



**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH**

IA (IB) (Plan) No. 3/CB/2024

IN

CP (IB) No. 14/CB/2021

(An Application filed under Section 30(6) 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)

In the matter of:

AJAY GUPTA

RESOLUTION PROFESSIONAL OF

METISTECH FABRICATORS PRIVATE LIMITED

Registration No. IBBI/IPA-001/IP-P00140/2017-2018/10304,

having address at: 7-A, Sidhartha Extension,

Pocket-B, New Delhi- 110014,

Email: ajaygupta1969@gmail.com

.....Applicant

SUBHLAXMI INVESTMENT ADVISORY PVT. LTD.

Incorporated under the Companies Act, 2013

CIN- U17221WB2008PTC127538,

having its Corporate Office at Unit No.

111, ACY-Aggarwal City Square, Plot No. 10,

District Centre Manglam Place,

Sector-3, Rohini, New Delhi- 110085

.....Successful Resolution Applicant

Order Pronounced on: 28.03.2025

CORAM: DEEP CHANDRA JOSHI, MEMBER (JUDICIAL)

BANWARI LAL MEENA, MEMBER (TECHNICAL)

APPEARANCE:

FOR APPLICANT: AS Juris (Advocates and Solicitors)

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ORDER

1. This application is filed by Mr. Ajay Gupta, Resolution Professional (hereafter '**RP/Applicant**') of **M/s Metistech Fabricators Private Limited** (hereinafter '**Corporate Debtor/CD**') bringing on record the Resolution Plan approved by Committee of Creditors (hereinafter '**CoC**') under Section 30(6) of the Insolvency Bankruptcy and Code, 2016 (hereinafter '**IBC/ the Code**') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (hereinafter '**CIRP Regulations**') seeking approval of resolution plan as approved by the CoC.

BRIEF SUBMISSIONS MADE BY THE APPLICANT:

2. The insolvency application was filed by M/s Rourkela Steel Syndicate under Section 9 of the Code by Rourkela Steel Syndicate was admitted by this Hon'ble Tribunal vide order dated 01.11.2023 wherein the applicant was appointed as the Interim Resolution Professional (IRP) to carry out the CIRP process of the corporate debtor. The IRP was confirmed to continue as an RP by the CoC in its first CoC Meeting in accordance with section 22(3)(a) of the Code and the same was approved by the Tribunal.

3. After the admission the IRP in terms of the Section 13 and 15 of the Code read with Regulation 6 of the CIRP Regulations issued Public Notice in Form- A which was published in Raipur edition of Times of India (English) and Durg edition of Dabang Dunia (Hindi) on 03.11.2023 inviting the creditors of the corporate debtor to submit their claim by 15.11.2023.

4. Pursuant to the Public announcement the IRP received claims from two operational creditors namely M/s Rourkela Steel Syndicate for a sum of Rs 1,06,18,697/- and Shree Ram Machino Fabrik Pvt. Ltd. for a sum of Rs 25, 76,218.94/- on 15.11.2023, and the claims stood admitted by the Applicant on 21.11.2023

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5. Upon perusal of the last available financial statement of the Corporate Debtor as on 31.03.2003, it was observed that the Corporate Debtor owes financial dues to IDBI Bank and thus, sent an intimation letter to IDBI Bank informing about initiation of CIRP against the corporate debtor vide email dated 16.11.2023 and also visited the concerned branch of IDBI Bank on 22.11.2023 intimating about the requirement for filing the claim before 23.11.2023 as 24.11.2023 was the last date for constitution of CoC. However, no claims were received from IDBI Bank and hence the RP continued with the process and finalised the list of Creditors in compliance of Section 21(1) of the Code and Regulation 13 & 14 of the CIRP Regulations filed the list along with a report of constitution of CoC before this Tribunal on 24.11.2023.

