

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III

I.A. 1953/2022

In

C.P. No. (IB) 1466/MB/C-III/2019

Under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Mr. Rakesh Kumar Tulsyan)

(Resolution Professional of)
M/s. Max Alert System Limited))
Having office at:)
B-4, Vinay Tower, Kranti Nagar)
Lokhandwala, Kandivali (East))
Mumbai – 400101)

... *Resolution Professional /
Applicant*

IN THE MATTER OF

Interocean Fincap Services Pvt. Ltd.

... *Operational Creditor*

Vs

Max Alert System Limited

... *Corporate Debtor*

Order pronounced on: 7th February 2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Applicant: Adv. Rohit Gupta a/w Adv. Prakhar Tondon

Per: Shri. Charanjeet Singh Gulati, Member (Technical)

ORDER

1. The above I.A. is filed by the Mr. Rakesh Kumar Tulsyan, Resolution Professional of the Corporate Debtor (**RP**) under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Regulation 39(4) of the IBBI (Insolvency Resolution Process of Corporate Debtors) Regulations, 2016 (**Regulations, 2016**) seeking approval of the Resolution Plan submitted by M/s. Astra Ventures (**Successful Resolution Applicant**) which was approved by the Committee of Creditors (CoC) by 100% voting at its 14th Meeting held on 29.07.2022.

Facts of the Case, in brief:

2. The Corporate Insolvency Resolution Process (**CIRP**) of Max Alert System Limited (**Corporate Debtor**) was initiated by this Tribunal vide Order dated 24.08.2021 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**the Code**) and Mr. **Rakesh Kumar Tulsyan** was appointed as the Interim Resolution Professional (**IRP**).
3. The Committee of Creditors (**CoC**) was constituted with Interocean Fincap Services Pvt. Ltd. (Operational Creditor) being the sole member, and the 1st CoC Meeting was held on 05.10.2021. The composition of the CoC changed with the Financial creditors replacing the Operational Creditor. The new CoC approved the appointment of Mr. Rakesh Kumar Tulsyan as the Resolution Professional (RP) by 100% voting on its 2nd meeting held on 26.10.2021.
4. The freshly constituted **CoC Members** are as follows:

| Sr. No. | Name of the Creditor | Amount claimed (In Rs.) | Amount Admitted (In Rs.) | Voting Percentage | Remarks |
|----------------|-----------------------------|--------------------------------|---------------------------------|--------------------------|----------------|
| 1 | Punjab National Bank | 8,56,11,035 | 8,56,11,035 | 93.94% | |
| 2 | Tangent Constructions | 57,22,000 | 55,22,000 | 6.06% | |

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
I.A. 1953/2022 In C.P. No. (IB) 1466/MB/C-III/2019

| | | | | | |
|---|-------------------------|-----------|-----------|----|---|
| | (India) Private Limited | | | | |
| 3 | Lenin Chandran | 88,69,405 | 88,69,405 | 0% | Promoter of CD. Hence, no voting power. |
| 4 | Santosh Balachandran | 2,12,563 | 2,12,563 | 0% | Promoter of CD. Hence, no voting power. |

5. The **Total Claims** received and admitted by the RP are as under:

| Nature of creditor | Amount Claimed (In Rs.) | Amount Admitted (In Rs.) |
|---|--------------------------------|---------------------------------|
| Financial Creditors (Secured) | 8,56,11,035 | 8,56,11,035 |
| Financial Creditors (Unsecured) | 1,48,03,968 | 1,46,03,968 |
| Sub Total- A | 10,04,15,003 | 10,04,15,003 |
| Operational Creditor (other than Workmen and Employees and Government Dues) | 5,32,20,745 | 4,77,04,632 |
| Sub Total- B | 5,32,20,745 | 4,77,04,632 |
| Total A+B | 15,36,35,748 | 14,79,19,635 |

6. The Valuation Reports procured by the RP in accordance with the provisions of the Code and the applicable regulations is annexed to the Application. The Liquidation and Fair Value of the Corporate Debtor as determined by Registered Valuers are as follows:

| Category | Valuer | Fair Value | Liquidation Value | Average Category wise Fair Value | Average Category wise Liquidation Value |
|-----------------|---------------|-------------------|--------------------------|---|--|
| | | | | | |

