late for the RP to check their eligibility and also for the new bidder to submit the Resolution Plan within the CIRP period due to time constraints.
- (k) CoC in its 6th meeting held on 07.11.2019 was informed that the Hon'ble High Court of Karnataka vide an order dated 06.11.2019 had issued an interim stay on the CIRP of the Corporate Debtor on an application filed by one of the New EoI Applicant i.e. G.K. Ispat Pvt. Ltd. along with the Group Company i.e. Bipin Textile Processing Industries Pvt. Ltd. till the next day of the hearing. On the next date of hearing, the Hon'ble High Court of Karnataka vide an order dated 12.12.2019, further extended the interim stay period till 02.01.2020.
- (l) It is stated that the CIRP process of 270 days was coming to an end on 02.01.2020. Therefore, CoC in its 7th meeting held on 23.12.2019

directed the RP to file an application with the Tribunal seeking for exclusion of time period of litigation (i.e. the stay period from 06.11.2019 to 02.01.2020). The Adjudicating Authority, vide order dated 31.12.2019, excluded a period of fifty seven (57) days i.e. from 06.11.2019 to 02.01.2020 from CIRP Period. Subsequently, the Hon'ble High Court of Karnataka, vide order dated 03.01.2020, had directed the RP to accept the Resolution Plan submitted by GK Ispat Pvt. Ltd. and Bipin Textile Processing Industries Ltd.

- (m) During the CoC meeting held on 17.01.2020, the Committee was re-constituted as follows:

Sr. No.	Name of the Financial Creditor	Voting Percentage
1.	Canara Bank	65.01%
2.	IDBI Bank	29.59%
3.	SBI Global Factors Limited	4.20%
4.	Indian Overseas Bank	0.17%
5.	Deccan Mining	1.03%

Further, in the said meeting, the RP placed three Resolution Plans received from M/s. PP Metallix, M/s. Starteck Finance Ltd. and M/s. Bipin Textiles Processing Industries Pvt. Ltd. for revival of the Corporate Debtor. All the three Resolution Plans were opened and the Committee wanted the brief of the detailed payment structures proposed by the Resolution Applicant(s) and directed the RP to submit a preliminary report on the Resolution Plans so received.

- (n) During the CoC meeting held on 18.01.2020, the RP placed the summary of the Resolution Plan(s) received from the Resolution Applicants, which is as follows:

Name of the Resolution Applicant	Amount proposed for the Revival (Rs.)	Upfront Cash (Rs.)	Time period within which the deferred payments to be made
PP Metallix	40 Crores	4 Crores	1 – 3 years
Starteck Finance Ltd.	60 Crores	20 Crores	1 – 6 years

Bipin Textile Processing Industries Limited	69.24 Crores	2 Crores	1 – 7 months
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- (o) CoC in its meeting held on 21.01.2020 discussed the representations made by the respective Resolution Applicants and decided that the Resolution Plans needs to be revised and granted time till 29.01.2020 for submission of the same. CoC in its meeting held on 30.01.2020 was briefed about the revised bids and the terms of which are as follows:

Name of the Resolution Applicant	Revised Amount proposed for payment to Creditors	Upfront Cash	Time period within which the deferred payments to be made	Remarks
PP Metallix	FCs: 82 Crores OCs: 30 Crores – conditional (if not agreed for conditions, OCs will get liquidation value) CIRP Expenses: 0.25 Crores	For FCs: 22 Crores For OCs: 0.50 Crores	4 years for FCs and OCs	For FC payment an interest @ 9% shall be payable along with yearly instalments. No interest will be payable to OCs. If the CIRP expenses crosses 0.25 Crores the same will be adjusted from the upfront payment to the FCs provided there is no sufficient internal accruals.
Bipin Textile Processing Industries Ltd.	FCs: 70 Crores OCs, employees, etc: 2.24 Crores CIRP Expenses: on actuals	For FCs: 5 Crores	For FCs: Within 7 months For OCs: 90 days	No interest shall be provided
Starteck Finance Limited	FCs Secured: 69 Crores FCs Unsecured: 1 Crore OCs: As per the Liquidation Value PF/ESI: As per the outcome of the cases CIRP Expenses: 0.25 Crores	For FCs Secured: 18.73 Crores For FCs Unsecured: 27 Lakhs	Deferred payment on 364 th day of the plan approval or earlier	If the CIRP expenses crosses 0.25 Crores the same will be adjusted from the upfront payment to the FCs provided there is no sufficient internal accruals.

