In the National Company Law Tribunal

Mumbai Bench

MA 1090/2019 in CP No.1562/I&BC/MB/MAH/2017

Application Under **Section 30(1) & (6)** and **Order under section 31** of Insolvency & Bankruptcy Code 2016

In the matter of

Percula Shipping & Trading INC
…..Operational Creditor
V.

Dadi Impex Pvt. Ltd.
……. Corporate Debtor

(Registered Office : 614 Laxmi Plaza, Laxmi Industrial Estate, Off Linking Road, Andheri (West) , Mumbai.)
Mr. Dhiren Shantilal Shah
…….Applicant/ Resolution Professional

Order delivered on: 22.05.2019

Coram: Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Applicant : 1. Advocate Anirudh Purushothaman a/w Advocate Priyanka Mishra, for Resolution Professional
2. Sr. Counsel Mr. Gaurav Joshi a/w Counsel Mr. Ankit Lohia a/w Mr. Jonathan Jose
3. Ms. Nisha Kaba i/b Naik Naik & Co., for IDFC Bank
4. Advocate Neelima Kirve i/b Ganesh & Co. (For Operational Creditor- Pacific World)
5. Advocate Rajendra Shahasane i/b Harsh Pratap (For Operational Creditor – Clipper Bulk ALJ)
6. Advocate Tripti Sharma i/b Bose & Mitra & Co. (For Operational Creditor)

Per M.K. Shrawat, Member (Judicial).

ORDER

1. An Application has been moved on 15.03.2019 by the Learned Resolution Professional by invoking the Provisions of **Section 30(6)** of the Insolvency & Bankruptcy Code, 2016 read with **Regulation 39(4)** of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) 2016 for **approval of a Resolution Plan.** On receiving this Application along with

Resolution Plan an **Order** is hereunder passed as prescribed **U/s 31(1) of The Code.**

2. The 'Operational Creditor' Percula Shipping & Trading INC had filed a Petition by invoking the Provisions of Section 9 of The Code against the Corporate Debtor **Dadi Impex Private Limited** read with Rule 6 of The Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016.

2.1. After considering the merits of the case, the said Petition was **admitted** vide an **Order dated 22.05.2018 (CP No.1562/I&BP/NCLT/MB/2017).** Initially Mr. Sudip Bhattacharya was appointed as IRP. Pursuant to initiation of Corporate Insolvency and Resolution Process, in the first CoC meeting dated 28.06.2018, the IRP Mr. Sudip Bhattacharya was resolved to be replaced by Mr. Martin Golla to act as the Resolution Professional of the Corporate Debtor. The order of substitution of the IRP was passed on 20.07.2018 by this Tribunal.

2.2 The Applicant submits that on 12.11.2018, Mr. Martin Golla was debarred from practising as an Insolvency professional by the IBBI Disciplinary Committee, therefore, in the 6th CoC meeting, Mr. Dhiren Shantilal Shah was resolved to be appointed as the Resolution Professional of the Corporate Debtor. Hence, an order for appointment of Mr. Dhiren Shantilal Shah as the Resolution Professional of the Corporate Debtor was passed on 28.11.2018. Consequently, an exclusion of 29 days from the Corporate Insolvency Resolution Process period was excluded vide order dated 28.11.2018. Also, an extension of 90 days' time was also given under section 12 of the I&B Code.

3. It is stated by the Applicant that Mr. Anand Prakash Choudhari and Mrs. Manju Choudhari (jointly referred to as 'the **Resolution Applicant**') submitted a Resolution Plan on 03.11.2019. Their **eligibility under section 29A read with Section 240A(1)** of the I&B Code has been looked into and an affidavit in that regard has been submitted by the Resolution Applicant and the same has been

placed on record. Pursuant thereto, in the 14th CoC meeting dated 26.02.2019, the Resolution Plan was placed on table.

4. After deliberations and modifications in the Plan, in the 17th CoC meeting dated 11.03.2019, the voting was conducted and **87.88% of the CoC members had voted in favour of the resolution plan,** thereby approving the 'Resolution Plan' with more than 66% voting as prescribed under the I&B Code.

5. The **Corporate Debtor is an MSME concern,** therefore, it is stated that the erstwhile promoters/ directors of the Corporate Debtor are qualified by the introduction of **Section 240A (Application of this Code to Micro, Small and Medium Enterprises) enforced w.r.e.f 06.06.2018**, prescribed therein that in spite of anything to the contrary contained in this code, the provisions of clauses (c)&(h) of Section 29A shall not apply to a Resolution Applicant in respect of Corporate Insolvency Resolution Process of any Micro, Small and Medium Enterprises. As a consequence, the promoter/directors are **not disqualified under section 29A** of the I&B Code. These Applicants to be held eligible as a Qualified Resolution Applicants. Undisputedly, this Plan is submitted by ex-directors of the Corporate Debtor.

   It is submitted that the cause of default is not due to erstwhile management but due to other factors which were beyond their control, viz. ill health of Mr. Chaudhari, which have led to the admission of this petition. The health of Mr. Chaudhari is slowly improving. Both his married daughters, though not directors /officers of the Company, as a part of their moral duties towards their parents, will be helping their parents in the business. With the additional help of the continuing staff, customers, etc., the business of the Company continues and shall continue.

6. The salient features of the Resolution Plan are discussed herein below:

(A) PRELIMINARY

This Resolution Plan is prepared by Mr. A.P. Choudhari & Mrs. Manju Choudhari (Jointly), hereinafter also called as Resolution Applicant for re-acquire of M/S. DADI

IMPEX PRIVATE LIMITED, hereinafter also called as Corporate Debtor (CD) for submission before Mr. DHIREN SHAH, an Insolvency Professional, appointed as Resolution Professional for Corporate Insolvency Resolution Process of the Corporate Debtor under Insolvency and Bankruptcy Code, 2016.