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
I.A. 1953/2022 In C.P. No. (IB) 1466/MB/C-III/2019

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|-------------------|------------------------------|-----------|-----------|------------------|------------------|
| Plant & Machinery | Mr. Mangesh Shinde | 13,00,000 | 9,00,000 | 12,10,500 | 8,98,400 |
| | Mr. Yogesh Rasal | 11,21,000 | 8,96,800 | | |
| SFA | Riken Vora | 93,07,676 | 93,07,676 | 85,25,338 | 85,25,338 |
| | Ramesh Kumavat | 77,42,000 | 77,43,000 | | |
| | Average Overall Value | | | 97,35,838 | 94,23,738 |

Issue of Expression of Interest

7. In terms of Section 25(2)(h) of the I&B Code, the RP published the 1st public notice in Form – G on 07.11.2021 inviting Expression of Interest (**EoI**) to submit Resolution Plan for the Corporate Debtor. The first EoI was published in 2 newspapers, namely, **Financial Express – Mumbai Edition** and **Apla Mahanagar – Mumbai Edition**. However, no interest was received till the last date of EoI.
8. Thereafter, the CoC, on its 7th meeting dated 21.01.2022, unanimously passed a resolution for issuance of second EoI on 29.01.2022. Accordingly, fresh Form-G was published on 29.01.2022 in the following newspapers:
- i) *Active Times – English (Mumbai Edition)*
 - ii) *Lakshdeep – Marathi (Mumbai Edition)*
 - iii) *Morning India – English (Ranchi Edition)*
 - iv) *Sanmarg – Hindi (Ranchi Edition)*

Extension of CIRP Period & Change in CoC Voting Share

9. It is to be noted that the CIRP period was to end on 20.02.2022, and therefore, another resolution for seeking extension of CIRP period was unanimously passed by CoC. Accordingly, the RP filed I. A. No. 365/2022 on 19.02.2022 seeking extension of CIRP period by 90 days which was duly allowed by this Tribunal vide order dated 24.02.2022.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
I.A. 1953/2022 In C.P. No. (IB) 1466/MB/C-III/2019

10. During the 7th CoC Meeting dated 21.01.2022, the RP also placed on record the Forensic Report of the Corporate Debtor conducted by the RP-appointed Auditor. The RP sought clarifications from the suspended directors/ concerned persons of the Corporate Debtor, which were not found to be satisfactory. Accordingly, an Interlocutory Application has been filed with this Tribunal. It is to be noted that in the Forensic/ Transaction Audit Report, few transactions were pointed out which were done with Tangent Construction (India) Private Limited due to which the RP had temporarily removed the voting power of Tangent Construction (India) Private Limited. Therefore, as on 21.01.2022, following was the voting power of the CoC:

| Sr. No | Name of the Creditor | Amount Admitted (Rs.) | Voting Percentage | Remarks |
|--------|--|-----------------------|-------------------|--|
| 1 | Punjab National Bank | 8,56,11,035 | 100% | - |
| 2 | Tangent Construction (India) Private Limited | 55,22,000 | 0% | - |
| 3 | Lenin Chandran | 88,69,405 | 0% | Promotor of the corporate Debtor. Hence, no voting power |
| 4 | Santosh Balachandran | 2,12,563 | 0% | Ex-MD of the Corporate Debtor. Hence No voting power. |

Request for Resolution Plan (RFRP)

11. In furtherance of the second EoI issued by the RP, 4(four) Prospective Resolution Applicants (**PRAs**) had shown interest. Out of the 4 PRAs, 2(two) of them, namely M/s Astra Venture and M/s Prasanna Sai Raghuveer Kandula, submitted their Resolution Plans (**Plan**).
12. The CoC approved the Request for Resolution Plan (RFRP) vide voting dated 25.02.2022 pursuant to the 8th CoC Meeting held on 18.02.2022. Thereafter, the RP issued the RFRP, Information Memorandum and

other relevant documents to all the Prospective Resolution Applicants in consultation with the CoC.