But belatedly the applicant received claims from IDBI Bank on 30.11.2023 which stood admitted by the applicant provisionally on 13.12.2023, alongside other operational creditors namely M/s Friends Agency and M/s Excel Tube Corporation who filed their claims belatedly on 11.12.2023 and 16.12.2023 and the same stood admitted by the applicant on 13.12.2023 and 19.12.2023. Whereafter, the COC stood reconstituted with IDBI Bank as the sole financial creditor and an updated list of creditors was also filed before this Hon'ble Tribunal.

The CoC consisted of just one member:

Sl. No.	Name of the Creditor	Voting Share
1.	IDBI Bank	100.00%

6. It is submitted by the applicant that in pursuance of taking over control of the Corporate Debtor the applicant intimated the suspended directors on 02.11.2023 regarding the initiation of CIRP and sought all requisite information and documents from them. The applicant also visited Bhilai, Chhattisgarh on 22.11.2023 where the registered office of the CD is located to take custody of the CD's Assets but it was

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informed by the suspended directors that the premises of the Registered office is situated in the premise owned by one of the suspended director and IDBI bank has taken over possession of the same in pursuance of an order u/s 14 of the SARFAESI Act, 2002.

The factory of the CD which was operated from a rented premises situated at Khasra No. 51, Transport Nagar Main Road, Village Umda, Durg, Chhattisgarh-490026 and the operations were closed since August-2021 due to recurring losses and pursuant to such closure, most of the plant & machinery and inventory items were sold at the time of vacation (except few), which as on the date of commencement of CIRP were kept in open area at a factory premises situated at 17D, Light Industrial Area, Bhilai, Chhattisgarh, which is owned by one of the known person of the suspended directors namely Mr. Rinku Sharma proprietor of M/s Shree Steel Corporation. However, due to the absence of any list of such assets, the applicant could not take possession of the assets and further instructed the Suspended directors to prepare a list of the inventories so that the same can be taken into custody.

7. Upon getting no cooperation from the suspended directors, applications were filed u/s 19(2) through IA (IB) 15/CB/2024 on 02.01.2024 of the Code seeking cooperation from the suspended directors and the erstwhile statutory auditors and this Tribunal vide order dated 05.03.2024 ordered the suspended directors to provide complete cooperation as required by the applicant to take over custody of the CD

8. The Corporate Debtor did not have any Land and Building or Plant & Machinery and the assets of the Corporate Debtor comprised only of Securities and Financial Assets (SFA) including Inventory and to ascertain the value of the assets the CoC in its 1st meeting appointed 2 (Two) Registered Valuers of SFA category namely Mr. Gyaneshwar Sahai and Ms. Smita Gupta, who submitted the valuation reports on 25.04.2024 and 08.05.2024.

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9. Upon perusal of the financial statement of the CD, it seemed that some of the transactions were of questionable nature and for which transaction audit is necessary and hence Chaudhary Pradip & Co. Chartered Accountants were appointed as Transaction Auditor to determine if any of the transactions fall within the ambit of Section 43,45,49,50 and 66.

10. The draft auditor report was submitted on 22.02.2024 seeking clarifications from the suspended board of directors and the same was shared with the Suspended Directors and the CoC. The suspended directors did not respond to the clarifications sought by applicant but IDBI bank provided certain clarifications and documents in respect to the same and based on those clarifications the auditor submitted its final report on 15.04.2024. Based on that report identifying possible PUFÉ transactions applications were filed before this tribunal u/s 43,49 and 66 of the Code wherein notices were issued on 19.07.2024 and the same is presently pending adjudication.

11. After finalising the eligibility criteria for submission of resolution plan and inviting expression of interest from the prospective resolution applicants, Form G was published on 30.12.2023 in All India Editions of Business Standard (English & Hindi) inviting EOI with last date for receipt of EOI being 20.01.2024. However, only one entity namely Subhalaxmi Investment Advisory Pvt Ltd submitted the EOI till the last date and hence upon the recommendation of the CoC, FORM G was published on 23.01.2024 in Raipur Edition of Times of India (English) and Raj Express (Hindi) with last date for submission being 07.02.2024. In pursuant of the fresh publication another EOI from SPSS Infrastructure Pvt. Ltd was received and the final PRA list comprised of Subhalaxmi Investment Advisory Pvt Ltd (hereinafter **PRA 1/SRA**) and SPSS Infrastructure (hereinafter **PRA 2**) Pvt. Ltd.

