



NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

1. I.A. 1932/2021
I.A. 1907/2021
IN
C.P.(IB)-2469(MB)/2018

CORAM: SHRI. H.V.SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **03.06.2022**

NAME OF THE PARTIES: UCO Bank

V/s

PMT Machines Ltd.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. PCA Mr. Ayush J. Rajani, counsel appearing for the RP, Mr. Arjun Sathees, counsel appearing for the Corporate Debtor are present through virtual hearing.

Order pronounced in the open court vide separate order. In the result, the above Interlocutory Application No. 1932/2021 is dismissed, and the Interlocutory Application No. 1907/2021 is allowed and disposed of.

Rest of the pending applications on 21.06.2022.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
H.V.SUBBA RAO
Member (Judicial)

SKS



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT 3, MUMBAI BENCH**

IA 1932/2021 in
C.P. No. CP(IB)-2469/MB/2018

Under Section 60(5) of the Insolvency
and Bankruptcy Code, 2016 read with
Rule 11 of the National Company Law
Tribunal Rules, 2016.

In the matter of

UCO Bank
..... Financial Creditor

V/s

PMT Machines Limited
.....Corporate Debtor

And In The Matter of:

IA 1932/2021

Pravin K Shishodiya
.... Applicant

V/s.

Mr. Ram Ratan Kanoongo & Ors.
... Respondents

Order delivered on : 03.06.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Abhijeet Singh, Advocate.

For the Respondent: Mr. Janak Dwarkadas, Sr. Counsel, Mr. Amir Arsiwala a/w. Adv. Abdullah Qureshi, Mr. Rohan Rajadhyaksha, Advocate for Resolution Professional, Mr. Vikram Nankania, Counsel for the successful Resolution Applicant.



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT 3, MUMBAI BENCH**

IA 1932/2021 in C.P. No. CP(IB)-2469/MB/2018

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. IA 1932/2021 in CP(IB)-2469/MB/2018 has been filed by the Unsuccessful Resolution Applicant, Mr. Pravin K Shishodiya against the Resolution Professional (RP) Mr. Ram Ratan Kanoongo, the Successful Resolution Applicant Mrs. Monica Shah and other Financial Creditors viz. UCO Bank, Indian Bank, JM Financial ARC, HDFC Bank Limited, L&T Financial Services, State Bank of India, Allahabad Bank, etc.
2. The main prayers of the Unsuccessful Resolution Applicant (Applicant) are as under:-
 - (a) Set aside and quash the decision declaring Respondent No.2, i.e., Mrs. Monica Shah, as the Successful Resolution Applicant of the Corporate Debtor ;
 - (b) Declare Mrs Monica Shah, Respondent No.2 as ineligible to submit a Resolution Plan in the Corporate Insolvency Resolution Process of the Corporate Debtor.
3. The main submission of the Applicant is that (i) it had submitted a superior commercial offer; (ii) Respondent No.2 who is Successful Resolution Applicant is ineligible u/s 29A(j) of the Code.
4. As per the Applicant who is an Unsuccessful Resolution Applicant, the Successful Resolution Applicant Mrs Monica Shah is ineligible u/s 29A of the Code amended. As per the Applicant, the Successful Resolution Applicant is a promoter of ETCO Industries Private Limited and her husband, Mr. Ramesh Shah, was in control and management of ETCO Industries whose account has been declared as NPA.



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Brief facts of the case:-

5. The Corporate Debtor Company M/s PMT Machines Limited was incorporated on 08th September 1961 and is an MSME. The successful Resolution Plan was submitted by Mrs. Monica Shah on 21st July 2021.
6. In the 15th CoC meeting held on 14th September 2020, the RP intimated the CoC about the recent amendment to Regulation 39(3) of IBC (Insolvency Resolution Process for Corporate Persons) (4th amendment) effective from 07.08.2020 which reads as under:-

“39(3) The committee shall-

- (a) evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix;
- (b) record its deliberations on the feasibility and viability of each resolution plan; and
- (c) vote on all such resolution plans simultaneously.

(3A) Where only one resolution plan is put to vote, it shall be considered approved if it receives requisite votes.

“3(B) Where two or more resolution plans are put to vote simultaneously, the resolution plan which receives the highest votes, but not less than requisite votes, shall be considered as approved:

Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting:

Provided further that where none of the resolutions plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.”

[emphasis supplied]

7. The Bench notes that it was made clear to the CoC members about the impact of Section 39(3B) regarding the tie-breaker formula. The Bench notes that this tie-breaker formula was considered in the 16th CoC meeting held on 12th October 2020



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and it was decided that it would be included in the RFRP document.