Further extension of CIRP Period

13. During the 10th CoC Meeting dated 11.05.2022, the RP obtained approval for the extension of CIRP period by 60 days beyond 270 days which was approved by the CoC by 100% voting. Thereafter, an Interlocutory Application No. 1350/2022 was filed seeking extension till 18.07.2022. However, the IA was pending adjudication when the RP filed the instant IA No. 1953/2022 for approval of Resolution Plan. Since the Resolution Plan was already filed, the application No. 1350/2022 filed for extension of CIRP Period was allowed by this Tribunal vide order dated 19.07.2023 in the interest of justice and to legalize the CIRP process.

Approval of Resolution Plan by CoC

14. In the subsequent meetings, there were discussions and negotiations with both the Resolution Applicants. It was agreed that both the Resolution Applicants shall submit revised Resolution Plans which shall be put for vote.
15. Thereafter, the revised Resolution Plan only of the M/s Astra Ventures, through Proprietor Mr. Amit Vengilat, was submitted for approval of CoC. The Resolution Plan submitted by M/s Astra Ventures (**Successful Resolution Applicant/SRA**) was placed before the CoC for voting on the 14th CoC Meeting held on 29.07.2022 and the same was approved by the CoC by 100% voting.

16. **Brief background of the Successful Resolution Applicant:**

- 16.1 The Successful Resolution Applicant, M/s Astra Ventures, is a firm involved in the business of mining and crushing of stones which is one of the key materials required in the construction and infra industry.

16.2 It is submitted that the Successful Resolution Applicant is exactly in the same business line as that of the Corporate Debtor and has sufficient experience in the business of the Corporate Debtor. Thus, the acquisition of the Corporate Debtor would enable the Successful Resolution Applicant to strengthen its business model in the command area. It is pertinent to note here that the Successful Resolution Applicant is also an operational creditor of the Corporate Debtor.

16.3 It is submitted that the Successful Resolution Applicant is not barred by Section 29A of the Code and an affidavit in this regard is also submitted by the Successful Resolution Applicant which is annexed to the Petition.

17. **Salient Features of Resolution Plan:**

17.1 The Committee of Creditors (CoC) in its 14th meeting held on 29.07.2022 approved the Resolution Plan of M/s Astra Ventures by 100% voting. M/s Astra Ventures, the Successful Resolution Applicant (**SRA**), is also an Operational Creditor of the Corporate Debtor.

17.2 The Resolution Plan also mentions the 'Source of Funds'. The SRA has already paid an advance of Rs. 10,00,000 (Rupees Ten Lakhs) as Earnest Money Deposit (EMD). Further, an amount of Rs. 20,00,000 (Rupees Twenty Lakhs) was paid at the time of submission of Resolution Plan. The Source of Funds for the balance payment plus the CIRP expenses at actuals is as listed below:

- a) Own funds and/or
- b) Funds from friends & relatives and/or
- c) Funds from third parties

A copy of letter of intent dated 23.06.2022 from NNM NextGen Advisory Pvt. Ltd. for providing funds for implementation of Resolution Plan is annexed to the Application.

- 17.3 The Resolution Plan proposes payment to CIRP cost, financial creditors and Operational creditors as stated therein. Further, compliance certificate in Form – H is submitted as mandated under Regulation 39(4) of IBBI Regulations, 2016.
- 17.4 It is relevant to mention here that the Resolution Applicant who is also an operational creditor of the Corporate Debtor has an outstanding due of Rs. 4,03,88,805, which was earlier included in the Resolution Plan. However, in the Plan, the amount allocated to the Resolution Applicant was 100% whereas the amount allocated to other Operational Creditors is 1%. When matter was called up for hearing on 18.10.2023, this Tribunal sought clarification on the same and the Resolution Applicant undertook to delete the amount of Rs. 4,03,88,805 proposed to be paid to him under the Plan. Accordingly, an additional affidavit was filed on 15.12.2023 whereby an Addendum to the Resolution Plan was placed on record.
- 17.5 Accordingly, the amount of Rs. 4,03,88,805 due and payable to the Resolution Applicant being the Operational Creditor is deleted and the revised Operational Debt of the Corporate Debtor stands at Rs. 73,15,827 and the proposed payment to Operational Creditors is Rs. 73,158.
- 17.6 In view of the same, the Resolution Plan amount which was earlier quoted as Rs. 5,66,17,938 stands modified as **Rs. 1,62,29,132 (Rupees One Crore Sixty-one lakhs fifty-five thousand Nine hundred and seventy-four).**
- 17.7 The Issued, Subscribed and Paid-up share capital is Rs. 9,19,95,000 comprising of 91,99,500 equity shares of Rs. 10 each. The Resolution Plan proposes to reduce the shareholding of each shareholder in the