The Resolution Plan has been prepared based on the information provided in the Information Memorandum (IM), additional information from the Resolution Professional, Public Domain and application U/s 9 of IBC 2016.

(B) OVERVIEW OF THE CORPORATE DEBTOR

Sr.	Particulars	Particulars
1	Name of Corporate Debtor	Dadi Impex Private Limited
2	Registered Address	614, Laxmi Plaza, Laxmi Industrial Estate, Off Link Road , Andheri West, Mumbai -400053
3	Corporate Identification Number	U51909MH2003PTC139055
4	Incorporated on	6/02/2003 under Companies Act,1956
5	Regularity Authority	Registrar of Companies, Mumbai
6	Resolution Professional	Dhiren Shah
		Reg.No: IBBI/IPA-001/IP-P00220/2017-18/10419.
		Address- B-102, Bhagirathi Niwas, Near Natraj Studio, Sir M V Road, Mumbai, Maharashtra – 400 069. Email :

(C) BACKGROUND OF THE CORPORATE DEBTOR

Dadi Impex Private Limited ("Corporate Debtor") is a part of a 25 year old group that was founded in 1987 at Kandla, west coast of India. The Corporate Debtor is to be believed the top exporters of salt from India with strong reputation in Asia. The Corporate Debtor is mainly into the business of export of salt and has business spread across the globe. They have exported salt to more than 30 countries and had opened its headquarters in Mumbai in 1997. The Corporate Debtor also deals in many other products such as cement clinker, bauxite, iron ore, wheat, soyabean extract, rice, maize etc. The Corporate Debtor is headed by the founder and director Mr. A. P. Choudhari and Mrs. Manju Choudhari and mainly supported by their daughters Ms. Mehak Choudhari and Neha Mangal.

(D) MANUFACTURING FACILITIES

Dadi Impex has an office and a washery in Gandhidham, Gujarat which is the on-site office of Dadi Impex. Office and washery both are located at a short distance from Kandla port, in the main city of Gandhidham for ease of operations. This office is also used for holding meetings with suppliers of salt, transportation and other miscellaneous activities. When buyers visit Kandla to check the quality of our salt and inspect the loading of their vessels from time to time the meetings are held in this office. It is also used as an assembling point for Gandhidham staff to run day to day operations of procurement of salt, accounting, supplier bill checking, loading of vessels, etc. Washery is used to wash salt to be exported to countries which have such requirement.

(E) SHARE CAPITAL AND SHAREHOLDING PATTERN AS ON 22-05-2018

Sr. No.	***Name of the Shareholder***	***No. of Shares held (FV Rs.10 each)***	***Nominal Amount(in INR)***	***Percentage (%)***
1	Mr. Anand Prakash Choudhari (Director)	11,89,668	1,18,96,680	*37.18*
2	Mrs. Manju Choudhari (Director)	12,03,000	1,20,30,000	*37.59*
3	Ms. Neha Choudhari	1,12,000	11,20,000	*3.50*
4	Ms. Mehak Choudhari	6,95,332	69,53,320	*21.73*
	Total	**32,00,000**	**3,20,00,000**	***100.00***

(F) LIABILITIES OTHER THAN SHARE CAPITAL AND RESERVE AS PER BALANCE SHEET AS ON 22-05-2018

Particulars	Amount
Term Loans – Secured	
SBI Car Loan	36,20,372
Capital First Ltd.	5,92,87,848
Tata Capital Finance Service Ltd	2,92,214
Bajaj Finance Ltd	13,61,499
HDFC Bank Ltd	8,61,771
Deutsche Bank	8,48,481
SHORT TERM BORROWINGS	
Secured Loans Repayable on Demand, from Bank	
SBI, Cash Credit Account	5,14,84,538
SBI, EPC Account	36,86,87,264
Trade Payables	2,86,30,629
Outstanding Liabilities for Expenses	2,25,99,099
Statutory Dues	51,40,235
Trade Advances	6,76,90,311
TOTAL	**61,05,04,260**

(G) CURRENT ASSETS AS PER BALANCE SHEET AS ON 22-05-2018

Particulars	Amount
Trade Receivables	2,19,12,727
Sundry Advances	11,81,269
Trade Receivables	2,08,24,692
BALANCES WITH GOVT. AUTHORITIES	
GST Refundable	3,36,16,585

Particulars	Amount
TCS on Motor Car	50,269
TDS for AY 2018-19	2,60,936
Input Service Tax	2,07,13,025
Inventories	48,97,92,700
Cash and Cash Equivalents	4,48,27,374
TOTAL	**63,31,79,577**

(H) DEBT PAYABLE TO RELATED PARTY

Sr.No.	*Name of related Party*	*Relationship*	*Date of Loan Received*	*Nature*	*Outstanding as on 22-05-2018*	
					Principal	*Interest*
1	Deltacorp Pacific Trading LLC	Member	-	Advance	4,91,60,389	-
2	Kompass Oversees Trade Advances	Member	-	Advance	1,31,08,669	-
	TOTAL				**6,22,69,058**	

(I) DEBT RECEIVABLE FROM RELATED PARTY

Sr. No.	*Name of the Related Party*	*Relationship*	*Date of Loan granted*	*Nature*	*Outstanding as on 22-05-2018*	
					Principal	*Interest*
1	Dadi Developer	--	--	Advance	77,50,000	--
	TOTAL				**77,50,000**	

(J) CLAIMS CONSIDERED BY RP

(i) FINANCIAL CREDITORS

Sr. No	Creditor	Category	Address	Claim Amount	Claim Admitted	Security Claimed, if any