CoC in its meeting held on 30.01.2020 *inter alia* observed as under:

“The Committee of Creditors preliminary observed the conditional offer made by one of the Resolution Applicants i.e. M/s. PP Metallix and informed the Resolution Professional to write to them requesting them to revise the plan and making it unconditional stating the amount that will be payable to the Operational Creditors.

However, the Committee was of the view that the Resolution Applicants requires to further revise their Resolution Plan and hence one more round was required to be scheduled with them for further negotiations / discussions.”

The Committee after deliberation was of the view that another round of negotiations was required and in meantime directed the RP to inspect and confirm that the Resolution Plans were as per the provisions of the Code.

- (p) In the meantime, the Resolution Applicant i.e. PP Metallix had filed a Writ Appeal vide No.84 of 2020 against the order of the Hon’ble High Court of Karnataka dated 06.11.2019. However, no stay was granted by the Hon’ble High Court.
- (q) A meeting of the CoC with the three Resolution Applicants took place on 17.02.2020 and also subsequently called for on 18.02.2020. However, on 18.02.2020, the representative of PP Metallix sent an email reiterating the earlier contentions. The Committee vide email has *inter alia* informed the Resolution Applicant that conditional payment to the operational creditors are not acceptable and accordingly they are requested to remove the conditions for payment of operational creditors or alternatively the Committee will not consider the conditional payment to the operational creditors.
- (r) Accordingly, at the meeting of the CoC held on 18.02.2020, the Highest (H1) and the second highest (H2) Resolution Applicants i.e. Starteck Finance Ltd. and Bipin Textile Processing Industries Pvt. Ltd. respectively were declared after due deliberations on the Evaluation Matrix. After various rounds of negotiations and discussions, Starteck Finance Limited was declared as the Highest Resolution Applicant. The final proposal submitted by H1 and H2 is as follows:

Payment Schedule	Amount (Rs. in Crores)	
	Bipin Textile	Starteck Finance
Upfront Payment	35	36.5
Year 1	6	25

Year 2	49.5	25
Year 3		7.5
Total Payment	90.5	94

After multiple rounds of negotiations and revision to the Resolution Plan, the Resolution Plan of the Applicant i.e. Starteck Finance Limited was approved by 98.97% of the members of the CoC voting in favour and 1.03% of the member of the CoC dissented against the Resolution.

- (s) It is further stated that the RP has received certain claims after the Resolution Plan has been opened. The RP hereby admits those claims which are as follows:

Financial Creditors			
Sl. No.	Name of the Creditor	Amount Claimed	Amount Admitted
1.	Soul Space Realty Limited	24,04,51,506	24,04,51,506
Operational Creditors			
1.	Shaurya Enterprises	95,86,450	95,86,450
2.	A.R. Enterprises	2,09,82,892	2,09,82,892
3.	Soul Space Realty Limited	83,39,570	83,39,570
4.	Akai Steels Pvt. Ltd.	9,51,50,258	9,51,50,258
5.	Navinchandra Steels Pvt Ltd.	9,33,99,709	9,33,99,709

- (t) The RP certified that the Resolution Plan complies with all the provisions of the Code, the CIRP Regulations and further does not contravene any of the provisions of the law for the time being in force. Further, a copy of the Form H – Compliance Certificate under Regulation 39(4) of the IBBI (IRP for Corporate Persons) Regulations, 2016 along with an affidavit is annexed as Annexure 24. Also, the Resolution Applicant i.e. Starteck Finance Ltd. has submitted an Affidavit pursuant to Section 30(1) of the Code confirming its eligibility u/s 29A of the Code to submit the Resolution Plan and the same has been annexed as Annexure 25.
- (u) Summary of the Financial Proposal of Resolution Plan is as under:

Sl. No.	Payment Obligation	Amount payable under the Plan
1.	Payment of CIRP cost	CIRP cost to be paid on actuals, provided that any amounts payable in excess of Rs.25 lakhs under this head

		shall be adjusted against the upfront payable to the financial creditors.
2.	Upfront cash payment to Financial Creditors (within 30 days of the Plan approval date or such other date as may be mutually agreed between the Applicant and the CoC) Secured Financial Creditors Unsecured Financial Creditors	Rs.36.30 Crores Rs.0.20 Crores
3.	Deferred cash payment to Financial Creditors: On the 364 th day from the Plan Approval date: Secured Financial Creditors Unsecured Financial Creditors	Rs.24.87 Crores Rs.0.13 Crores
	On the 729 th day from the Plan Approval date: Secured Financial Creditors Unsecured Financial Creditors	Rs.24.87 Crores Rs.0.13 Crores
	On the 1094 th day from the Plan Approval date: Secured Financial Creditors Unsecured Financial Creditors	Rs.7.46 Crores Rs.0.04 Crores
4.	Payment to Workmen and Employees	None (as no amount is due to workmen and employees as per the Information Memorandum)
5.	Payment to Trade Creditors (Other than the Government Creditors and Workmen and Employees)	As per their entitlement in terms of Section 30(2)(b) of the Code
6.	Amount towards outstanding Provident Fund and ESI cases	Liability to be met based on the outcome of the cases
7.	Payment to Government Creditors	As per their entitlement in terms of Section 30(2)(b) of the Code
9.	Fresh funds infusion to meet the working capital / project development expenses / capital expenditure requirements (over and above the upfront cash payment to the creditors)	Rs.42 Crores (Rupees Forty Two Crores only)

- (v) The Resolution Applicant has sought certain reliefs and concessions as set out in the Resolution Plan (Annexure 26) by *inter alia* stating that all creditors of the Corporate Debtor shall withdraw all legal proceedings commenced against the Corporate Debtor in relation to claims, including all criminal proceedings, arbitral proceedings, proceedings u/s 138 of the Negotiable Instruments Act, 1881 and

proceedings under SARFAESI and RDDBFI, within 30 days of effective date. Further, immunity shall be deemed to have been granted to the Corporate Debtor from all proceedings and penalties under all applicable laws for any non-compliance for the period prior to the effective date.

- (w) It is stated in the Resolution Plan that the Resolution Applicant has not at any point in time, failed to implement, or contributed to the failure to implement, any other resolution plan approved by the Adjudicating Authority.
- (x) It view of the above, the RP filed the instant application seeking approval of the Resolution Plan submitted by Starteck Finance Limited for revival of the Corporate Debtor.
3. Heard Shri Shivadutt Bannanje, learned Resolution Professional, Shri A. Murali, learned Counsel for the Applicant/Resolution Professional, Ms. Chitra Nirmala, learned Counsel for the Canara Bank and carefully perused the pleadings on record.
4. The Corporate Debtor herein, namely, M/s. Bhuwalka Steel Industries Limited was incorporated on 18.08.1981 and the CIRP proceedings were initiated against the Corporate Debtor by this Adjudicating Authority, vide order dated 08.04.2019 passed in C.P. (IB) No.228/BB/2018. The present application is filed for approval of the Resolution Plan submitted by M/s.Starteck Finance Limited ('Resolution Applicant'). The approval has been sought under the provisions of Section 31(1) of the Code.
5. In pursuant to the public announcement inviting claims from the Creditors of the Corporate Debtor, the IRP had constituted the Committee of Creditors. The list of Financial Creditors of the Corporate Debtor i.e. Bhuwalka Steel Industries Limited being Members of the CoC and distribution of voting share among them is as under (Para No.5 of Form H):-

Sr. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	Canara Bank	65.01%	Voted For

2.	IDBI Bank	29.59%	Voted For
3.	SBI Global Factors	4.20%	Voted For
4.	Indian Overseas Bank	0.17%	Voted For
5.	Deccan Mining Syndicate Private Limited	1.03%	Dissented
6.	Soul Space Realty	-	Claim was received only after the last Committee of Creditors meeting dated February 18, 2020, hence not considered for voting.