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
I.A. 1953/2022 In C.P. No. (IB) 1466/MB/C-III/2019

ratio 1:10 such that the total number of equity shares shall be reduced to 9,19,950 amounting to Rs. 91,99,500. Further, the Authorized Share Capital shall be increased from Rs. 10,00,00,000 to Rs. 20,00,00,000 which shall be utilized by the Resolution Applicant to subscribe equity and for issue of equity shares of the Corporate Debtor to the Identified Investors on private placement basis. Accordingly, the Memorandum of Association shall be amended.

17.8 It is proposed that there shall be issue and allotment of Rs. 1,25,00,000 equity shares of face value of Rs. 10 to the Resolution Applicant against the infusion of funds at Rs. 2 per share and allotment of Rs. 60,00,000 equity shares on private placement basis to the Identified Investors against the funds infused in form of working capital.

17.9 It is submitted that pursuant to the order of approval of Resolution Plan by this Tribunal, any debit or credit, being the balancing figure, arising as a result of giving effect to this Resolution Plan, will be adjusted appropriately by the Corporate Debtor/ Resolution Applicant in the capital reserve at its sole discretion in compliance with the applicable accounting standards.

17.10 The new Board of Directors proposed to be constituted after the approval of the Resolution Plan is as follows:

| Sr. No. | Name | DIN |
|----------------|-----------------------|------------|
| 1 | Amit Vengilat | 07544088 |
| 2 | Abilash Kochuparambil | 06717763 |
| 3 | Balan Nair | 07968894 |

17.11 In accordance with Regulation 38(1-A) of the IBBI Rules, 2016, the statement showing the treatment given to the stakeholders is given below:

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
I.A. 1953/2022 In C.P. No. (IB) 1466/MB/C-III/2019

| Sr. No. | Particulars | Amount Admitted (in Rs.) | Settlement Value Offered (in Rs.) | Terms of Payment | Settlement % |
|----------------|--------------------------------------|--|--|---|---------------------|
| 1 | CIRP Costs | 57,38,623 | 57,38,623 | To be paid in full within 30 days from the Effective date | 100% |
| 2 | Secured Financial Creditors | 8,56,11,035 | 89,00,000 | To be paid in full within 45 days from the Effective date | 10.39% |
| 3 | Unsecured Financial Creditors | 1,46,03,968 | 15,17,352 | To be paid within 45 days from the Effective date | 10.39% |
| 4 | Operational Creditors | | | | |
| a | Employees and Workmen | Nil (No claims filed or admitted) | Nil | Nil | - |
| b | Government Authority Dues | Nil (No claims filed or admitted) | Nil | Nil | - |
| c | Operational Creditors | 73,15,827 (excluding the Resolution Applicant) | 73,158 | As provided in the table below | |
| | Total | | 1,62,29,132 | | |