8. On 22.07.2021 in the 29th CoC meeting the two Resolution Plans, one each received from Mrs Monica Shah and Mr Pravin K Shishodiya were discussed and thereafter the e-voting had commenced. Upon conclusion of the e-voting on 09.08.2021, it was found that both prospective Resolution Applicants had received equal votes, i.e., 91.46% and therefore, in terms of the tie-breaker clause, as was already there in the RFRP and in terms of provisions of Regulation 39(3B) of the Insolvency and Bankruptcy Board of India (Insolvency) Regulation Process for Corporate Persons, 2016, the tie-breaker formula was applied. In fact, the tie-breaker formula adopted by the CoC was disclosed to both the prospective Resolution Applicants in the RFRP document itself.
9. The Bench notes that the Resolution Plan submitted by Mrs Monica Shah received higher marks among the two Resolution Plans. The Resolution Plan of Mrs Monica Shah received 72.5 points against 65.5 received by Mr Pravin K Shishodiya under the Bid Evaluation matrix. Therefore, Mrs Monica Shah was declared as Successful Resolution Applicant for PMT Machines Limited.
10. The contention of the Applicant Mr. Pravin K Shishodiya is that he had offered Rs 271 crore compared to the Successful Resolution Applicant's offer, i.e., Rs 265 crores, hence the Applicant's Plan ought to have been approved. The Bench finds that the Successful Resolution Applicant in fact has



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offered Rs 341 crores against the unsuccessful Resolution Applicant's offer of Rs 271 crores.

11. The Bench notes that the offer of Rs 271 crore was solely to the Creditors of the Company with almost no contribution towards the revival of the Company by way of infusion of funds for capital expenditure or working capital. The Unsuccessful Resolution Applicant while submitting its Resolution Plan to the RP/ CoC has mentioned that in the event its Plan is declared as approved by the CoC it would raise resources through financial institutions by partially disposing of the non-core business/ assets of the Corporate Debtor Company. This puts a shadow on the Unsuccessful Resolution Applicant's capacity to raise finances for meeting its financial commitment. In contrast, the Successful Resolution Applicant has already deposited Rs 30 crores comprising of EMD and Performance Bank Guarantee. Be that it may, the offer of about Rs 341 crore of the Successful Resolution Applicant is as under:-

Sr. No.	Particulars	Amount (in Rs.)
1	Payment of CIRP Costs	Since the Corporate Debtor is a going concern with operational profits there are no outstanding corporate insolvency and resolution process costs.
2	Payment towards claims of Financial Creditors	265,01,00,000
3	Payment towards claims of Operational Creditor	
4	Payment towards any other Debts	
5	Funds infused in Corporate Debtor for Capital Expenditure	26,00,00,000



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6	Funds infused in Corporate Debtor for additional Working Capital	50,00,00,000
	TOTAL OUTLAY OF THE RESOLUTION PLAN	341,01,00,000

12. It is because of the above funds the Successful Resolution Applicant received 72.5 marks in the evaluation matrix compared to 65.5 marks obtained by the Unsuccessful Resolution Applicant though, in terms of voting percentage, both of them had secured the same voting, i.e., 91.46%. The Bench notes that the CoC had finalised the evaluation matrix by tie-breaker formula and the same forms part of RFRP dated 12.04.2021. As per Clause 2.1.1(e) of the RFRP dated 12.04.2021, it was clearly mentioned that as per the provisions of Regulation 39(3B) of CIRP Regulations a “tie-breaker formula” is required to be finalised in the event two or more Resolution Plans received equal votes but not less than 66% votes. The CoC on 08.07.2020 had decided that the tie-breaker formula shall be the highest score received as per the Bid Evaluation Matrix approved by the CoC. The Bench notes that the prospective Resolution Applicants were informed of the Evaluation Matrix and tie-breaker formula. Therefore, the Bench is of the considered view that there is no basis whatsoever for the unsuccessful Resolution Applicant to raise baseless allegation like the inadmissibility of the tie-breaker formula, etc.

13. The Bench is of the view that it is trite law that the evaluation matrix applied by CoC falls within the commercial wisdom of the CoC and matters of commercial wisdom of CoC are kept outside the purview of the judicial scrutiny. As mentioned in the submission of the RP, the Hon'ble NCLAT in the matter of



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IMR Metallurgical Resources AG Vs. Ferro Alloys Corporation Limited [Company Appeal (AT)(Insolvency) No.272 of 2020] has held:

“12. In this Appeal, the Appellant had challenged the evaluation matrix applied by the CoC which falls within the commercial wisdom of the CoC. It is settled position of law that approval or rejection of Resolution Plan depends upon the commercial wisdom of the CoC, which involves evaluation of the Resolution Plan based on its feasibility. Such commercial wisdom of the CoC with the requisite voting majority is non-justiciable. The powers of the Adjudicating Authority under Section 31 of the Code is limited to the matters covered under Section 30(2) of the Code when the Resolution Plan does not conform to the stated condition. Therefore, the Appellant cannot question the commercial wisdom of the CoC in rejecting the Resolution Plan, with the requisite majority and in approving the Resolution Plan of STPL. No material irregularity in Corporate Insolvency Resolution Process before the R.P. has been demonstrated.”