1	State Bank Of India	Secured financial Creditor	1st,Floor Lekhraj Bhavan,Sakivihar Road, Andheri East , Mumbai-400072	42,61,24,962	42,61,24,962	Personal Guarantee, Fixed Deposit, Hypothecation
2	Capital First Limited	Secured financial Creditor	India bulls Finance Centre, 15th Floor, Tower 2 , Senapati Bapat Marg, Elphinston west, Mumbai - 13	6,23,93,850	5,87,62,155	Jaipur Property
TOTAL				**48,85,18,812**	**48,48,87,117**	

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(ii) OPERATIONAL CREDITORS

Sr.No.	Particulars	Claimed in Form B	Amount admitted by Resolution Professional
1	Starchart Maritime Consultancy	14,24,572	14,24,572
2	Vijay Rungta & Co.(Statutory Auditor)	4,86,160	4,86,160
3	Manisha Dikshit (Company Secretary)	28,250	28,250
4	Pacific World Shipping Pte Ltd	9,22,53,132	9,22,53,132
5	Scorpio UK Limited	34,38,661	34,90,944
6	Maritime Asia Zircon Pte Ltd	25,15,733	25,15,733
7	New Venture INC	71,20,125	70,89,766
8	Percular Shipping Inc	6,99,97,714	6,99,97,714
9	Maritime Asia Zircon Pte Ltd	2,21,98,927	2,77,93,025
10	Pacific Gulf Shipping Pte Ltd	36,26,611	36,20,092
11	Clipper Bilk A/S	9,22,15,170	9,21,03,784
12	Happie Auntie S.A.	2,99,83,155	2,99,83,155
13	Nebula Marine Services Pvt. Ltd.	1017559.75	10,17,560
	TOTAL		**33,18,03,886**

(K) GUARANTEES GIVEN IN RELATION TO DEBT DUE TO CORPORATE DEBTOR

Sr. No	*Name of Guarantor*	*Relation with the Corporate Debtor*	*In Favour Of*	*Amount*	*Date on which guarantee was renewed*
1	Mr.Anandprakash & Mrs. Manju Choudhari	Director/Member	SBI	43,80,00,000	17.03.2018
2	Mrs. Manju Choudhari	Director/Member	SBI Car Loan	50,00,000	02.12.2017
	TOTAL			**44,30,00,000**	

(L) ONGOING INVESTIGATION OR PROCEEDING INITIATED BY GOVERNMENT OR STATUTORY AUTHOURITIES

Sr. No.	**Name of Statute**	**Nature of Dues**	**Forum where dispute is pending**	**Period to which the Amount relates**	**Amount involved**
1	Income Tax Act	Penalty Demand	CIT(Appeals)	A.Y.2010-11	3,30,630

(M) OVERVIEW OF RESOLUTION APPLICANT

Resolution Applicant	1. Mr. Anand Prakash Choudhari and 2. Mrs. Manju Choudhari
Constitution	Individuals – Jointly
Address	A/203 Legend Building, Lokhandwala, Andheri (w), Mumbai – 400053

(N) BRIEF WRITE UP ON RESOLUTION APPLICANT

Mr. Anand Prakash Choudhari and Manju Choudhari have been married for 38 years and actively engaged in international trade for over 30 years. Mr. and Mrs. Choudhari have traded in many commodities such as salt, iron ore, cement clinker, sulphur, timber, bauxite, soyabean extract, china silk fabrics, etc.

Mr. Anand Prakash Choudhari has a net worth of about 6.14 crores and Mrs. Manju Choudhari has a net worth of about 14.31 crores. Mr. Choudhari has been the President of Kandla Timber Association, Kandla Free Trade Zone, Lions Club of Gandhi Dham and many other associations. Mrs. Choudhari has also been the president of Lions Club of Seaside, Mumbai.

Mr. Anand Prakash Choudhari is the pioneer of salt exports from India. He has expertise in procurement of the best quality salt and chartering the right vessels to conduct the shipments effectively and efficiently. During their long career, Mr and Mrs Choudhari together have secured clients in over 30 countries around the world and export about 1.2 million tons of salt every year.

The government of India honours a company on their exceptional export performance and turnover in five categories. With the efforts of the directors, Anandprakash Choudhari and Manju Choudhari, Dadi Impex achieved the status of two star export house. Objective of this status is to accelerate growth in export of services so as to create a powerful and unique 'Served from India' brand, instantly recognized and respected world over.

Together, Anandprakash Choudhari and Manju Choudhari value integrity and honesty, openness and respect and with their hard work aim to take Dadi Impex Pvt Ltd to the next level as a trading house.

(O) Net Worth of Resolution Applicants

Particulars	Amt in Crs.
Mr. Anandprakash Choudhari	6.14
Mrs. Manju Choudhari	14.31
Total	**20.45**

(The Net Worth Certificate for both the applicants is attached in the Application**.)**

(P) DETAILS OF RESOLUTION APPLICANTS

Sr. No.	Particulars Required	Status of Resolution Applicants in this regard
A	Identity	Individual
B	Conviction for any criminal offence during preceding 5 years	No such convictions involving Resolution applicants
C	Criminal Proceedings pending, if any	No such convictions involving Resolution applicants
D	Disqualification, if any, under Companies Act 2013 to act as Director	No such disqualification.
E	Identification as wilful defaulter by any Bank or financial Institution in accordance with RBI Guidelines	No such default till date.
F	Debarment , if any, from accessing to, or trading in securities markets under any order or direction of SEBI	No such default till date.
G	Transactions, if any, with the Corporate Debtor during preceding two years	The Resolution Applicants were directors and the remuneration has been paid to them during preceding two years.