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
I.A. 1953/2022 In C.P. No. (IB) 1466/MB/C-III/2019

| Sr. No. | Particulars | Amount Admitted (in Rs.) | Settlement Value Offered (in Rs.) | Terms of Payment | Settlement % |
|----------------|--------------------------------------|---------------------------------|--|---|---------------------|
| 1 | Interocean Fincap Services Pvt. Ltd. | 32,07,319 | 32,073 | To be paid within 60 days from the Effective Date | 1% |
| 2 | Santosh Balachandran HUF | 1,85,481 | 1,855 | To be paid within 60 days from the Effective date | 1% |
| 3 | Lenin Chandra HUF | 1,85,481 | 1,855 | To be paid within 60 days from the Effective date | 1% |
| 4 | Astra Ventures | 4,03,88,805 | Will not be paid under the Resolution Plan | | |
| 5 | Chandrabanshi Service Centre | 17,35,000 | 17,350 | To be paid within 60 days from the Effective Date | 1% |
| 6 | Jain Vinay & Associates | 88,500 | 885 | To be paid within 60 days from the Effective date | 1% |
| 7 | Rochbeck Estate Private Limited | 19,14,046 | 19,140 | To be paid within 60 days from the Effective date | 1% |

17.12 Terms of the Resolution Plan and Implementation Schedule

- i) CIRP costs to be paid in priority within a period of 30 days from the date of approval by the Adjudicating Authority.
- ii) Rs. 1,04,17,352 to the secured and unsecured Financial Creditors shall be paid in full within a period of 45 days from the date of approval of the Resolution Plan.
- iii) All Operational Creditors to be paid within a period of 60 days from the date of sanction of the Resolution Plan.
- iv) Astra Ventures, who is an operational creditor and also the successful Resolution Applicant, will not be paid under the Resolution Plan.
- v) Advance of Rs. 10,00,000 as EMD was paid by the Resolution Applicant and shall be adjusted in the amount which is to be paid to the Financial Creditor.
- vi) An amount of Rs. 20,00,000 which was paid by the Resolution Applicant at the time of submission of the Resolution Plan shall be adjusted in the amount which is to be paid to the Financial Creditor.

Compliance Certificate in Form – H

18. Pursuant to Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Successful Resolution Applicant has prepared a Compliance Certificate dated 15.07.2022 in **Form H** which is annexed to the Application.

19. Compliance of mandatory requirements under the Insolvency & Bankruptcy Code, 2016:

| Sr. No. | Particulars | Compliance |
|----------------|---|-------------------|
| 1 | Section 25: Whether the Resolution Applicant meets the criteria approved by the | Yes. |

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
I.A. 1953/2022 In C.P. No. (IB) 1466/MB/C-III/2019

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| | CoC having regard to the complexity and scale of operations of business of the Corporate Debtor? | |
| 2 | Section 29A: Whether Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority? | Yes. |
| 3 | Section 30: | |
| | (1) Whether the Resolution Applicant has submitted an affidavit stating that it is eligible? | Yes. The Resolution Applicant has submitted an affidavit under section 29A of IBC, 2016 confirming his eligibility for submission of Resolution Plan. |
| | (2)(a) Whether the Resolution Plan provides for payment of insolvency resolution process costs? | Yes. Part VI-C of the Plan provides for the payment of CIRP Costs in full and in priority to other debts, within a period of 30 days from the Approval date. |
| | (2)(b) Whether the Resolution Plan provides for the payment of the debts of operational creditors? | Yes. Part VI-F of the Plan provides for payment to the operational creditors. |
| | (2)(b) Whether the Resolution Plan provides for the payment to the financial creditors who did not vote in favour of the resolution plan? | Not Applicable. (Part VI-E) |
| | 2(c) Whether the Resolution Plan provides for the management of the affairs of the Corporate Debtor? | Yes. Part VI-P of the Plan states that upon approval of the Resolution Plan, the control of the Corporate Debtor shall vest with the Board of Directors and the Resolution Applicant shall have the authority to appoint the Directors on the Board of the Corporate Debtor. |
| | 2(d) Whether the Resolution Plan Provides for implementation and supervision of the resolution plan? | Yes. Part VI-Q of the Plan states that there would be an Implementation and |

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
I.A. 1953/2022 In C.P. No. (IB) 1466/MB/C-III/2019