[Emphasis added]

14. Therefore, the Bench has no iota of doubt that the CoC as well as the RP have acted fairly and correctly as per the various provisions of IBC and concerned Regulations and the CoC through their commercial wisdom has rightly declared Mrs Monica Shah as the Successful Resolution Applicant of the Corporate Debtor Company, i.e., M/s PMT Machines Limited.
15. The other contention of the unsuccessful Resolution Applicant is that Respondent No.2, who is the successful



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Resolution Applicant, is not eligible to act as a Resolution Applicant as she is barred by Section 29A of the IBC. The Applicant contends that Mr Ramesh D Shah who is the husband of the Successful Resolution Applicant Mrs Monica Shah, is the Director and majority shareholder of ETCO Industries Limited which is classified as NPA by Union Bank of India on 01st October 2014 and, therefore, Mrs Monica Shah, as per the Applicant, is ineligible u/s 29A of the Code to be a Resolution Applicant.

16. The Bench notes here that the Successful Resolution Applicant Mrs Monica Shah has only 100 equity shares in ETCO Industries Private Limited and ETCO Spinners Private Limited, out of total equity shares of more than Rs.10 crore, which in terms of percentage, would be very insignificant, i.e., about 0.0001%. The Bench notes that the Successful Resolution Applicant Mrs Monica Shah has not been Director, employee, Officer, or Personal Guarantor or connected with the business management and control of ETCO Industries Private Limited. It is an admitted case of the Applicant that the Respondent No.2 Mrs Monica Shah owns only 100 shares of out of over 10 crore shares in the ETCO Industries Private Limited which is 0.0001%. In addition, she has not been in Board of ETCO Industries Private Limited or played any role in the business of ETCO Industries Private Limited. Therefore, by no stretch of imagination can Mrs Monica Shah be categorised as having any control in the business activities of ETCO Industries Private Limited. In fact, the connected party, her husband, has given a Resolution Plan in respect of ETCO Industries Private Limited (an MSME) which has been approved by the



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CoC as well as by NCLT vide its Order dated 01.11.2021. Similarly, in ETCO Denim Private Limited her husband Mr Ramesh Shah is considered as an eligible Resolution Applicant in view of Section 240A read with Section 29A of the IBC. In this case also the Resolution Plan of Mr Ramesh Shah, husband of Mrs Monica Shah has been approved by CoC and is pending adjudication.

17. The Bench is of the view that since Mr Ramesh Dahyalal Shah, as per Section 240A read with Section 29A of the Code was not barred from submitting a Resolution Plan of an MSME, Mrs Monica Shah, his wife also cannot be barred from submitting a Resolution Plan with respect to the present Corporate Debtor M/s PMT Machines Limited which is also an MSME. The Bench is aware that for attaching any disqualification u/s 29A it is imperative to establish connection with the business activity of the Resolution Applicant. Mrs Monica Shah having a very miniscule shareholding in a Company of her husband without actually any connection with the business, management and control of ETCO Industries Private Limited cannot face disqualification u/s 29A. The Hon'ble Apex Court in *Swiss Ribbons Private Limited & Ors. vs. Union of India and Ors* dated 25 January 2019 – [2019 4 SCC 17] observed that:

*“This being case, said categories of persons who were **collectively mentioned under caption “relative” obviously need to have a connection with business activity of resolution applicant. In absence of showing that, such person was “connected” with business of activity of resolution applicant, such person could not possibly be disqualified under Section 29A(j). All categories in Section 29A(j) dealt with persons, natural as well***



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as artificial, who were connected with business activity of resolution applicant. Expression “related party”, therefore, and “relative” contained in definition Sections must be read noscitur a sociis with categories of persons mentioned in Explanation I, and so read, would include only persons who were connected with business activity of resolution applicant.”

[Emphasis added)

Further the Hon'ble NCLAT in the case of *S.S. Natural Resources Private Limited and Ors vs. Ramsarup Industries Limited and Ors. [CA(AT)(Ins.) No. 1159 of 2019]* dated 04 March 2021 held that:

*“100. We have considered the argument advanced by both parties. We find that a Shyam Ferro is not an NPA and does not have an investment in a company that is an NPA. Neither Shyam Emco Infrastructure Ltd. nor Emco Power Ltd. is NPA. They do not have an investment in an NPA company. **By merely having a group company, which has shareholders, who are also shareholders in an NPA entity, does not disqualify the Successful Resolution Applicant ‘SSN’.**”*

18. The Bench notes that the Corporate Debtor M/s PMT Machines Limited is an MSME, a fact brought out in the Information Memorandum floated by the Corporate Debtor. Being an MSME, the provisions of Section 240A are applicable to the resolution process of the Corporate Debtor. Section 240A(1) reads as under:-

“S. 240A(1) – Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process or pre-



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*packaged insolvency resolution process of any micro, small
and medium enterprises.”*

The Bench is of the view that being an MSME, certain aspects of Section 29A as per Section 290A of the Code will not be applicable to MSME. Due to the same, the concerned person connected with MSME can submit a Resolution Plan. Such person is not disqualified to become a Resolution Applicant. This is the case of Mr Ramesh Shah in connection with his Resolution Plan of ETCO Industries Private Limited. Since Mr Ramesh Shah is not disqualified to be a Resolution Applicant, as per the grounds provided for disqualification under Clauses (a) to (i) of Section 29A of the Code, Respondent No.2 Mrs Monica Shah who has no business relationship or concern in her husband's venture also cannot be regarded as disqualified.