(Q) MANDATORY CONTENTS OF THE RESOLUTION PLAN – REGULATION 38

Sr. No	Condition	Fulfilment of conditions
A	CIRP Costs (As approved by CoC)	Total CIRP Cost which includes any expenses which have been incurred in the during CIRP period and total of outstanding liability as on 28th February 2019 is Rs.9.36 crores (subject to para 09 below). In addition to this, as the Corporate Debtor is going concern, any amount which arises after 28th February 2019 will be added and the same will be paid from the accounts of the Corporate Debtor. Source : Information Memorandum
B	Payment of liquidation value for Workmen Dues Regulation 38(1)	There are no workmen dues claims as on date of CIRP. In case of claims of the Operational Creditors, though the liquidation Value is NIL, the resolution applicant has proposed to pay each of the operational creditors, 2% of the total amount claimed by them in priority to financial creditor as per Regulation 38 (1) of IBC 2016 as upfront payment. Source : Information Memorandum
C	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.	Table no 21 on page No. 43 shows the payment to be made to all the stakeholders.

	Regulation 38(1A)	
D	A resolution plan shall provide: (a) the term of the plan and its implementation schedule; (b) the management and control of the business of the corporate debtor during its term; and (c) adequate means for supervising its implementation. Regulation 38(2)	The plan covers all the conditions as mentioned in the regulations and the same are given here below in this Resolution Plan.
E	A resolution plan shall demonstrate that – (a) it addresses the cause of default; (b)it is feasible and viable; (c) it has provisions for its effective implementation; (d) it has provisions for approvals required and the timeline for the same; and (e) the resolution applicant has the capability to implement	

	the resolution plan.	

(R) KEY PROPOSITIONS OF THE RESOLUTION PLAN

(i) Proposed Share Capital

Present Share Capital of the Corporate Debtor is 32 lakhs shares at face value of Rs.10 each i.e. Rs.3.20 crores.

Resolution Applicant proposes to continue the existing shareholding pattern as before CIRP. The table below shows the shareholding pattern.

Sr. No.	***Name of the Shareholder***	***No. of Shares held (FV Rs.10 each)***	***Nominal Amount(in INR)***	***Percentage (%)***
1	Mr. Anand Prakash Choudhari	11,89,668	1,18,96,680	*37.18*
2	Mrs. Manju Choudhari	12,03,000	1,20,30,000	*37.59*
3	Ms. Neha Choudhari	1,12,000	11,20,000	*3.50*
4	Ms. Mehak Choudhari	6,95,332	69,53,320	*21.73*
	Total	**32,00,000**	**3,20,00,000**	***100.00***

(ii) <u>Limit from State Bank of India and additional collateral to be given</u>

Currently, there are two credit facilities which have been provided to the Corporate Debtor in form of **Export Packaging Credit** i.e. **Working Capital Loan of Rs.37.5 crores** and **Cash Credit limit for Rs.5 crores**. In addition to the same there is interest amount which come to Rs.0.11 crores which is the difference between the amount of limit and amount claimed and admitted during CIRP. The two credit facility has been supported by providing the below list of collateral security.

1) FDR for Approx. Rs.4.5 crores inclusive of Interest

2) Residential Flat at Lokhandwala
3) Corporate Office at Laxmi Industrial Estate
4) Residential Flat at Metropolis
5) Office at Corporate Park, Gandhidham, Gujarat

(iii) **Based on the above details, the Resolution Applicant proposes to reduce the limit as follows:**

a) To reduce the present total limit of Rs.42.5 crores to Rs.38 crores by requesting the bank to liquidate the FDR along with accrued interest till March 2019 which is approximately 4.5 crores, which SBI are already in possession of and to consider this as upfront payment on the approval of the Resolution Plan by the Adjudicating Authority.
b) To pay Rs.3.5 crores within next 12 months from the date of approval of Resolution plan by Adjudicating Authority which will further reduce the overall credit limit to Rs.34.5 crores. Resolution Applicant proposes to pay this amount on account of expected GST refund. The process of claiming the refund with the GST department has already been initiated.
c) In case, the expected GST refund is delayed and not received within 12 months, then the Resolution Applicant propose to pay the amount of Rs.3.50 crores in 3 equal instalments with time gap of 6 months each. The interest on the same will be charged at MCLR rate + 3% and paid on regular basis till the total amount is repaid.
d) Further the remaining credit loan amount of Rs.34.5 crores will be partly converted into a term loan of Rs.5.5 crores for the period of 7 years and the same will be paid along with interest at MCLR rate + 3%.
e) Further, EPC limit after the above proposed repayment is Rs.29 crores which will be further reduced to 22 crores, by making repayment of 1 crores every year for 7 years in the form of quarterly instalment of Rs.25 lakhs starting June 2019. EPC interest rate will be set at the applicable MSME interest rate. For calculation purposes it is taken at 6%.

f) Additional collateral in form of residential property at Neral valued at approximately 35 lakhs.

g) To create second charge on the commercial property at Jaipur in favour of SBI on which there is first charge created in favour of IDFC First.

h) In case of Sale of Jaipur Property, the net sale consideration will be utilized to clear the outstanding loan amount of IDFC first. In case, there is balance left, the same will be utilized for repayment of term loan with SBI. No foreclosure fees will be paid by the Resolution Applicant in such situation.

i) To offer personal guarantees of Anand Prakash Choudhari and Manju Choudhari to secure the loan of State Bank of India as on the date of approval of the Resolution Plan by Adjudicating Authority.

j) Based on the above proposal, the Resolution Applicant is offering 100% repayment to SBI by requesting to change the credit structure.