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| | | Monitoring Committee comprising of 3 (three) members as below: 1. The existing Resolution Professional, and 2. 2(two) persons as representative will be appointed by the Resolution Applicant. |
| | (2)(e) Whether the resolution plan contravenes any of the provisions of the law for the time being in force? | No. (Part VIII) |
| | (4)(a) Whether the Resolution Plan is feasible and viable, according to the CoC? | Yes. |
| | (4)(b) Whether the Resolution Plan has been approved by the CoC with 66% voting share? | Yes. The Resolution Plan has been approved with 100% voting. |
| 4 | Section 31(1): Whether the Resolution Plan has provisions for its effective implementation Plan, according to CoC | Yes. |
| 5 | Section 35A: Whether the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50, or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board? | Yes. Application has been filed before the Tribunal. |

20. Compliance under mandatory requirements under IBBI (Insolvency Resolution Process of Corporate Debtors) Regulations, 2016

| | | |
|----------------------|--|--|
| Regulation 38 | | |
| 1 | Whether the amount due to the operational creditors under the resolution plan has been given | Not Applicable. The amount payable to Operational Creditors is within 60 days whereas |

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
I.A. 1953/2022 In C.P. No. (IB) 1466/MB/C-III/2019

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| | priority in payment over financial creditors? | financial creditors will be paid in 45 days. As per liquidation value, the Operational Creditors are not entitled for payment as Financial Creditors is not able to receive full amount. |
| 1A | Whether the resolution plan includes a statement as to how it has dealt with the interest of all stakeholders? | Yes. Part VI-L of the Plan mentions that the Plan has considered the interests of all stakeholders. |
| 1B | <p>i) Whether the Resolution Applicant or any of its related parties has filed to implement or contribute to the failure of implementation of any resolution plan approved under the Code?</p> <p>ii) If so, whether Resolution Applicant has submitted the statement giving details of such non-implementation?</p> | <p>No.</p> <p>The Resolution Applicant declared that the Resolution Applicant or any of its related party has not failed to implement or not contributed to the failure of implementation of any other resolution plan approved by Adjudicating Authority at any time in the past.</p> |
| 2(a) | Whether the Resolution Plan provides the term of the plan and its implementation schedule? | Yes. (Part VI-Q and Annexure-1) |
| 2(b) | Whether the Resolution Plan provides for the management and control of the business of the corporate debtor during its term? | Yes. Part VI-Q |
| 2(c) | Whether the Resolution Plan provides adequate means for supervising its implementation? | Yes. Part VI-Q |
| 3 | Whether the Resolution Plan demonstrates that - | |
| (a) | It addresses the cause of default? | Yes. |
| (b) | It is feasible and viable? | Yes. |
| (c) | It has provisions for its effective implementation? | Yes. The Resolution Plan covers all the provisions as required for the effective implementation of the Plan. |
| (d) | It has provisions for approvals required and the time for the same? | Yes. Part VI-J. |

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
I.A. 1953/2022 In C.P. No. (IB) 1466/MB/C-III/2019

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| (e) | The Resolution Applicant has the capacity to implement the Resolution Plan? | Yes. |
| Regulation 39 | | |
| 2 | Whether the RP has filed applications in respect of transactions observed, found or determined by him? | Yes. |
| 4 | Provide details of performance security received as referred to in sub-regulation (4A) of Regulation 36. | |

21. The CIRP has been conducted as per the timeline indicated as under:

| Section/ Regulation No. | Description of Activity | Latest Timeline under Regulation 40A | Actual Date |
|---------------------------------------|--|---|---|
| Section 16(1) | Commencement of CIRP and Appointment of IRP | T | 24.08.2021 (order received on 11.09.2021) |
| Regulation 6(1) | Publication of Public Announcement | T+3 | 14.09.2021 |
| Section 15(1)(c)/ Regulation 12(1) | Submission of Claims | T+14 | 25.09.2021 |
| Regulation 13(1) | Verification of Claims | T+21 | 01.10.2021 |
| Section 26(6A)/ Regulation 15A | Application for Appointment of Authorized Representative, if necessary | T+23 | - |
| Regulation 17(1) | Filing of Report certifying Constitution of CoC | T+23 | 29.09.2021 |

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
I.A. 1953/2022 In C.P. No. (IB) 1466/MB/C-III/2019