12. Both the PRAs were provided with Request For Resolution Plan (RFRP) including evaluation matrix and information memorandum and

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the last date for submission of Resolution Plan was 23.03.2024 but PRA 1 sought an extra 15 days for submission of Resolution plan and upon consultation with the CoC PRA 1 was allowed a 15 days extension and PRA 1 submitted its plan on 06.04.2024 with Earnest Money Deposit (EMD) of Rs.2,00,00/- and no resolution plan was received from PRA 2.

13. In pursuance of the order dated 05.03.2024 of this tribunal directing the suspended directors to provide complete cooperation, the technical person appointed by the applicant visited the premises of the CD and identified 7 types of items which were available during physical inspection. The registered valuer also visited the premises on 08.04.2024 for the purpose of valuation of the assets of the CD. The list of available inventory along with photographs were presented before the CoC in the 6th Meeting held on 20.04.2024 and it was informed that the assets of the CD were still lying in the premises of a third party and upon deliberation regarding the custody of the assets it was concluded by the CoC that since the weight of the material lying in the premises of third party weights around 25MT and since those were customised to suit the needs of the CD and its storage cost is really high, hence to realise the maximum value of the said assets it is best to sell them as 'scrap by weight'. Subsequently the same was sold to the highest bidder i.e. one M/s Om Shri Ganapati Lime and Minerals for Rs.9,62,640/- @Rs.36 per kg on 29.05.2024.

14. The Resolution plan submitted by Subhalaxmi Investment Advisory Pvt Ltd was deliberated upon and after multiple meetings the CoC approved the plan on 21.09.2024 and a Letter of Intent (LoI) was issued to the SRA and the SRA was asked to deposit Rs. 4,50,500/- i.e. 10% of the total plan value as performance security, which was compiled by SRA by making the payment on 25.09.2024. The applicant RP has provided the brief details regarding the total cost of the Resolution Plan at clause 5.7 of the plan as follows:

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Sl No.	Particular	Amount (In Rupees)
1.	Corporate Insolvency Resolution Process Cost (Estimated)	20 Lakhs
2.	Secured Financial Creditor	24.50 Lakhs
3.	Unsecured Financial Creditor	Nil
4.	Operational Creditors	50,000
5.	Other debts and Dues	Nil
	Total	Rs.45,00,000/-

15. It is further stated that the RP, in compliance with Regulation 39(4) of CIRP Regulations, 2016, has prepared Form H.

Sl No	Category of Stakeholder	Sub Category of Stakeholder	Amount Claimed (in Lakhs)	Amount Admitted (in Lakhs)	Amount Provided under the Plan (in Lakhs)	Amount provided to the Amount claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Secured Financial Creditors	(a) Creditors not having a right to vote under Sub-Section (2)	-	-	-	-

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		of Section 21 (b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	223.94	223.94	24.50	10.94%
		Total [(a) + (b)]	223.94	223.94	24.50	10.94%
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub- section (2) of section 21	-	-	-	-
		(b) Other than (a) above:	-	-	-	-

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		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				
		Total [(a) + (b)]	-	-	-	-
3.	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:	-	-	-	-
		(i) Government				
		(a) Employee State Insurance Corporation (ESIC)	0.74	0.74	-	0%
		(ii) Workmen				
		(iii) Employees				
		(iv) Other Operational Creditors	239.63	184.83	0.50	0.21%

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		Total [(a) + (b)]	240.38	185.57	0.50	0.21%
4.	Other debts and dues	-	-	-	-	-
Grand Total			464.32	409.51	25.00	5.38%