(iv) Repayment of Loan from IDFC First Bank

1. The total admitted claim of Capital First is Rs. 5.87 crores. Since November 2018, EMI of Rs.9.04 lakhs for IDFC first has not been paid, which totals up to 51.32 lakhs till April 2019.
2. Resolution Applicant proposes to restructure the loan by increasing the amount of EMI and keeping the overall tenure of the loan as unchanged. In this case, monthly EMI will be Rs. 9,32,149/-
3. The payment of EMI is assumed to restart from April 2019 for calculation purpose in the plan.
4. In case of Sale of Jaipur Property, the net sale consideration will be utilized to clear the outstanding loan amount of IDFC first. In case, there is balance left, the same will be utilized for repayment of term loan with SBI. No foreclosure fees will be paid by the Resolution Applicant in such situation.
5. Also the Resolution Applicant propose not to change the status of the Loan account to NPA for non-payment of EMI during CIRP and to maintain the account as Standard Account.
6. Resolution Applicant asks for waiver of penal charges which have arise on account of non-payment of EMI during the CIRP period to IDFC Bank.

7. Based on above we propose to make 100% repayment for the loan of IDFC first.

(v) Loan Repayment for others

As the corporate debtor is a going concern, the loan which were taken from the below mentioned banks are being paid on regular basis and Resolution Applicant proposes to continue to honour the repayment of the loans.

The loan taken from Deutsche Bank and Tata Capital has been repaid in full as on date whereas SBI Car Loan, Bajaj Finance Ltd and HDFC Bank Ltd. Loans are still on going.

(vi) Payment to Operational Creditors

The claimed operational creditors will be paid 2% of the claim admitted as per information provided by the Resolution Professional and the same will be infused by the Resolution Applicant. Any amount in addition to 2% of amount admitted for operational creditors, will be paid from the existing business of the Corporate Debtor.

(vii) Rent for the property used by Corporate Debtor

Corporate Office of the Corporate Debtor and additional place of business at Ghandhidham has been taken on rent from one of the Resolution Applicant Mrs. Manju Choudhari. The resolution applicant propose to continue to provide these property on rental basis to Corporate Debtor. Proposed Rental amount for Corporate Office will be Rs.80,000/-* (qualified - subject to para 8 herein below) and for office at Ghandhidham will be Rs.25,000/- subject to increase by 10% every year.

(viii) No Dividend payout

Resolution Applicant propose no dividend payment during the tenure of Resolution Plan.

(ix) Payment to Related Parties

As on date there are related party outstanding under unsecured loan, in the books of Corporate Debtor which is mentioned below:

Sr. No.	***Name of related Party***	***Relation***	***Outstanding as on 22-05-2018***	***Payment during CIRP***	***Receipts During CIRP***	***Closing as on date***
1	Deltacorp Pacific Trading LLC	Related Party	4.92	-	-	4.92
2	Kompass Overseas	Related Party	1.31	2.96	4.50	2.85
3	AP Choudhari	Promoter/Resolution Applicant	-	-	0.77	0.77
4	Manju Choudhari	Promoter/Resolution Applicant	-	-	2.65	2.65
5	Neha Mangal	Daughter of Promoter/Resolution Applicant	-	-	0.83	0.83
6	Mehak Choudhari	Daughter of Promoter/Resolution Applicant	-	-	0.18	0.18
	TOTAL		**6.23**	**2.96**	**8.93**	**12.19**

In the above table, amount received from all the parties excluding Deltacorp is during the CIRP period as unsecured loans to run the operations of the Corporate Debtor. Resolution Applicant propose to keep these funds in the company till the term of Resolution Plan.

(x) Performance Security

As per Regulation 36(4A), Resolution Applicant provides performance security to an extent of Rs.10,00,000/- (Rupees Ten Lakhs Only) in form of Fixed Deposit for 7 years which shall stand forfeited if the resolution applicant, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

(S) UTILISATION OF FUNDS

Rs. In Crores

Sr. No.	Nature	30 days	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	TOTAL
A	Unpaid CIRP Cost (As approved by CoC – approx.)	9.36*	-	-	-	-	-	-	-	-	9.36
B	Payment to Creditors	5.23	6.70	3.12	3.18	3.35	3.59	3.83	3.98	0.29	33.28
	GRAND TOTAL	**14.59**	**6.70**	**3.12**	**3.18**	**3.35**	**3.59**	**3.83**	**3.98**	**0.29**	**42.64**

*(subject to para 09 below).

(T) PAYMENT SCHEDULE AND CONDITIONS

a. Total Consideration

Resolution Applicant has offered to Rs. 42.64 crores as total consideration to the Financials as well as Operational Creditors and also towards the unpaid CIRP cost which will be as per actuals.

b. Approximate CIRP Cost

The Corporate Debtor is run by the Resolution Professional as a going concern and there are unpaid expenses incurred after 22nd May 2018 and before 28th February 2019, which amounts to Rs. 9.36 crores (subject to para 09 below). The cost will be paid as and when due during the course of business from the accounts of Corporate Debtor. CIRP cost which is expected to be incurred between the period after approval of Plan by CoC till the plan is approved by Adjudicating Authority will continue to be paid from the accounts of Corporate Debtor.

c. Payment to State Bank of India

Table above shows balance of Rs.42.50 crores outstanding which is on account of EPC and CC taken by the Corporate Debtor. As proposed, Resolution Applicant will reduce the overall credit risk with SBI to Rs.29 crores which will be utilised as working capital loan.
The table shows the principal repayment which will be done in next 7 years hence reducing the principal amount to 22 crores.