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| Section 22(1) and Regulation 17(2) | First Meeting of CoC | T+30 | 05.10.2021 |
| Regulation 35A | Determination of fraudulent and other transactions | T+115 | 06.01.2022 |
| Regulation 27 | Appointment of two registered Valuers | T+47 | 04.10.2021 |
| Regulation 36(1) | Submission of Information Memorandum to CoC | T+54 | |
| Regulation 36A | Invitation of EoI | T+75 | 07.11.2021 |
| | Publication of Form G | T+75 | 07.11.2021 |
| | Provisional list of Resolution Applicants | T+100 | 26.02.2022 |
| | Final list of Resolution Applicants | T+115 | 04.03.2022 |
| Regulation 36B | Issue of RFRP including Evaluation Matrix, etc | T+105 | 25.02.2022 |
| Section 30(6)/ Regulation 39(4) | Submission of CoC approved Resolution Plan | T+165 | 16.07.2022 |
| Section 31(1) | Approval of Resolution Plan | T=180 | |

22. On perusal of Form-H, it is seen that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code. The Resolution Plan also meets the requirements of Regulations 37, 38, 38(1A) and 39 (4) of the IBBI Regulations, 2016. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with

law. It is also observed that the Plan amount is more than the Liquidation amount.

23. It is also seen that the Resolution Professional has received a Letter of Intent dated 23.06.2022 from M/s NNM NextGen Advisory Private Limited (**New Investor**) whereby it expressed interest in providing funds for the effective implementation of the Resolution Plan, in accordance with and subject to the provisions of the RFRP dated 18.02.2022. Since the New Investor is to provide fund as per the provisions of the RFRP, it is assumed that the New investor is not ineligible under section 29A of the I&B Code. The Monitoring Committee shall ensure that the Investor is not hit by section 29A of the Code.
24. In **K Sashidhar v. Indian Overseas Bank & Others (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 Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex 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.
25. In **Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta & Ors (2020) 8 SCC**

531, 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 has approved.

26. In view of the law laid down by Hon'ble Supreme Court, the commercial wisdom of the COC is to be given paramount importance for approval / rejection of the resolution plan. As the Resolution Plan meets the requirements of the I & B Code and the IBBI Regulations, the same needs to be approved. Accordingly, the **Resolution Plan is approved** with the following directions:

- i) The Resolution Plan submitted by M/s Astra Ventures 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) No person will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which is not a part of the Resolution Plan.
- iii) The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall review operational performance of the Corporate Debtor.
- iv) The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise further line of action required for starting of the

operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise further line of action required for starting of the operations.

- v) As per the Resolution Plan, extinguishment of existing shares of the Corporate Debtor, allotment of shares to the Resolution Applicant and to New Investor and reduction of share capital do not require the consent of shareholders as required under the Companies Act or any other authority for implementation of the Resolution Plan.
- vi) **Reliefs and Concessions:**
- a) Approval of the Resolution Plan shall not be a ground for termination of any existing consents, approvals, licenses, concessions, authorizations, permits or the like that has been granted to the Corporate debtor or for which the Corporate Debtor has made an application for renewal, grant permissions, sanctions, consents, approvals, allowances, exemptions etc.
 - b) Any Exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted but the Resolution Applicant is at liberty to approach Competent Authorities for the exemptions if permitted under the law.
 - c) For past non-compliances of the Corporate debtor under applicable laws the Resolution Applicant shall not be liable for any liabilities and offences committed prior to

the commencement of CIRP and as stipulated under Section 32A of IBC, 2016.

- d) It is hereby clarified that in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. 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 of a claim which is not a part of the Resolution Plan.
- e) With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- vii) Any amount out of the action taken against other persons for Preferential/ Fraudulent Transactions u/s. 43 and 66 of the IBC, 2016 as found in the Audit Report and also Unauthorized Transaction post CIRP order, shall be appropriated towards the unsatisfied claims of Secured Financial Creditors.
- viii) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III
I.A. 1953/2022 In C.P. No. (IB) 1466/MB/C-III/2019

approvals, under any law for the time being in force, within such period as may be prescribed.

- ix) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- 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 certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

27. Accordingly, the Resolution Plan in IA/1953/2022 is hereby **allowed** and **approved**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Uma, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)