16. The timeline of implementation of resolution plan as provided in the plan at page 63 is as follows:

Particulars	Amount	Timeline
EMD with Resolution Plan	Rs.2,00,000/-	Paid with Plan
Performance Bank Guarantee	as per RFRP	As stipulated in RFRP
Upfront Cash Payment	Rs.5,00,000/-	Within 30 days of Approval of Plan
Balance Payment in Instalment	Rs. 38,00,000/-	Within 90 days of Approval of Plan
Total	Rs. 45,00,000/-	

17. The compliance aspect of the Resolution Plan has been given in Para No. 9 of Form H, which is as follows:

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?	Clause 8.11 depicts that the resolution applicant meets criteria approved by the CoC	Yes

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Section 29A	Whether the Resolution Applicant is eligible to submit a resolution plan as per the final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Clause 8.12 the RA was duly reflected in the final list of PRA dated 22.02.2024 issued by the Resolution Professional	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Clause 8.12 an affidavit dated 20.01.2024 submitted in this regard	Yes
[Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the	(a) Clause 5.1 provides for payment of the insolvency resolution process costs. (b) Clause 5.2.3 provides for payment to the operational creditors (c) Clause 5.3.2 provides for payment to financial creditors of at least the amount specified under section 30(2)(b) (d) Section 7 read with Clause 8.4 provides that the management and control of the corporate	Yes Yes Yes Yes

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affairs of the corporate debtor?	debtor shall be vested in the hands of monitoring committee as proposed by the RA under the resolution plan. Thereafter, the corporate debtor shall be managed with the term of Board of Directors an extended professionals.	
(e) provides for the implementation and supervision of the resolution plan?	e) Chapter 7 read with Clause 8.5 provides for implementation of resolution plan under the supervision of the monitoring committee.	Yes
(f) contravenes any of the provisions of the law for the time being in force?]	f) Declaration to that effect has been furnished under clause 8.13.	Yes

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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) Clause 8.7 depicts that the resolution plan is feasible and viable and CoC has considered these aspects while approving the plan (b) Yes Resolution plan has been approved by the CoC with 100.00% voting share.	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Chapter 7 and Capsule 8.5 provides for implementation of resolution plan under the supervision of the monitoring committee which was considered by CoC while approving the plan	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Clause 5.3.1 provides for payment to operational creditors in priority in payment over financial creditors.	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 8.2 provides for interest of all the stakeholders including financial creditors whether assenting or dissenting and operational creditors.	Yes

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Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non implementation?	An affidavit dated 17.01.2024 and a declaration under clause 8.1 has been provided by the applicant to this effect. NA	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term?	(a) The timeline for the implementation schedule is provided in Clause 5.7 read with clause 8.3 of the resolution plan. (b) 1st installment of Rs. 5,00,000 within 30days from date of approval i.e date of approval of Resolution Plan by Adjudicating Authority. Balance payment of Rs. 38,00,000 in instalments within 90 days from the	Yes Yes

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	(c) adequate means for supervising its implementation?	resolution plan approval from NCLT i.e. date of approval of Resolution Plan by Adjudicating Authority. (c) Section 7 Clause 7. I provides the Constitution of Monitoring Committee and implementation of resolution plan under the supervision of the monitoring committee.	Yes
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?	(a) The clause 8.6 of the Resolution Plan addresses the cause of default. (b) Clause 8. 7 depicts that the resolution plan is feasible and viable. (c) Clause 71. Describes the constitution of monitoring committee and implementation of the resolution plan under the supervision of the monitoring Committee.	Yes Yes Yes

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	(d) it has provisions for approvals required and the timeline for the same?	(d) Clause 8.8 of the resolution plan deals with the approvals required by the Resolution Applicant.	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	(e) A conjoint reading of Clause 8.9 and 8.11 describes the capability of resolution applicant to implement the resolution plan and sources of funds for resolution plan.	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	RP has filed application 1. Under section 43 vide diary no. 211313600295202 4 on 14th May 2024. 2. Under section 49 vide dairy no. 211313600324202 4 on 3pt May 2024. 3. Under section 66 vide diary no. 211313300353202 4 on 19.06.2024.	Yes
Regulation 39(4)	Provide details of performance security	RTGS reference no. CBINR52024092510	Yes- Provided