19. The Bench, therefore, has no hesitation in coming to the conclusion that when Mr Ramesh Shah who is himself eligible to be a Resolution Applicant in case of MSME Companies, under no stretch of imagination Mrs Monica Shah can be considered ineligible due to being wife of Mr Ramesh Shah. Further, as demonstrated above, she neither has any business connection nor having any control or management of any Company along with Mr Ramesh Shah. In view of the above, the Bench has no hesitation in coming to the conclusion that Mrs Monica Shah is eligible to file a Resolution Plan and be declared as a Successful Resolution Applicant and is not hit by Section 29A of the Code.



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20. In view of the above, **IA 1932/2021** filed by the Unsuccessful Resolution Applicant in CP(IB)-2469/(MB)/2018 is **not allowed** and “**Dismissed**”.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
H V Subba Rao
Member (Judicial)



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

**I.A. No. 1907 of 2021
IN
C.P. No. 2469 of 2018**

In the matter of an Application
under Section 30(6) and Section
31(1) of the Insolvency and
Bankruptcy Code, 2016.

Concur

In the matter of
UCO Bank

... Financial Creditor

V/s.

PMT Machines Ltd.

... Corporate Debtor

I.A. No. 1907/2021

Mr. Ram Ratan Kanoongo

...Applicant/
Resolution Professional

Resolution Professional

Order delivered on: 03.06.2022

Coram:

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

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Rohan Rajadhyaksha, Advocate a/w. Ayush
Rajani, Practising Chartered Accountant i/b. AKR
Advisors LLP

Mr. Ram Ratan Kanoongo, Resolution
Professional-in-person

Mr. Vikram Nankania, Counsel for Successful
Resolution Applicant

Per Shri Chandra Bhan Singh, Member (Technical)

ORDER

1. This is an Application under Section 30(6) and Section 31(1) 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 Mrs. Monica Shah, which is approved by 91.46% of the 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:

- i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 22.10.2018 under section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Ram Ratan Kanoongo, was appointed as Interim Resolution Professional. The COC in its 1st meeting held on 20.11.2018 appointed (the present Applicant) as the Resolution Professional (RP). The IRP published a public announcement on 23.10.2018 inviting claims from the creditors of the Corporate Debtor.
- ii. The Applicant submits the claims of financial and operational creditors as exist on the date of approval of resolution plan by the COC along with the respective vote of the Financial Creditors in the COC is as under:

I. Claims of Financial Creditors (along with their respective voting shares):

Rs. In crores

Sr. No.	BANK	Claimed	Admitted	% Voting
1	UCO Bank – Pimpri	121.28	121.28	24.70%
2	Indian Bank	42.98	42.99	8.75%
3	JM Financial ARC (assigned by OBC)	26.04	26.04	5.30%
4	HDFC Bank	6.20	6.20	1.26%
5	L&T Financial Services	51.28	51.28	10.44%
6	Canara Bank	32.00	31.88	6.49%
7	Hua Nan Commercial Bank - Singapore	31.44	31.44	6.40%
8	Krung Thai Bank Public Co. Ltd. - Singapore	53.33	53.33	10.86%
9	UCO Bank - Hong Kong	33.40	30.23	6.16%



10	UCO Bank - Singapore	10.81	8.18	1.67%
11	Taiwan Co-operative Bank	26.28	26.28	5.35%
12	Allahabad Bank	1,144.32	15.62	3.18%
13	SBI – Mumbai	1,732.82	35.78	7.29%
14	The Shanghai Commercial & Saving Bank Ltd	10.66	10.48	2.13%
	TOTAL	3,322.84	491.00	100%

II. Claims of Operational Creditors:

Sr No.	Operational Creditor	Amount Claimed	Under Verification	Claim Admitted
1	Income Tax Dept	296.20	-	296.20
2	Central Sales Tax Dept	7.75	-	3.05
3	Bonatrans India Pvt Ltd*	1.71	-	0.00
4	Yashaswi Institute of Technology	0.22	0.22	0.00
	TOTAL	305.88	0.22	299.25

III. Claims of Employees, Workmen and class of Creditors:

The Resolution professional has not received any claims from workmen & employee or from any other Creditor in FORM D, E and F respectively.

IV. The Resolution Professional submits that since the Corporate Debtor is a going concern, all the employees, workmen and operational creditor's dues are being paid on regular basis from the internal resources of the Corporate Debtor.

V. Thereafter, Resolution Professional upon verification of the same, constituted the CoC. Pursuant to the public announcement RP received four Expression of Interest from the Prospective Resolution Applicant (PRA).