6. The details of stakeholders and the amounts provided for them under the Resolution Plan given in Para No.7 of Form H are as under:-

(Amount in Rs. Crores)

Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1.	Dissenting Secured Financial Creditors	-	-	-	-
2.	Other Secured Financial Creditors*	479.09	479.09	93.23	19.46%
3.	Dissenting Unsecured Financial Creditors	13.30	5.00	0.08	1.67%
4.	Other Unsecured Financial Creditors	24.88	24.88	0.42	1.67%
5.	Operational Creditors**	229.42	208.49	0	0
	Government**	30.83	30.83	0	0
	Workmen	-	-	-	-
	Employees	-	-	-	-
	PF and ESI***				Sincere there is no claim, the liability to be met based on the outcome of the cases
6.	Other Debts and Dues (CIRP expenses)	0.52	0.52	0.52	100%
Total		778.04	748.81	94.25	-

* There is a dispute regarding the charges filed by the SBI Global Factors. The same needs to be resolved among the charge holders and accordingly they will be considered as secured financial creditors, if not as unsecured financial creditors.

** As per the Resolution Plan, Operational Creditors shall be paid as per their entitlement in terms of Sec. 30(2)(b) of the Code. So, accordingly the creditors shall be paid NIL.

*** The Provident Fund and ESI claims are not received, however they are under dispute. So according to the Resolution Plan, liability to be met based on the outcome of the cases.

7. The compliance of the Resolution Plan has been given in Para No.9 of Form-H as follows:

— Sd —

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?	CoC as per the requirements of the EOI, the Resolution Professional shortlisted the Resolution Applicant	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?	12.7 and affidavit has been filed by the Applicant. The copy of the same is enclosed with the Resolution Plan.	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	12.7	Yes
Section 30(2)	Whether the Resolution Plan – (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment of the debts of operational creditors? (c) provides for the management of the affairs of the corporate debtor? (d) provides for the implementation and supervision of the resolution plan? (e) contravenes any of the provisions of the law for the time being in force?	a) Clause 5.1.1 read with 8.4.4 b) Clause 5.6 read with 8.4.4(b) c) Clause 8.2 read with Clause 5.1.8 d) Clause 8.3 e) Clause 12.7	Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	a) The consideration received is more than the liquidation value. b) Approved by 98.97%	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 8.4	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?	Separate IA shall be filed based on the Forensic Auditors report.	Yes
Regulation 38(1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the – (a) Insolvency resolution process costs? (b) Liquidation value due to operational creditors? (c) Liquidation value due to dissenting financial creditors?	Section XI	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Section IX	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) The term of the plan and its implementation schedule?	Clause 8	Yes



	(b) For the management and control of the business of the corporate debtor during its term? (c) Adequate means for supervising its implementation?		
38(3)	Whether the resolution plan demonstrates that- (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	a. Section IV b. Section VII c. Section 8.4 d. Section 8.4.1 e. Section 4.1, further the CoC has obtained an Independent Chartered Accountant Certificate	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	The Resolution Professional is in the process of filing the IA.	No

8. The approval of the resolution plan has been sought under Section 31(1) of the Code, which reads as under:

“If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which 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.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.”

9. The conditions provided for in Section 31(1) of the I&B Code, 2016 for approval of Resolution Plan are therefore:

(a) The Resolution Plan is approved by the CoC under Section 30(4) of the Code;

- (b) The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;
- (c) The Resolution Plan has provisions for its effective implementation.

The satisfaction of the conditions is discussed below.