The table also shows interest which will be paid during the period for the proposed term loan of Rs.5.5 crores which will be repaid in 7 years.

d. Payment to IDFC First Bank

Resolution Applicant proposes to restructure the loan by increasing the amount of EMI and keeping the overall tenure of the loan as unchanged. In this case, monthly EMI is Rs. 9,32,149/-

e. Payment to HDFC Bank/SBI Car Loan/Bajaj Finance Ltd

Resolution Applicant has proposed to pay 100% of the outstanding loan in full as per the terms originally agreed before CIRP.

f. Payment to Claimed Operational Creditors

Resolution Applicant proposes to pay 2% to each of the Operational Creditors against their respective claim admitted in priority to the financial creditors as per Regulation 38(1) of IBC 2016 by infusing this amount into the company.

(U) WAIVERS OF LIABILITIES:

1. Waiver of unclaimed dues if any, and any other operational liability which are not reflected before the CIRP commencement date as well as waiver of all the Contingent Liability arising out of any acts or actions of the company done before the Insolvency (CIRP) commencement date shall be dealt with in future as per law**.**

(V) PROPOSED SETTLEMENT OF DUES UNDER THE PROPOSED PLAN

Amt in Crores.

Sr. No.		**Claim Type**	**Amount Due**	**TOTAL PAID**	**Unpaid**	**% REPAID**
A	**CIRP**	APPROX. CIRP COST - Unpaid	9.36	9.36	-	
		TOTAL - A	**9.36**	**9.36 ***	**-**	***100%***
B	**FC**	State Bank of India	42.50	20.50	22.00	***48%***
		State Bank of India - Interest on TL	-	3.16	-	
		Capital First Limited	5.87	5.87	-	***100%***
		Capital First Limited - Interest	-	2.50	-	
		SBI Car Loan	0.36	0.36	-	***100%***
		Bajaj Finance Ltd	0.14	0.14	-	***100%***
		HDFC Bank Ltd	0.09	0.09	-	***100%***
		TOTAL - B	**48.96**	**32.62**	**22.00**	***55%***
C	**OC**	Starchart Maritime Consultancy	0.14	0.00	0.14	***2%***
		Vijay Rungta & Co.(Statutory Auditor)	0.05	0.00	0.05	***2%***

Sr. No.		Claim Type	Amount Due	TOTAL PAID	Unpaid	% REPAID
		Manisha Dikshit (Practising Company Secretary)	0.00	0.00	0.00	*2%*
		Pacific World Shipping Pte Ltd	9.23	0.18	9.04	*2%*
		Scorpio UK Limited	0.35	0.01	0.34	*2%*
		Maritime Asia Zircon Pte Ltd	0.25	0.01	0.25	*2%*
		New Venture INC	0.71	0.01	0.69	*2%*
		Percula Shipping Inc	7.00	0.14	6.86	*2%*
		Maritime Asia Zircon Pte Ltd	2.78	0.06	2.72	*2%*
		Pacific Gulf Shipping Pte Ltd	0.36	0.01	0.35	*2%*
		Clipper Bilk A/S	9.21	0.18	9.03	*2%*
		Happie Auntie S.A.	3.00	0.06	2.94	*2%*
		Nebula Marine Services Pvt. Ltd.	0.10	0.00	0.10	*2%*
		TOTAL C	**33.18**	**0.66**	**32.52**	*2%*
		TOTAL	**91.50**	**42.64**	**54.52**	

*****(subject to para 09 below)

(W) <u>TERM OF THE RESOLUTION PLAN</u>

The term of the Resolution Plan would run from the approval of Resolution Plan by Adjudicating Authority under section 31 of IBC, 2016 for a period of **7 years and 3 months**. Any amount outstanding in reference to the loans taken from any financial institution will be repaid as per the agreed terms before CIRP started.

(X) <u>LIQUIDATION SCENARIO</u>

In case of Liquidation, the liquidation value of the company is assumed at Rs.30 Crores (Rupees Thirty Crores Only). The liquidation value will be paid to the corporate debtors in the below mentioned Order:

Sr. No.	**Order**	**Particulars**	**Amount Claimed**	**Amount paid**	**Remarks**
1	First	CIRP Cost	9.36	9.36*	CIRP Cost & Liquidation cost will be paid in full.
2	Second	Liquidation Cost	0.50	0.50	
3	Third	Secured Financial Creditors	48.96	20.14	Balance amount after the payment of CIRP & Liquidation Cost, will be paid on pari-passu charge.

*(subject to para 09 below)

The liquidation value is low and does not cover the entire dues of Secured Creditors and Workmen, hence commencement of liquidation is not advisable.

(Y) MANAGEMENT OF THE COMPANY

The Company shall continue as a going concern and operate in its normal course of business upon implementation of the Proposed Plan. The management of affairs of the Company after approval of the plan would be done as follows:

a. **Appointment of a Monitoring Agency**

A committee comprising of one representative State Bank of India being the lead banker and M/s. Parekh Shah & Lodha are proposed to be appointed as monitoring agency for as per the provisions of the Code

The monitoring agency shall monitor the day to day operations of the Company and provide regular updates to the Resolution Applicant and financial creditors till all the approvals necessary for implementation of the plan are in place and a professionally managed Board is appointed by the Resolution Applicant.