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

3. The Applicant states that two Registered Valuers were appointed to determine the Fair Value and Liquidation Value of the Corporate

Debtor. The Applicant states that the liquidation value and fair value as per the valuation reports submitted by the valuers is as under:

(Amount in Rs. Lakhs)

A. Valuation of Core Assets	Fair Value			Liquidation Value		
	Valuer 1	Valuer 2	Average	Valuer 1	Valuer 2	Average
Land	11,299	12,688	11,994	8,234	10,151	9,193
Building	5,349	3,918	4,634	3,210	2,670	2,940
Plant & Machinery	5,252	5,232	5,242	3,151	3,139	3,145
Furniture & Fixtures	0	737	368	0	249	125
Vehicles	97	98	97	58	59	58
Investments	100	72	86	100	58	79
Inventory	2,382	2,418	2,400	1,736	1,693	1,714
Trade Receivables	1,108	3,091	2,100	886	2,164	1,525
Cash & Bank Bal	1,610	3,218	2,414	1,610	3,218	2,414
Deferred Tax Assets	0	5,918	2,959	0	592	296
Others	71	260	165	60	186	123
Total - A	27,268	37,650	32,459	19,046	24,178	21,612
B. Valuation of Non-Core Assets (Real Estate)	Fair Value			Liquidation Value		
	Valuer 1	Valuer 2	Average	Valuer 1	Valuer 2	Average
Flats at Rup Nivas CHS	1,728	2,322	2,025	1,210	1,858	1,534
Flats at Empire Estate CHS	158	180	169	111	144	127
Flats at Sanjeevni CHS	62	90	76	44	72	58
Flats at Mukta CHS	89	90	89	62	72	67
Flats at Kumarpal CHS	193	221	207	135	176	156
Land at Bhosari, Pimpri	1,163	1,318	1,241	872	1,055	963
Total - B	3,393	4,221	3,807	2,434	3,376	2,905



A. Valuation of Core Assets	Fair Value			Liquidation Value		
	Valuer 1	Valuer 2	Average	Valuer 1	Valuer 2	Average
GRAND TOTAL (A+B)	30,662	41,870	36,266	21,479	27,554	24,517

4. During the period of CIRP total 31 COC meetings were held (last being on 04th August 2021) and RP issued 10 EOIs in Form G during period 04th of January 2019 to 17th April 2021. The Applicant submits that the last Form-G was published on 17.04.2021 inviting Expressions of Interest (EOI), the last date of submission of Resolution Plan was till 05.06.2021. The Applicant further states that, in furtherance of the revised Form-G issued by applicant, he received EOIs from 4 Prospective Resolution Applicants (PRAs) within the stipulated time period, below are the names of the Prospective Resolution applicant:

1. Eight Distressed Fund India – I
2. Mr. Pravin Kumar Shishodiya jointly with –
Dr. Jyotsana Shishodiya
Mr. Mukul Shishodiya
Mrs. Purva Shishodiya
Mr. Punit Shishodiya
Fullon Finance Pvt. Ltd.
3. Mrs. Monica Shah
4. Mr. Prakash Jalan jointly with –
Mr. Anmol Singh Jaggi
Gensol Engineering Ltd.

5. The Applicant submits that out of the above-mentioned PRA's, Mr. Pravin Kumar Shishodiya jointly with Dr. Jyotsana Shishodiya, Mr. Mukul Shishodiya and Mr. Punit Shishodiya (sr. no. 2) and Mrs. Monica Shah (sr. No. 3) as mentioned above, submitted a resolution plans for the Corporate Debtor which were considered, deliberated and voted upon by the COC members.



6. The Applicant submits that COC members during the 29th COC meeting was held between 14th July 2021 to 22nd July 2021 and the e-voting window closed on 09th August 2021. As per the e-voting results the Resolution Plan proposed by Mr. Pravin Kumar Shishodiya and ors. (Consortium) and Mrs. Monica Shah received 91.46% votes and both met the threshold of 66% as required under the provisions of the Code.
7. The Applicant submits that during the 29th COC meeting started on 14th July 2021 and concluded on 22nd July 2021, COC members graded both the Resolution Plans based on the evaluation matrix approved by the COC which included the “tie-breaker mechanism” in line with the Regulation 39(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
8. The Applicant further submits that this “tie-breaker mechanism” was pre-decided by the COC in its 16th meeting held on 12th October 2020 wherein it was decided that in the event two or more Resolution Plans receive equal votes, but more that the requisite 66%, then the plan with the “Highest Marks” received as per the Evaluation Matrix approved by the COC on 8th July 2020 would be treated as a “successful resolution applicant”.
9. The Applicant submits that the during the 29th Meeting of CoC held on 14.07.2021 which concluded on 22.07.2021, both the revised proposed Resolution Plans were evaluated on the basis of the evaluation matrix and it was declared that the plan submitted by the Mrs. Monica Shah got highest score.
10. **The salient features of the Resolution Plan are as under:**
 - A. The Resolution Applicant Mrs. Monica Shah by qualification is Chartered Accountant. Mrs. Monica Shah being entrepreneur and business women is running

Dyna-K Automotive Private Limited (Dyna-K), which operates two manufacturing facilities having 52,000 sq.ft in Pune MIDC Industrial Area. As per the submissions made by the Resolution Professional Dyna-K has world class in-house tool designing & manufacturing capabilities.