10. It is submitted by the RP that, the CoC in its Meeting held on 18.02.2020 has approved the Resolution Plan dated 18.02.2020 submitted by M/s.Starteck Finance Limited with 98.97% of voting shares and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

11. 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;

(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.”*

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

Section 30(2)(a): As regards the payment of insolvency resolution process costs, the Resolution Plan at Page Nos.302 and 318 of the Application *inter alia* stated that CIRP cost shall be paid at actuals, provided that any amounts payable in excess of Rs.25 lakh (Rupees Twenty Five Lakh) under this head shall be adjusted against the upfront amount payable to the Financial Creditors. Further, the unpaid Insolvency Resolution Process costs shall be paid in priority to payment of other debts of the Corporate Debtor. The amounts payable

Section 30(2)(b): As regards the payment of debt of the Operational Creditors, the Resolution Plan at Page Nos.305 and 318 of the Application *inter alia* stated that the Information Memorandum provides that the total admitted claims of the Trade Creditors amount to Rs.198.84 Crores. The Resolution Applicant proposes to make payment to the Trade Creditors as per their entitlement in terms of Section 30(2)(b) of the Code r/w Regulation 38(1) of the CIRP Regulations in settlement of all Claims of the Trade Creditors against the Corporate Debtor till the Effective Date in accordance with the Resolution Plan. The amounts due to the Trade Creditors under the Resolution Plan shall be given priority of payment over Financial Creditors. It is further stated that the amounts payable to the Operational Creditors under this Resolution Plan, including Workmen and

Employee Dues amount, shall be paid in priority to payments to the Financial Creditors in accordance with this Resolution Plan and as per the Code.

Section 30(2)(c): As regards the management of affairs of the Corporate Debtor, the Resolution Plan in Page Nos.315 and 303 of the Application *inter alia* stated that upon approval of the Resolution Plan by the Adjudicating Authority and until the Effective Date, Mr. Shivadutt Bannanje shall be appointed as the 'Insolvency Professional' who shall act on the instructions of the Monitoring Committee in accordance with the provisions of this Resolution Plan. Within one Business Day of the Plan Approval Date, a Monitoring Committee shall be constituted which shall comprise of (i) the Insolvency Professional; (ii) a representative or advisor of the CoC ('CoC Nominee') and (iii) a representative or nominee of the Resolution Applicant ('RA Nominee') (hereinafter referred to as 'Monitoring Committee'). The CoC shall notify the details of the CoC Nominee to the RP and the Resolution Applicant on or prior to the Plan Approval Date.

The Monitoring Committee shall have the powers of the board of directors vested in it. With effect from the Plan Approval Date, the supervision of management of the affairs of the Corporate Debtor shall *inter alia* vest with the Monitoring Committee. The business and operations of the Corporate Debtor shall be managed, supervised and controlled jointly by the Insolvency Professional (who shall act in accordance with the instructions of the Monitoring Committee) and the Monitoring Committee in good health, in trust and for the benefit of the Creditors and in furtherance of acquisition of the Corporate Debtor by the Resolution Applicant pursuant to this Resolution Plan. An amount of Rs.42 Crores towards fresh funds infusion to be made by the Resolution Applicant to meet working capital / property development expenses / capital requirements of the Corporate Debtor.

Section 30(2)(d): As regards the implementation and supervision of the Resolution Plan, it is *inter alia* stated in Page No.316 of the Application that during the period from the Plan Approval Date till the Effective Date,

the Insolvency Professional and Monitoring Committee shall supervise implementation of the Resolution Plan; support and assist the Resolution Applicant with implementation of this Resolution Plan; provide all assistance with removal of the existing directors of the Corporate Debtor; not undertake any actions outside the ordinary course of business and ensure that the existing management, directors, company secretary and other personnel of the Corporate Debtor shall extend full cooperation and support in implementation of this Resolution Plan, including for making all relevant filings under Applicable Law.

Section 30(2)(e): As regards whether the Resolution Plan contravenes any of the provisions of the law for the time being in force, it is declared in Page No.335 of the Application that the Resolution Applicant confirms that this Plan is not in contravention of the provisions of any of the Applicable Laws.