The Monitoring Agency would also supervise the implementation of the resolution plan and would continue to do so even after formation of a Board until the claims of secured financial creditors are settled fully.

b. Constitution of new Board of Directors

(i) It is proposed that the Company shall be a Board managed company upon approval of the Proposed Plan. A Board would be formed within 30 days of the date of approval of Resolution Plan by the Adjudicating Authority and other approvals, if any, required. The new Board shall be accountable for the day to day operations of the Company and shall be bound as per applicable law to protect and preserve the value in the Company. Highlights of the composition of the Board is as below:

Sr. No.	Name of the Director	Category	Proposed Monthly Remuneration
1	Mr. AP Choudhari	Managing Director	₹3,00,000/-* (qualified)
2	Mrs. Manju Choudhari	Non-Executive Director.	Nil* (qualified)

(*Subject to para 10 given below in this order)

The Constitution of the Board shall at all times comply with the provisions of the Companies Act, 2013 and the SEBI Regulations and LODR applicable to listed companies, subject to any relaxation being available to the company whose Resolution Plan is approved as per the provisions of IBC, 2016. Mr. Anandprakash Choudhari & Mrs. Manju Choudhari are supported by their daughters Ms. Mehak Choudhari & Ms. Neha Mangal. A full time CEO shall be hired within 6 months of approval of the plan, who will assist Mr. Anandprakash Choudhari for day to day affairs. He shall be paid ₹ 1,50,000/- and Mrs. Choudhari ₹ 50,000/- during the period of 7 years and 3 months. The payment to Mrs. Choudhari is justified because the rental income shall be curtailed for this period.

c. Appointment of Key Managerial personnel:

These appointments shall be made as and when required to meet the requirements of the operations and regulatory requirements. The Board shall ensure that the Company makes adequate disclosures under Regulation 30 read with Schedule III of LODR and the appointees, being KMPs of the Company shall make disclosures under Regulation 7 of the SEBI Insider Trading Regulations.

d. Appointment of Statutory Auditor

The Resolution Applicants proposes to change the existing statutory auditor on approval of the Resolution Plan by Adjudicating Authority.

e. Continued Corporate existence

The Company shall start its operations in the normal course of business. While the implementation of the Proposed Plan and settlement of the Creditors happen concurrently, the newly appointed Board shall take up the responsibilities of the day to day affairs of the Company. The Resolution professional /suspended board may be directed to hand over all important documents pertaining to the Resolution applicant on approval of the plan for smooth functioning of the Corporate Debtor. It is requested that, on approval of Resolution Plan by the Adjudicating Authority, the control of the company, possession of all the assets and records to be peacefully handed over to the Resolution applicant.

f. Corporate Actions

The Company shall take appropriate corporate actions necessary for implementation of all the provisions of the Proposed Plan, which includes

(i) Filing of appropriate documents or forms with *interalia* RoC, SEBI, MCA and RBI and obtaining relevant consents / approvals from such regulatory authorities,

(ii) Approval of / intimation to existing shareholders,

(iii) Issuance of shares and instruments as provided in the plan and

(iv) Regular compliances as per the governing law.

(Z) SUPERVISION OF THE PLAN

The newly appointed Board shall have the responsibility of effective implementation of the Proposed Plan.

The actions necessary for independent supervision of plan are as follows:

Monitoring Agency

The Resolution Applicant shall appoint M/S Parekh Shah & Lodha, as the monitoring agency for professional fees of ₹ 50,000/- (Rupees Fifty Thousand) per month for the first 6 months after passing of the Resolution plan by the Adjudicating Authority. Thereafter the monthly fees shall be ₹25,000/- (Rupees Twenty Five Thousand) for the rest of the term. The monitoring agency shall have the following responsibilities:

a. To supervise implementation of resolution plan as approved by NCLT, by the new management of the Company

b. To provide regular updates to the lenders

c. To provide updates, if any, to Insolvency and Bankruptcy Board of India (IBBI) as and when required

d. To ensure disbursement of dues to financial and operational creditors as per the approved plan

The monitoring agency shall continue to operate until repayment of entire financial liability.

(ZA) SALIENT FEATURES OF THE RESOLUTION PROPOSAL

I. The Resolution Applicant fulfils the criteria prescribed under section 29A of the Insolvency and Bankruptcy Code (amendment),2017 and Regulation38 (3) of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016.

II. The Proposal provides for the payment of the cost of CIRP and fee payable to the IRP/RP in terms of Regulation 38 (1) (a) of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016.

III. The Resolution plan complies with the guidelines in Regulation 39 of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016.

IV. The Proposal envisages mobilizing the entire amount required for the resolution of claims by way of infusion of fresh funds and by generating from its existing business.

V. The Corporate Debtor will be back on track and would function as a going concern.

(ZB) CONCLUDING TERMS AND CONDITIONS

a. Amendment in constitutional documents of the Company

The Company shall make required changes in the constitutional documents viz. Memorandum of Association and Articles of Association of the Company as required under the proposed plan within 30 days of the Effective date. The Company, its stakeholders, the proposed Resolution Applicants and the proposed new management of the Company shall be bound by such revised constitutional document.

b. Execution of the material agreements by the Resolution Applicant

The Resolution Applicant shall execute material agreements as required under the plan, initiate approvals and infuse funds as required under the Proposed Plan.

c. Governing Law

The Company and the new management shall be governed by the laws of India while giving effect to NCLT order approving the Proposed Plan and any agreements, documents and instruments executed in connection with the Proposed Plan.

d. Binding Effect

This Proposed Plan once approved by the Adjudicating Authority shall be binding on the corporate debtor, its employees, members, creditors, guarantors and other stake holders.

e. Severability

In the event that CoC or the Adjudicating Authority determines that any provisions of the plan are prima facie or otherwise unenforceable, the Resolution Applicants may modify the Proposed Plan to the satisfaction of the Adjudicating Authority (option to pull out if any unacceptable clause is approved without affecting our performance Security).

f. Affirmative Actions

After approval of the Resolution Plan by NCLT no such decision shall be made without prior approval of the Investors. Examples of major decisions include (but will not be limited to) assuming of non-trade liabilities, usage of funds from non-trade sources, change in key management positions etc.