- B. The Resolution professional mentions that the company operated by the Successful Resolution Applicant is in the field of precision stampings & pressed components for the automotive industry. Over the years, with dynamic leadership, prudent operations management and extremely focused financially viable business decisions, the company has been able to overhaul its tool designing capabilities and entered into new lines of products like stampings for Brake components, Welded Assemblies, Engine Parts, Turbo Charger Parts etc. She has also taken the lead to undertake routine technology upgradation, building strategic partnerships and introducing Lean Practices to achieve better return on asset and capital employed. Dyna-K has been operating at ZERO Long Term Debt having turnover of 46 Crore.
- C. Mrs. Monica Shah holds 50 % shareholding in the company. It is pertinent to note that Mrs. Monica Shah in all this 30 year of her business doesn't have any litigation, no statutory dues or No financial stress in any of her business and all her business has been managed professionally with maintaining a very high corporate governance standard.
- D. The Corporate Debtor is an unlisted Public Limited Company incorporated in India on September 08, 1961, has its Registered Office at behind PCMC Building, Mumbai-Pune Road, Pimpri, Pune - 411018. The Corporate Debtor started its operation as Traub India in



1963. In 1977, Corporate Debtor was sold to Perfect Machine Tool Ltd and subsequently sold to Mr. Nitin Sandesara in 1993. It is the one of the oldest and the leading machine tool manufacturers in India. The Corporate Debtor has state-of-the-art manufacturing facilities located at Pimpri, Pune. It is classified as a MSME (Medium Small and Micro Enterprise) and has received the MSME Certificate bearing number UDYAM-MH-26-002200.

- E. The Corporate Debtor Company's authorised share capital is Rs. 30,00,00,000/- (Rupees Thirty Crore Only) and the Paid-Up Equity Share Capital of the Corporate Debtor is Rs. 24,83,13,790/- (Rupees Twenty-Four Crore, Eighty-Three Lakh, Thirteen Thousand, Seven Hundred Ninety Only).
- F. The Resolution Applicant proposes to infuse Rs. 26 crores (Rupees Twenty Six Crores) for the Capital Expenditures inclusive but not limited to technology upgradation, acquisition of new machinery, enhancement of existing capacity etc. and Rs. 50 crores (Rupees Fifty Crores) towards working capital as per the business requirement and looking at increase in the level of operations of the Corporate Debtor. The above-mentioned funds shall be inducted within 12 months from the Resolution Plan Closure Date.
- G. The Resolution Applicant further reserves the right to infuse additional funds, if required, for additional capital expenditure and working capital requirements, on a need basis.
- H. The Resolution Plan proposes a total Consideration of Rs. 341.01 Crores for the settlement of claim by the Resolution Applicant.



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

A) **CORPORATE INSOLVENCY RESOLUTION PROCESS**

- (i) The actual Corporate Insolvency Resolution Process Cost (hereinafter referred to as 'CIRP'), the CIRP Cost is to be paid in priority before the payments to be made to any other creditors and the CIRP Costs shall, amongst other things, include the costs, fees and charges incurred by the Resolution Professional, in running the operations of the Corporate Debtors as a going concern.
- (ii) There is no outstanding CIRP Cost as on day of submission of this Resolution Plan.
- (iii) Resolution Applicant proposes to meet any shortfall in the CIRP Cost, in priority over other payments to other Stakeholders. The payments towards the shortfall in CIRP Cost, if any, shall be met out of the proposed total Bid Value till the handover of the Corporate Debtor to the Resolution Applicant

B) **FINANCIAL CREDITOR**

According to the List of Financial Creditors mentioned in the Information Memorandum, the total claims filed by Financial Creditors is Rs.3322.84/- Crores, and the total admitted claim is Rs. 491/- Crore. The bifurcation of the claims is provided below:

Rs. In crores

Sr. No.	BANK	Claimed	Admitted	% Voting
1	UCO Bank – Pimpri	121.28	121.28	24.70%
2	Indian Bank	42.98	42.99	8.75%
3	JM Financial ARC (assigned by OBC)	26.04	26.04	5.30%
4	HDFC Bank	6.20	6.20	1.26%
5	L&T Financial Services	51.28	51.28	10.44%



6	Canara Bank	32.00	31.88	6.49%
7	Hua Nan Commercial Bank - Singapore	31.44	31.44	6.40%
8	Krung Thai Bank Public Co. Ltd. - Singapore	53.33	53.33	10.86%
9	UCO Bank - Hong Kong	33.40	30.23	6.16%
10	UCO Bank - Singapore	10.81	8.18	1.67%
11	Taiwan Co-operative Bank	26.28	26.28	5.35%
12	Allahabad Bank	1,144.32	15.62	3.18%
13	SBI – Mumbai	1,732.82	35.78	7.29%
14	The Shanghai Commercial & Saving Bank Ltd	10.66	10.48	2.13%
	TOTAL	3,322.84	491.00	100%

The consideration proposed to be paid to the Financial Creditors shall be paid out of the “Total Bid Value”, in settlement of their total claims. Further, all distributions to the Dissenting Financial Creditors shall be done in a fair and equitable under Sections 30(2)(b)(ii) and 30(4) of IBC.