Section 30(2)(f): It is stated by the Resolution Professional in Form-H at para 3 that he has examined the Resolution Plan dated 18.02.2020 received from the Resolution Applicant i.e., M/s. Starteck Finance Limited and approved by CoC of the Corporate Debtor. He further certified at para 4 of Form-H that the said Resolution Plan complies with all the provisions of the Code, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force and that the said Resolution Applicant submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility u/s 29A of the Code to submit resolution plan and that the contents of the said affidavit are in order.

13. We are now examining the compliance of the proviso to Section 31(1) of the I&B Code, 2016 that the Resolution Plan has provisions for its effective implementation. The Resolution Plan at Page No.317 of the Application *inter alia* stated that upon approval of this Resolution Plan by the Adjudicating Authority, the existing RP shall be appointed as Insolvency Professional from the Plan Approval Date until the Effective Date. The Insolvency Professional shall act in accordance with the instructions of the Monitoring Committee. A Monitoring Committee shall be constituted, as

stated supra. The business and operations of the Corporate Debtor shall be managed, supervised and controlled jointly by the Insolvency Professional (who shall act in accordance with the instructions of the Monitoring Committee) and the Monitoring Committee in good health, in trust and for the benefit of the Creditors and in furtherance of acquisition of the Corporate Debtor by the Resolution Applicant pursuant to this Resolution Plan.


14. As regards the Sources of Funding, at Page No.324 of the Application, the sources of funds required to meet the payment obligations of the Resolution Applicant under this Resolution Plan have been set out herein below:

S. No.	Payment of Obligation	Sources of Funds
1.	Payment of CIRP Cost	Internal accruals and liquidation of current investments of the Resolution Applicant, or by way of contribution from co-investors.
2.	Payment to Financial Creditors	
3.	Payment to Workmen and Employees	
4.	Payment to Trade Creditors	
5.	Payment to Government Creditors	
6.	Fresh Funds Infusion to meet the working capital / project development expenses / capital expenditure requirements	

15. We have discussed above that the requirements under section 31(1) of the Code are satisfied in the present case. In para 4 of Form H, the Resolution Professional has certified that the 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. The RP has also certified that the Resolution Applicant i.e. Starteck Finance Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility u/s 29A of the Code to submit the Resolution Plan and the contents of the said Affidavit are in order. Copy of the Affidavit of the Resolution Applicant regarding its eligibility u/s 29A have been annexed as Annexure 25 of the Application. The RP has submitted that the Resolution Plan has been approved by the CoC with 98.97% voting share

in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

16. Pursuant to Regulation 38(3)(a) of the CIRP Regulations regarding whether the Resolution Plan demonstrates that it addresses the cause of default, it is *inter alia* stated in Section IV of the Resolution Plan (Page No.301 of the Application) that the major reason for the default by the Corporate Debtor was on account of primarily poor working capital management and inability to source raw material efficiently. Also, due to its fund crunch and inability to tie-up with a financial strong partner, the real estate potential of the Hoskote site could not be developed and also the necessary investment towards overhauling of infrastructure had not been undertaken. By virtue of its financial strength, Starteck Finance Limited (*formerly known as Nivedita Mercantile and Financing Limited*) is best poised to turnaround the Corporate Debtor. The net worth of the Resolution Applicant (Page No.300 of the Application) is Rs.109 Crores (Rupees One Hundred and Nine Crores).
17. Pursuant to Regulation 38(3)(b) of the CIRP Regulations regarding the feasibility and viability of the Resolution Plan, it is stated in Section VII of the Resolution Plan (Page No.312 of the Application) that taking into account the fresh funds to be infused by the Resolution Applicant, the Resolution Applicant has prepared the Business Plan which *inter alia* includes that the Hoskote Factory would be developed under a Joint Development Agreement with a leading and financially strong Real Estate Developer. The business plan has been proposed by the Resolution Applicant basis certain assumptions enlisted in the Plan.
18. Pursuant to Regulation 38(3)(c) of the CIRP Regulations regarding whether the Resolution Plan has provisions for its effective implementation, it is *inter alia* stated in the Resolution Plan (Page No.317-318 of the Application) that a Monitoring Committee shall be constituted as stated supra, and with effect from the Plan Approval Date, the supervision of management of the affairs of the Corporate Debtor shall *inter alia* vest with the Monitoring



Committee and that the Parties shall implement the Transaction Structure as set out in Section VI of the Resolution Plan. The Resolution Applicant/ Corporate Debtor shall make payment of the Financial Package to the Financial Creditors in the designated bank account as per the terms of the Resolution Plan.

