

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA(IBC) Plan No. 02/JPR/2024
In CP No. (IB)- 192/7/JPR/2020

IN THE MATTER OF:

LAXMI NARAIN YADAV

...Financial Creditor

VERSUS

M/S MAHAMAYAY METALS LLP

...Corporate Debtor

MEMO OF PARTIES

IN THE MATTER OF:

IA (IBC) Plan No. 02/JPR/2024:

VIKRAM BAJAJ

Resolution Professional

For M/s MahaMayay Metals LLP

Having its office at:

214, Spazedge, Tower-A

Sec 47, Gurugram-122018

...Applicant

For Applicant

: Abhishek Anand, Adv.

Karan Pratap Singh. Adv. For SRA

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Order Pronounced On: 12.03.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application bearing *IA(IBC) Plan No. 02/JPR/2024* has been filed by *Mr. Vikram Bajaj*, Resolution Professional ('Applicant') of *M/s Mahamayay Metals LLP* ('Corporate Debtor') under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Regulation 39 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') seeking approval of Resolution Plan in compliance of Order dated 04.03.2024 passed by this Adjudicating Authority.
2. The main Application numbered as *CP No. (IB)- 192/7/JPR/2020* was filed by the Financial Creditor *Laxmi Narain Yadav* under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and the same was admitted by this Adjudicating Authority *vide* Order dated 21.12.2021, wherein the Applicant was appointed as Interim Resolution Process ('IRP').
3. The IRP issued a public announcement on 23.12.2021 & 24.12.2021 as per Regulation 6 of the CIRP Regulations read with Sections 13 and 15 of the Code in Form A in two newspapers i.e., *Business Standard* (English- All

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India Edition) and *Sandhya Jyoti Darpan* (Hindi- Alwar Edition), inviting claims from the creditors of the Corporate Debtor.

4. The IRP, upon receipt of claims, constituted the Committee of Creditors ('CoC') in compliance with Section 21(1) of the Code and convened the 1st CoC Meeting on 22.01.2022. In the meeting, the CoC rejected the proposal concerning the appointment of the IRP as the Resolution Professional ('RP') of the Corporate Debtor. The CoC also did not propose the name of any other Insolvency Professional to act as Resolution Professional. Therefore, as per Regulation 17(3) of CIRP Regulations, the IRP performed the functions of RP from the 40th day of the Insolvency Commencement Date. The *then* composition of CoC comprised of following Financial Creditors:

S.No.	Name of the Financial Creditors	Amount Admitted	Voting Share
1	Karnataka Bank Ltd.	6,29,16,882.17	64.91%
2	Laxmi Narain Yadav	2,78,93,145.38	28.78%
3	Kimmi Modi	7,40,000	0.76%
4	Girdhar Jhalani/ Jhalani Electricals	11,95,000	1.23%
5	Neeraj Yadav	41,85,365.23	4.32%
Total		9,69,30,392.77	100.00%

It is pertinent to mention here that Karnataka Bank Limited, *then* majority shareholder, holding 64.91% voting rights, dissented from the resolution of IRP's appointment.

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5. In the 2nd CoC Meeting convened on 14.02.2022, the IRP apprised the members of CoC that as per provisions of the Code, the IRP is performing the functions of RP. Further, the IRP appointed two Registered Valuers to determine the fair value and liquidation value of the Corporate Debtor for all classes of assets. Also, the resolution for the issuance of an invitation for Expression of Interest ('EOI') for identifying prospective resolution applicants was proposed, but the said resolution was not approved by the CoC.
6. In the 3rd CoC Meeting convened on 28.02.2022, the IRP again put-forth the resolutions for EOI Terms and Request for Resolution Plan ('RFRP'). The CoC duly approved the resolutions for issuance of Invitation for EOI and the terms of RFRP. Further, in compliance with Regulation 36A (1) of the CIRP Regulations, the IRP published Form-G dated 06.03.2022 in Indian Express (English- Jaipur Edition) and Punjab Kesari (Hindi- Jaipur Edition) with the last date for submission of EOI being 21.03.2022. Subsequently, the IRP received five (5) EOIs, but after conducting due diligence, issued a provisional list including two prospective Resolution Applicants.
7. In the 4th CoC Meeting convened on 12.05.2022, the IRP apprised the CoC that by the last date of submission of the Resolution Plan, two (2) resolution plans were received from the following Resolution Applicants:

a. *Raman Kumar and Ramphal Singh*

b. *Kusumesh Steel Pvt. Ltd. and Rani Yogita*

In the said Meeting, the Resolution Applicants were invited to present their respective Resolution Plans.