Treatment for Dissenting Financial Creditors

- In terms of Section 30(2) of the IBC, the Dissenting Financial Creditors shall not be paid less than at least the amount payable to them in accordance with section 53(1) of the IBC in the event of a liquidation of the Corporate Debtor. Further, the Dissenting Financial Creditors, if any, shall be paid in priority to the Consenting Financial Creditors.
- The amount over and above the liquidation value shall be distributed to the Consenting Financial Creditor in the manner decided by the CoC in its meeting held on July 20, 2021.

C) OPERATIONAL CREDITORS –

As per the Information Memorandum, the total admitted claims of the Operational Creditors amounts to Rs. 299,25,00,000/-



(Rupees Two Ninety-Nine Crore and Twenty-Five Lakh Only).

Bifurcation of the claims is as below:

(in Crores)

Sr. No.	Operational Creditor	Amount Claimed	Under Verification	Claim Admitted
1	Income Tax Dept	296.20	-	296.20
2	Central Sales Tax Dept.	7.75	-	3.05
3	Bonatrans India Pvt Ltd.	1.71	-	0.00
4	Yashaswi Institute of Technology	0.22	0.22	0.00
	TOTAL	305.88	0.22	299.25

As per the provisions of IBC, the payment due to operational creditors should not be less than:

- (i) the liquidation value payable to such operational creditors in the event of a liquidation of the Corporate Debtor under sub section (1) of section 53 of the IBC; or
- (ii) the amount that would have been paid to such Operational Creditors, if the amount to be distributed under the Resolution Plan is distributed shall be in accordance with the order of priority in sub-section (1) of section 53 of the IBC, whichever is higher.
- (iii) c) Pursuant to Regulation 38(1) of CIRP Regulations, the amount due to Operational Creditors, if any, shall be provided priority in payment over Financial Creditors

D) EMPLOYEES/WORKMEN CLAIMS

The Applicant submits that he has not received any claims from workmen & employee or from any other Creditor in FORM D, E and F respectively.

The Applicant submits that since the Corporate Debtor is a going concern, all the employees, workmen and operational



creditor's dues are being paid on regular basis from the internal resources of the Corporate Debtor.

E) PROPOSAL FOR SHAREHOLDERS

As it is estimated that the Liquidation Value of the Corporate Debtor is not sufficient to cover debt of the Financial Creditors of the Corporate Debtor in full. Therefore, the Liquidation Value due to the equity shareholders of Corporate Debtor is NIL and hence, they will not be entitled to receive any payment and no offer will be made to any shareholder of the Corporate Debtor.

12. SOURCES OF FUNDS

The Total Bid Value shall be funded by the Resolution Applicant from her own sources through a mix of sale of land and residential flats owned by the Resolution Applicant's companies, direct equity from her own internal funds, funds raised from friends/relatives, borrowing from group companies etc. Sources of Funds are provided below:

Sr. No.	PERTICULARS	AMOUNT in Rs. Crores
A	Own funds of Mrs. Monica Shah	
1	Own Liquid Funds in the form of Bank FDs, shares and bank balances in the group companies	25
2	Raising of funds from friends /relatives	50
3	Sale of land owned by Abhar Properties Pvt Ltd near Mumbai International Airport at Vile Parle East	125
4	Sale of Flats owned by Group Compnay. The Building is located at Vile Parle East having saleable Carpet Area of 17,000 Sq.ft with 11 Residential Units and 6 Commercial Units	65
5	Sale of 44.90 % shareholding in Maredia Resorts Pvt Ltd	135
	TOTAL - A	400
B	Standby Arrangement of Funds	
1	Funding Commitment from Mr. Anand Desai	100
2	Funding Commitment from Mr. Rajendra Shah	50
3	Funding Commitment from Mr. Rishi Shah	50



4	Funding Commitment from M/s Yash Shares & Stocks Pvt Ltd.	50
5	Funding Commitment from Almas Capital Ltd	150
	TOTAL - B	400
	GRAND TOTAL - A + B	800

13. The payments proposed to be made under this Plan are as follows:

Sr. No.	Particulars	Amount (in Rs.)
1	Payment of CIRP Costs	265,01,00,000
2	Payments towards claims of Financial Creditors	
3	Payments towards claims of Operational Creditor	
4	Payments towards claims of Workmen and Employees	
5	Payments towards any other Debts	
6	Funds infused in Corporate Debtor for Capital Expenditure	26,00,00,000
7	Funds infused in Corporate Debtor for additional Working Capital	50,00,00,000
	TOTAL OUTLAY OF THE RESOLUTION PLAN	341,01,00,000

Total outlay is 341.01 Crores of which Rs. 265.01 Crores is offered to the stakeholders, 26 Crores is additional infusion for CAPEX and another 50 Crores is towards working capital for running for Corporate Debtor.