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	received, as referred to in sub-regulation (4A) of regulation 36B.]	015300 dated 25.09.2024 for Rs. 4,50,500 (10% of the resolution plan amount) received in account no. 0048102000025850 of the corporate debtor maintained with IDBI Bank, Bhilai Branch	
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18. The approval of the resolution plan has been sought under Section 31(1) of the Code, which reads as follows:

"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."

19. The conditions provided in Section 31(1) of the Code for approval of resolution plan are as follows:—

- The Resolution Plan is approved by the CoC under Section 30(4) of the Code;
- The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;

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- c) The Resolution Plan has provisions for its effective implementation. The satisfaction of the conditions is discussed below.

20. The Applicant submits that the COC has approved the Resolution Plan with 100% of the voting share of the financial creditors, and the conditions provided for by Section 30(4) of the Code are satisfied.

21. The provisions of Section 30(2) of the Code are as follows:

“(2) 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 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.

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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) confirms to such other requirements as may be specified by the Board.*

Explanation.—For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law."

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*out of which claim amounting to Rs.1,84,82,861.21/- was admitted.
The average fair value of the CD has been valued at Rs.43.07 Lakhs
and the liquidation value payable to Opera*

OBSERVATIONS AND DIRECTION:

22. We have perused the submissions made by the RP and the Plan submitted before us and the following is observed regarding the following:

- a. The Resolution Plan has been filed by the applicant after 329 days from the date of Commencement.

Proposal for Financial Creditors (Secured and Unsecured)

b. The Plan proposes to settle dues with the sole secured financial Creditor by paying a lump sum amount of **Rs.24,50,000/-** as against the claimed and fully admitted dues of Rs.2,23,94,148.32. It is also observed that though initially the claim amount of the Financial Creditor was Rs.3,31,94,148.32 but it was subsequently revised upon realisation of Rs.1,08,00,000/- from sale of immovable property of Personal Guarantor of CD. The Financial Creditor is taking a haircut of approximately 88%.

c. As per the Information Memorandum and the Plan NIL Claims were submitted on behalf of unsecured creditors.

d. The Resolution Plan at Clause 5.7 and Clause 7.3.3 states that The Resolution Applicant will share 25% of the recovery made from any debtor till 2.5 years from the date of approval shall be shared with the secured debtor and 15% of the recoveries made from the proceedings initiated for alleged PUFEE transactions will also be shared with the secured financial

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Creditors. Both these amounts will be paid over and above the amount proposed in the plan.

e. There are no Dissenting Financial Creditors as the plan has been approved by 100% vote.

Proposal for Operational Creditors (including Employees, Workmen and Statutory Dues)

f. Total claim amounting to Rs 2,39,63,259.97 was received from Operational Creditors other than Workmen & Employees & Statutory Authorities and an amount to the tune of Rs.1,84,82,861.21/- was admitted. The Plan provides **Rs.50,000/-** pari passu as the full and final settlement against the claims of this category of creditors. The plan states at clause 5.3.1 that since the **average fair value of the CD is approximately 43.07 lakhs** and the **Liquidation value is approximately Rs.27.99 Lakhs** and hence in case of liquidation the Operational Creditors in terms of Section 53(1) of the Code is expected to be NIL. The Plan also provides for priority payment to the Operational Creditors over Financial Creditors.

g. No Claims have been received from Workmen and Employees.

h. Regarding Statutory Dues, EPFO has initially filed a claim of Rs.74,380/- which was admitted by the RP. It has been submitted by the RP in the application and stated by the Resolution Applicant in its plan that after the commencement of CIRP the EPFO raised dues u/s 7A of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (**EPF Act, 1952**) to the tune of Rs.18,33,528/- but no claim had been filed with respect to the same before the RP. It has also been stated that RP through the suspended directors had sought to review the