8. In the 5th CoC Meeting convened on 15.06.2022, the IRP informed the members of the CoC that the CIRP period of 180 days would end on 19.06.2022. Since the resolution plan is still under consideration, the IRP put-forth a resolution for the extension of the CIRP for a further 90 days as per Section 12 of the Code. However, the said resolution stood rejected as it did not receive the requisite majority.
9. Further, pursuant to the aforesaid proceedings of the CoC, the IRP filed an Application being *IA No. 367/JPR/2022* under Section 33(1) of the Code seeking liquidation of the Corporate Debtor.
10. Furthermore, one of the Financial Creditors, Karnataka Bank Limited apprised the IRP *via* email that one of the Personal Guarantors, namely *Mr. Ramphal Singh*, had proposed to settle the account of Karnataka Bank Limited which was also agreed upon by the latter. Further, in the 6th CoC Meeting convened on 22.12.2022, the representative of Karnataka Bank Limited informed the other members of the CoC that a One Time Settlement ('OTS') had been entered into with the Personal Guarantor of the Corporate Debtor, however, the partial payment in terms of the settlement is yet to be received. The last date for depositing the settlement amount was 31.12.2022. Subsequently, in the 7th CoC Meeting convened on 30.01.2023, the



representative of the Karnataka Bank Limited apprised that the settlement proceedings with the Personal Guarantor are in process and after receiving internal approval for appropriation of the settlement amount, the claim filed before the IRP will be withdrawn and title deeds of the assets of the Corporate Debtor will be handed over to the IRP.

11. Subsequently, *vide* Letter and Email dated 17.02.2023, Karnataka Bank Limited withdrew their claim upon receiving the entire OTS amount. Furthermore, the Bank relinquished their security interest over the assets of the Corporate Debtor. Following the bank's exit pursuant to the settlement of their claim, the IRP reconstituted the CoC. The details of the reconstituted CoC are reproduced hereunder:

S.No.	Name of the Financial Creditors	Amount Admitted	Voting Share
1	Laxmi Narain Yadav	2,78,93,145.38	82.01%
2	Kimmi Modi	7,40,000	2.18%
3	Girdhar Jhalani/ Jhalani Electricals	11,95,000	3.51%
4	Neeraj Yadav	41,85,365.23	12.31%
Total		3,40,13,510.60	100.00%

12. In view of the developments, the IRP filed an application, being *IA No. 179/JPR/2023*. As the CoC was inclined to continue with the revival of the

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Corporate Debtor through CIRP, *IA No. 367/JPR/2022* was withdrawn *vide* Order dated 11.05.2023. The Adjudicating Authority partly allowed the *IA No. 179/JPR/2023 vide* Order dated 01.06.2023, wherein the IRP was allowed to update the claims and reconstitute the CoC. In the 8th CoC Meeting convened on 08.06.2023, the CoC agreed to appoint the IRP as RP/ Applicant. Thereafter, the Applicant filed CA No. 07 of 2023 under Section 12(2) of the Code read with Regulation 40 of the CIRP Regulations, seeking exclusion of the CIRP period of the Corporate Debtor from 20.06.2022 to 01.06.2023 and also sought an extension of 90 days, which this Adjudicating Authority allowed *vide* order dated 19.09.2023.