19. Pursuant to Regulation 38(3)(d) of the CIRP Regulations regarding whether the Resolution Plan has provisions for approvals required and the timeline for the same, it is *inter alia* stated in the Resolution Plan (Page No.317 of the Application) that the Resolution Plan will be approved by the CoC and after the CoC approves the same, the RP shall file the Resolution Plan with the Adjudicating Authority. The Adjudicating Authority shall approve the Resolution Plan in accordance with the provisions of Sec. 31(1) of the Code.
20. Pursuant to Regulation 38(3)(e) of the CIRP Regulations regarding whether the Resolution Applicant has the capability to implement the Resolution Plan, it is *inter alia* stated in the Resolution Plan (Page No.301 of the Application) that the major reason for the default by the Corporate Debtor was on account of primarily poor working capital management and inability to source raw material efficiently and the necessary investment towards overhauling of infrastructure had not been undertaken. Also, in terms of value chain, it is critical that any manufacturer captures as much of the value chain as possible. Unfortunately, the Corporate Debtor was not able to have hot-charging of its raw materials. Hence, they were not able to capture the additional margin from scrap/sponge to billet stage as well as all the associated cost-savings on account of hot-charging. By virtue of its financial Strength, Starteck Finance Limited is best poised to turnaround the Corporate Debtor. Further, the net worth of the Company is Rs.109 Crores.
21. Pursuant to the directions given by this Tribunal on 10.03.2022, the Applicant/RP vide Diary No.1133 dated 21.03.2022 has filed an Affidavit enclosing a copy of the Information Memorandum, Request for Resolution Plan (RFRP) and Bank Guarantee provided by the Successful Resolution Applicant i.e., Starteck Finance Limited and the same is taken on record.

- 22.** According to Regulation 39(4) of the CIRP Regulations, the Resolution Applicant shall furnish evidence of receipt of performance security as required under sub-regulation (4A) of Regulation 36B which came into effect from 24.01.2019. In this regard, as stated supra, the Applicant vide Diary No.1133 has *inter alia* stated that in view of the terms of the approved resolution plan, the successful resolution applicant has provided the performance security, vide bank guarantee No.0038NDDG00015122 issued by ICICI Bank on 19.03.2022 in favour of the Corporate Debtor for an amount of Rs.3,65,00,000/- (Rupees Three Crores and Sixty Five Lakhs only) with an Expiry Date being 18.09.2022. A copy of the said Bank Guarantee is annexed as Annexure-C to Diary No.1133 dtd.21.03.2022.
- 23.** In respect of the reliefs and concessions as set forth in Section XII of the Resolution Plan, it is declared that whatever reliefs and concessions entitled by the Resolution Applicant by virtue of the approval of the Plan, as per the application of I&B Code, 2016 and any other applicable Laws are entitled by it. In respect of the remaining, it is not possible for us to issue any direction except to say that the Resolution Applicant may take appropriate steps in accordance with Law in respect of the said reliefs and concessions and the public authorities / government authorities / any other party would duly consider the said requests / applications of the Resolution Applicant in accordance with Law.
- 24.** In the circumstances and for the aforesaid reasons, the instant IA bearing IA No.132 of 2020 is allowed and accordingly, the Resolution Plan dated 18.02.2020 ('Resolution Plan') as approved by the CoC and submitted by M/s. Starteck Finance Limited (annexed to the Application as Annexure 26) is hereby approved. 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. Under the provisions of section 31(3) of the Code, we also direct as under:



- (a) The moratorium order passed by this Adjudicating Authority under Section 14 of the Code on 08.04.2019 in the main C.P. shall cease to have effect; and
- (b) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.

Accordingly, I.A. No.132 of 2020 is disposed of.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

—sd—

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)