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assessment order of the PF dues u/s 7B of the EPF Act, 1952 and the same was under adjudication while the Resolution Plan was filed. In the Plan under clause 5.2.4 at page 30 the Resolution Applicant has made a provision of Rs.5,000/- against the claim made by the EPFO. In the present application, the RP has submitted that the review application u/s 7B has been rejected subsequent to the submission of the Plan vide order dated 28.08.2024.

i. It is observed that though in the Resolution Plan the total amount of the Plan at Clause 5.7 and in Para 7 in Form H it has been stated that no settlement amount has been proposed against the EPFO dues but in Clause 5.2.4 at page 30 of the plan the Resolution Applicant has clearly stated that it is making a provision of **Rs.5,000/-** as against the PF dues and also in Clause 5.7 Note 6 at page 38 of the Plan the Resolution applicant has stated that the total liability of the applicant shall not exceed beyond Rs.25,05,000/-, which includes Rs.5000/- towards EPFO Claims. Furthermore, the RP in the present application at Para 34 at page 15 of the application has stated that the Resolution applicant shall infuse funds of Rs. 45,05,5000/-. The Resolution applicant has also submitted a Performance guarantee of RS. 4,50,500/- i.e. 10% of the plan value in terms of the RFRP in the account of the CD. Considering all these facts it is evident that the total value of the plan is Rs.45,05,000/- and not Rs.45,00,000/- as stated in the Plan and Form H and the difference is a mere clerical error.

j. As per Clause 5.7 and Clause 7.3.3 of the Plan 5% of the recoveries made from the proceedings initiated for alleged PUFEE transactions will also be shared with the Operational Creditors on *pari passu* basis. Both these amounts will be paid over and above the amount proposed in the plan.

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k. No Proposal has been provided for any other creditors as no Claims were received in Form F

Implementation of the Plan

l. As per Clause 7.1 of the Plan the management of the Company after the date of approval of the plan till the implementation of the plan will be done by a Monitoring Committee which will be comprised of (i) "Resolution Professional as Chairman (ii) One Representative on behalf of the Resolution Applicant. (iii) One representative, nominated by the financial creditor

m. As per clause 7.2.1 of the plan upon approval of the resolution plan two escrow accounts shall be maintained with the IDBI bank one for recoveries of debtors and other for recoveries from PUFEE transactions and which will be operated in terms of the Resolution Plan.

n. As per clause 7.3 of the plan the Resolution applicant will the pending applications at its own cost and will also share any recoveries made from the proceedings with the Secured Financial creditor and Operational creditors in proportion as described in the plan.

Compliance u/s 29 A, Regulation 39(4) ,35A and 37 of CIRP Regulations

o. The Applicant/RP has also certified that M/s. Subhalaxmi Investment Advisory Private Limited, the Successful Resolution Applicant, has submitted an affidavit dated 20.01.2024 pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan, and the contents of the said affidavit are in order.

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p. As per the requirement of Regulation 39(4) of the CIRP Regulations for performance security, it is stated that the SRA has provided a Performance Bank Guarantee of Rs. 4,50,500/- , which is also affirmed in the Form-H by the Applicant.

q. With regard to compliance under Regulation 35A, it is stated that the application has already been filed before the Tribunal and is sub judice and the same shall be continued by the SRA.

r. With Regard to Regulation 37 the Resolution Applicant has stated that it is not applicable in its case.

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

a. **Section 30(2)(a):** The Resolution Plan (Section V-Clause 5.1- Pg. No. 48 of the Resolution Plan) states that the Resolution Applicant shall make payment of the actual CIRP cost incurred (even if it exceeds the estimated costs) and approved by the COC in priority over payments to any other Creditors.

b. **Section 30(2)(b):** The Resolution plan states that (Section V-Clause 5.2.3.1- Pg. No. 51 of the Resolution Plan) As per information memorandum a total claim amounting to Rs.2,39,63,259.97 was filed and out of which Rs.1,84,82,861.21/- was admitted but the liquidation value of the assets of the Corporate Debtor is inadequate to cover the dues of the secured financial creditors in full in which light operational creditors would receive nothing in the event of liquidation and hence the Resolution applicant has provisioned to pay Rs.50.000/- *pari passu* to the Operational creditors towards full and final settlement of dues.