7. It has been brought to our notice that one of the justifications for approval of the Resolution Plan is that the Liquidation Value is less comparing the proposals made in the Resolution Plan. The Procedure as prescribed under The Code is that a Resolution Plan is required to be submitted by a Resolution Application U/s 30 of The Code. On approval, the Resolution Professional is to submit U/s 30(6) the Resolution Plan, as approved by the Committee of Creditors, to the AA.

Thereafter, u/s 31, as reproduced *supra,* AA is to examine the contents of the Resolution Plan. The mandate of this section is that if the AA is “satisfied” that the Resolution Plan as approved by the Committee of Creditors meets the requirement as referred to in section 30(2), shall by an Order, approve the Resolution Plan. So the prerequisite is that recording of “satisfaction” by AA is a condition precedent. A “satisfaction” is to be recorded in writing in the Judgment approving the Resolution Plan. “Satisfaction” is required to be based upon a conscious decision on examination of the terms of the Resolution Plan. In our humble opinion a thorough study of a Resolution Plan is required before recording a “satisfaction” in writing by AA. The ‘satisfaction’ as mandated in the statute can either objective or subjective or both, but it is a condition precedent. Naturally ‘satisfaction’ is to be recorded in writing with reasons after proper application of mind. The pros and cons of the scheme is required to be studied before recording subjective satisfaction. If the CoC has submitted the scheme of Resolution after visualising the advantage and disadvantage then such proposal can be termed as just and equitable fit for according satisfaction. An ‘objective satisfaction’ revolves around the object of enactment of the Code as enshrined in the Preamble of the I & B Code i.e. to revive the financially stressed corporate body. And the ‘subjective satisfaction’ depends upon logical analysis of the Financial Data supplied so as to match with the business model of the Corporate Debtor. A methodical scrutiny of Financial Statement is expected before concurring with approval of the CoC. Per contra, absence of recording of subjective satisfaction may lead to situation that, being sanctioned without judicial analysis, thus may not be sustainable in the eyes of law. There are no two views, and must not be, that this I & B Code provides greater accountability both on the Insolvency Professional, as also on CoC, mainly comprise of lender Banks. Their approval of a Resolution Plan ought to be judged with due diligence. To sum up, in our humble interpretation the recording of an analytical 'satisfaction' is a condition precedent before granting of approval.

8. The Approval of the Resolution Plan is subject to certain qualifications to be read along with the plan and to be followed in implementation of the plan. The first qualification is about the rent of ₹ 80,000/- in respect of property lent out by Mrs. Manju Choudhari to the Corporate Debtor used by the Corporate Debtor for its Corporate Office proposed to be paid to Mrs. Choudhari; is hereby restricted and not to be paid during the implementation period of the Resolution Plan. In lieu, a sum of ₹25,000/- as a monthly salary to Mrs. Choudhari for rendering whole time services for looking after the business of the Company, is hereby approved so that she can devotedly work for the welfare of the Company.

9. The next qualification is about Corporate Insolvency Resolution Process Cost proposed to be paid at ₹ 9.36 Crores, which appears to be exorbitant and unfair. The governing body IBBI New Delhi has in one of its disciplinary order has made a similar observation that a resolution Professional is expected to be reasonable in demanding professional charges. Considering the nature of the professional services rendered, it shall be appropriate and reasonable to approve ₹ 2.00 Crores as Corporate Insolvency Resolution Process Cost. The balance surplus shall be appropriated against the liabilities of Operational Creditors to be distributed pari-passu. The Resolution Applicant had made a provision to settle the debts of operational creditors at a uniform rate of 2% which shall be increased proportionately.

10. The third qualification to be executed while implementing the Resolution Plan is in respect of payment of salary/remuneration to the directors. The proposal is to pay a sum of ₹ 3,00,000/- to Mr. A.P. Choudhari monthly and nothing to Mrs. Manju Choudhari. During the period of implementation of this Resolution Plan of 7 years 3 months, this Bench is of the view that Mr. Choudhari be paid ₹1,50,000/- and to Mrs. Choudhari ₹50,000/- This saving shall help in day to day running of business as well as comfortable liquidation of liability.

11. To sum up the above discussion, the Resolution Plan as approved by the Committee of Creditors is by and large hereby sanctioned by this Order in view of the recent judgement of the apex court in *K Sashidhar & Indian Overseas Bank & ors.[Civil Appeal No. 10673/2018], Date of order: 05.02.2019.* The Hon'ble Supreme Court in the said order has made the role of COC quite vital for deciding the fate of the company. It has been held that the Adjudicating authority is not required to go into the merits or reasoning of the decision taken by the COC for approval or rejection of a resolution plan. The only benchmark which is set up to be determined by the AA is to see whether the plan has been approved by 75% voting of the COC or not. Therefore, the commercial wisdom is not allowed to be interfered with. The relevant portion of the said judgement is reproduced herein below:

> *"As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is*

obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC muchless to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the Corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings *through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable".*

12. To conclude, the approval of a Resolution Plan by the CoC is to be accepted in toto by the Adjudicating authority if a 66% voting share approves the said plan. Because of the latest decision, the scope of any suggestion or alteration in the impugned resolution plan is very limited. As far as the procedure is concerned, in this case, the same has been followed as per the provisions of the Insolvency Code, therefore, the Resolution Plan has to be approved. The Resolution Applicant has submitted an affidavit as required U/s 30(1) of the Code stating that he is eligible U/s 29A of the Code.

13. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 shall cease to have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. That liberty is hereby granted

that if deem fit and legally permissible, can move Miscellaneous Application if required in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Mumbai.

14. RP to handover all records, premises/factories/documents to Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through Resolution Professional to finalise the further line of action required for starting of the operation.

15. The directions embodied and period of implementation provided hereinabove shall be effective from the date of receipt of this Order.

Sd/-
M.K. SHRAWAT
Member (Judicial)

Date : 22.05.2019
js