14. **DISBURSEMENT OF AMOUNT:**

The Resolution Professional has submitted the following chart showing the details of the total claims received and admitted by him and amount under plan as follows:

(Amount in Rs. crore)



Sr. No	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Claimed (%)
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:				
		(i) who did not vote in favour of the Resolution Plan	42.10	41.92	22.17	52.89%
		(ii) who voted in favour of the resolution plan	455.00	449.08	208.06	46.33%
		Total [(a) + (b)]	497.10	491.00	230.23	46.89%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	-
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	-
		Total[(a) + (b)]	0.00	0.00	0.00	-
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	-
		(b) Other than (a) above:				



		(i) Government	303.94	299.25	1.03	0.35%
		(ii) Operational Creditors (Non-Govt.)	2.82	0.00	0.00	-
		(iii) Workmen & Employees	0.00	0.00	0.00	-
		Total [(a) + (b)]	306.76	299.25	1.03	0.35%
4	Other Debts and Dues*	Mortgage Holders	235.03	0.00	33.75	NA
Total			1,038.89	790.25	265.01	33.53%

**These creditors have exclusive first charge over certain immovable assets of the Corporate Debtor. These creditors have filed their claim in Form C as “Financial Creditor”, however RP has not admitted their claim as “Financial Creditor” and has requested them to file their claim as “Other Creditors”. Since RP has not yet received their claim in the requisite form, these creditors have been allotted their liquidation value as per the code and Regulations made thereunder.*

15. The indicative timeline of events for implementation of Resolution plan from approval date is as follows:-

Sr. No.	Activity	Time Line (days)
1	Approval of the Resolution Plan by Adjudicating Authority (Resolution Plan Effective Date)	T
2	Formation of Plan Implementation Committee & Reconstituted Board and Dissolution of COC	T +1 days
3	Deposit of balance Total Bid Value of Rs. 225.01 crores in the Designated Account	T + 90 days
4	Distribution of outstanding CIRP Cost (if any), settlement of claims of, Operational Creditors, Dissenting Financial Creditors, if any from the bid value	T + 91 days
5	Distribution of Total Bid Value Payment to Consenting Financial Creditors	T+ 92 days
6	Restoration of Power of Reconstituted Board	T + 100 days
7	Receipt of no dues letter from Financial Creditors	T + 100 days



Sr. No.	Activity	Time Line (days)
8	Copies of encumbrance documents in respect of Admitted Financial Debt to be handed over the Resolution Applicants, the CoC and their legal advisors	T+100 days
9	Handover of relevant Documents and Information by Resolution Professional	T + 110 days

16. The Resolution Applicant is eligible to submit resolution plan, and the declaration in terms of Section 29A of the Insolvency & Bankruptcy Code, 2016 is given by the Resolution Applicant.

17. **OBSERVATIONS AND FINDINGS :-**

- i. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor in terms of Section 30(2)(c).
- ii. The Plan also provides for implementation of provision of the Resolution Plan as stated above as per Section 30(2)(d).
- iii. 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.
- iv. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a) Payment of CIRP cost will be made in priority over Financial Creditor (Regulation 38(1)(a)).
 - b) That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
 - c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the



stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).

18. The Resolution Plan has been approved in the 29th COC meeting held on 14.07.2021 with 91.46% votes in accordance with the provisions of the Code.
19. In the judgement of ***Venus Recruiters Private Limited v. Union of India and Ors.: CM Appl. 36026/2019*** the Hon'ble Delhi High Court observed that:
- “74.....
The role of the RP is not adjudicatory but administrative in nature. Thus, the RP cannot continue beyond an order under Section 31 of the IBC, as the CIRP comes to an end with a successful Resolution Plan having been approved. This however subject to any clause in the Resolution Plan to the contrary, permitting the RP to function for any specific purpose beyond the approval of the Resolution Plan.”
20. In view of the above ruling of the Delhi High Court, it can be easily derived that, the Resolution Professional in case it is so proposed in the Resolution Plan will continue to discharge his duties regarding the pending applications to the main petition even though the Resolution Plan is approved.
21. 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.

22. In **CoC of Essar Steel** (*supra*) the Hon’ble Apex Court 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. In para 42 Hon’ble Court observed as under:

*“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*).”*

23. 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.

24. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims. Resolution



Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- i. The Interlocutory Application No. 1907 of 2021 is allowed. The Resolution Plan submitted by **Mrs. Monica Shah** 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 the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
- iii. 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.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.



- v. 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.
- vi. In line with the judgement of Hon'ble Delhi High Court in the matter of **Venus Recruiters Private Limited v. Union of India and Ors.** and as proposed by the Resolution Professional during the course of hearing of the Resolution Plan, the Resolution Professional will pursue application u/s. 43, 45, 60 & 66 with the Adjudicating Authority.
- vii. The Bench takes note of the para 7.7 (e) of the Resolution Plan which reads as under:
“7.7 (e) It is clarified COC shall have the sole right on all monies recovered by the Corporate Debtors on account of orders, decree, judgement to be passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the IBC. It is proposed that the CoC, by authorizing any of the member of the CoC as deemed fit by CoC, shall pursue the applications filed under the above-mentioned sections.”
- viii. In line of the above the Bench as decided by COC approves that, even subsequent to the approval of the Resolution plan any other application under Section 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the Insolvency and Bankruptcy Code, 2016, pending would be pursued by the COC.
- ix. In terms of the judgement of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited**, *“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan,*



shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

- x. 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.
- xi. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- xii. The Interlocutory Application No. 1907 of 2021 is accordingly allowed and disposed of.

Sd/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

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