Sd

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As against the Government dues as observed in **Para 24 (g) and (h) of this order, the Plan provides for Rs.5,000/-** for the claims raised to the tune of Rs.74,380/- by EPFO. In case of subsequent recovery as envisaged in clause 7.3 of the resolution plan 5% of the net recovery will be paid on pro rata basis over and above the above-mentioned amount

c. **Section 30(2)(c):** From the Resolution Plan (Section IV- Clause A-Pg. No. 22), the Resolution Applicant has stated to make payment of Rs. 23.50 lakhs to the sole secured Financial Creditor towards full and final payment of their admitted claim amount of Rs. 2.23 Crores (approximately). All admitted debt of the sole Financial Creditor shall be extinguished upon the approval of this resolution plan and consequent payment by the Resolution Applicant. There is only one financial creditor.

d. **Section 30(2)(d):** In the Resolution plan it has been envisaged that an Implementation and Monitoring Committee comprising of 3 (three) Persons of which 1 is a Resolution Professional of the CD. 1 representative of the Resolution Applicant and 1 person from the Financial Creditor will be constituted without any further action required from the corporate debtor.

e. **Section 30(2)(e):** In Form H Para 4, the RP has certified that the Resolution Plan does not contravene any of the provisions of the law for the time being in force.

24. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of the resolution plan as discussed in the preceding paragraphs in relation to Section 30 and Section 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Thus, the resolution plan fulfils all the requirements of Regulation 38 of the CIRP Regulations.

25. The Resolution Plan *inter-alia* entails the following:

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- a. No Corporate Restructuring by way of merger, amalgamation and demerger shall be allowed.
- b. No cancellation of any consents, approvals, licenses, concessions, authorizations, permits or the like granted to the Corporate Debtor or for which the Corporate Debtor has made an application for renewal or grant.
- c. Extinguishment of any/all claims against the Corporate Debtor along with related legal proceedings, including criminal proceedings and other proceedings which shall stand abated, settled, and extinguished.
- d. If the implementation of resolution plan required any approval obtain necessary approvals required under any law for the time being in force within a period of one year from the date of the approval of resolution plan by Hon'ble Adjudicating Authority or within such period as provided for in such law, whichever is later
- e. Regulation 3 7(h) of the CIRP Regulations, the Resolution Applicant has not proposed any amendments in the constitutional document of the Corporate Debtor in the Resolution Plan. However, the Resolution Applicant shall be at liberty to change the name of Corporate Debtor on approval of the Resolution Plan
- f. The term of the plan and its implementation schedule is envisaged to be a period of 90 days.

26. In view of the above discussion, the **Resolution Plan submitted by Subhalaxmi Investment Advisory Pvt Ltd as approved by the CoC under Section 30(4) of the Code is hereby authorised for a total Plan Value of Rs. 45,05,000/- (Forty Five Lakhs and Five Thousand Rupees)** that includes Estimated CIRP Cost of Rs. 20 Lakhs, Rs. 24.50 Lakhs as Liability towards Secured Financial Creditor, Rs.

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50,000/- towards dues of Operational Creditors other than Statutory dues and Rs.5,000/- towards EPFO dues

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.

27. Under the provisions of Section 31(3) of the Code, we also direct as under:

- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 28.03.2024 shall cease to have effect; and
- b) The Applicant/RP shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Board to be recorded on its database

28. In view of the foregoing, **IA (IB) (Plan) No. 3/CB/2024** is **ALLOWED** and **DISPOSED OF**.

Sd

BANWARI LAL MEENA
MEMBER (TECHNICAL)

Sd

DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)