13. Further, between the 9th to 12th CoC Meetings the various proceedings took place in the CIRP of the Corporate Debtor. Thereafter, in the 13th CoC Meeting conveyed on 04.12.2023, the resolution plans of '*Kusumesh Steel Pvt. Ltd. and Rani Yogita*' & '*Raman Kumar and Ramphal Singh*' were put to vote before the CoC. Out of the two resolution plans, the Resolution Plan of *Kusumesh Steel Pvt. Ltd. and Rani Yogita* was approved with 96.5% majority by the CoC.
14. The Resolution Plan provides for the full payment of the CIRP Cost. The CIRP Cost, estimated to be Rs. 30 lakhs, has been proposed. Furthermore, the Applicant proposes to pay a lump sum amount of Rs. 3.15 crores for the dues of the financial creditors (secured and unsecured). Also, proposed to pay Operational Creditors (other than Workmen & Employees) a lump sum

amount of Rs. 4 lakhs. As provided further, the term of the Resolution Plan will be 9 months from the approval of the Resolution Plan by this Adjudicating Authority.

15. Subsequently, the Applicant issued a Letter of Intent ('LOI') dated 13.12.2023 to the Resolution Applicant, intimating them about the decision of the CoC, and seeking the deposit of performance security for an amount equivalent to Rs. 52,35,000/- (Rupees Fifty-Two Lakhs Thirty-Five Thousand Only) (being 15% of the amount proposed in the resolution towards CIRP Cost and Creditors). In compliance with the terms and conditions of the LOI and Regulation 39(4), the Resolution Applicant has provided performance security of 52,35,000/- (Rupees Fifty-Two Lakhs Thirty-Five Thousand Only) by way of bank guarantees. Further, the Resolution Applicant has submitted an affidavit concerning its eligibility to submit a resolution plan in terms of Section 29A of the Code.
16. Accordingly, the Applicant is duty bound to prefer an application under Sections 30(6) and 31 of the Code read with Regulation 39(4) of the CIRP Regulations seeking approval of the Resolution Plan which was duly accepted by the CoC, from this Adjudicating Authority. The Applicant has submitted the Resolution Plan along with a compliance certificate in Form H under Regulation 39(4) of the CIRP Regulations. In the matter of ***Arcellor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta***, Civil Appeal No. 9402-9405 of 2018, the Hon'ble Supreme Court held that the only reasonable

construction of the Code is the balance to be maintained between timely completion of the CIRP and the Corporate Debtor otherwise being put into liquidation and if there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible. A copy of the Resolution Plan dated 17.11.2023 and the compliance certificate in Form H are annexed as Annexure A-23 and Annexure A-25 of the IA, respectively.

17. The Applicant has stated that the Resolution Plan envisages the revival of the Corporate Debtor and sustains it as a going concern. In the case of rejection of the Resolution Plan, the Corporate Debtor would be liquidated, which would seriously prejudice the interests of all stakeholders.
18. Moreover, the Applicant states that as per Section 30 of the Code, the Resolution Plan ought to be approved by 66% of the voting share of financial creditors. It is submitted that the Resolution Plan has been duly approved by the CoC by a majority of 96.50% of the members. It is imperative to mention that one of the members of the CoC, *Girdhar Jhalani/ Jhalani Electricals*, holding 3.51% of the voting share abstained their vote on the Resolution Plan.
19. We have carefully considered the submissions of the learned counsel for the RP and have also perused the record.
20. The Corporate Debtor was incorporated on 02.09.2020 and the CIRP proceedings were initiated under Section 7 of the Code against the Corporate

Debtor by order dated 21.12.2021. The present application is filed for approval of the resolution plan submitted by *M/s Kusumesh Steel Pvt. Ltd. and Rani Yogita* (Successful Resolution Applicant). The approval has been sought under the provisions of Section 31 (1) of the Code.

21. We may first of all state that after receipt, verification, and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditors, the distribution of voting share among them and the position of voting for the resolution plan are as under (Para No.5 of Form H) -

S.No.	Name of the Creditors	Voting Share (%)	Voting for Resolution Plan (Voted for/ Dissented/ Abstained)
1	Laxmi Narain Yadav	82.01%	Approved
2	Kimmi Modi	2.18%	Approved
3	Girdhar Jhalani/ Jhalani Electricals	3.51%	Abstained
4	Neeraj Yadav	12.31%	Approved
Total		100.00%	Approved- 96.50% Abstained- 3.50%

22. The details of stakeholders under the resolution plan are given in Para 7 of Form H:

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*(Amount in Rs. Lakhs)

S. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	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) 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	-	-	-	-
	Total [(a)+ (b)]		-	-	-	-
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) Who did not vote in favour of the Resolution plan Girdhar Jhalani/ Jhalani Electricals	11.95	11.95		
		(ii) Who voted in favour of the Resolution Plan				
		Laxmi Narayan Yadav	279.91	278.93	315.00 For all Unsecured Financial Creditors	92.61%
		Kimmi Modi	7.40	7.40		
		Neeraj Modi	42.03	41.85		
		Total [(a) + (b)]	341.30	340.13	315.00	92.61%

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3.	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i) EPFO	1.42	1.42	1.42	100%
		(ii) GST	33.56	33.56	1.65	4.91%
		(iii) JVVNL	-	-	0.75	NA
		(iv) RIICO	-	-	0.18	NA
		Total [(a) + (b)]	34.98	34.98	4.00	11.43
4.	Other debts and dues	-	-	-	-	-
Grand Total			375.98	375.11	319.00	85.04

23. The abovementioned amount of Rs. 3,15,00,000/- (Rupees Three Crores and Fifteen Lakhs Only) payable to the Financial Creditors (unsecured) is proposed to be paid in two tranches. The upfront payment of Rs. 0.06 crores will be paid in first tranche and remaining Rs. 3.09 crores within 9 months of effective date will be paid in the second tranche, as per the Repayment Schedule provided in the Resolution Plan.

24. 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?	Net worth of the Resolution Applicant is Rs. 7.93 crores as per EOI documents, as against Net worth criteria of Rs. 5 crores determined by CoC.	Yes

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Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?		Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		Yes
Section 30(2)	Whether the Resolution Plan- (a) Provides for the payment of insolvency resolution process costs?	Chapter V- Clause 1	Yes
	(b) provides for the payment to the operational creditors?	Chapter V- Clause 2	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Chapter VIII- Clause 5	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Chapter X	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Chapter XI	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	Chapter V- Clause 7	No
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?		Yes
Section 31(1)	Whether the Resolution	Chapter XI	Yes

	Plan has provisions for its effective implementation plan, according to the CoC		
Regulation 38 (1)	Whether the amount due to the operational creditor under the Resolution Plan has been given priority in payment over financial creditors?	Chapter V and Chapter VIII	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Chapter V- Clause 3	Yes
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. i. If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Chapter V- Clause 8 NA	No
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? (c) adequate means for supervising its implementation?	Chapter V- Clause 4 and Chapter VIII/ IX Chapter X Chapter XI	Yes Yes Yes
Regulation 38(3)	Whether the resolution plan demonstrates that -	Chapter IV	Yes

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	(a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?		
Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		No
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	15% of settlement amount of creditors + CIRP Cost = Rs. 52.35 lacs deposited with CD	Yes

25. 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.”

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26. The conditions provided in Section 31(1) of the Code for approval of the Resolution Plan are as follows:

- (a) *The Resolution Plan is approved by the CoC under Section 30(4) of the Code;*
- (b) *The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*
- (c) *The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

27. It is observed that the Resolution Plan has been approved by a vote of 96.50% of the voting share of the financial creditors and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

28. 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

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be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

(c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;

(d) The implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) 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."

29. The compliance of Section 30(2) of the Code is provided in Para No. 9 of

Form H (*supra*). The same is being further examined as under:

29.1. **Section 30(2)(a):** The Resolution Plan (Chapter V Clause 1 on Page 175 of the IA) states that the Resolution Applicant shall pay any outstanding CIRP Cost in priority to the payment of any other debt under the Resolution Plan. The Applicant has made a provision of Rs. 30 lakhs against the estimated CIRP cost of Rs. 30 lakhs and it also undertakes to bear the difference if the actual CIRP Cost exceeds the above amount.

29.2. **Section 30(2)(b):** The Resolution Plan (Chapter V Clause 2 on Page 175 of the IA) provides that the Resolution Applicant shall pay an amount to the Operational Creditors which shall not be less than the amount that would have been paid to such creditors, if the amount to be distributed under Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53 of the Code or the amount to be paid to such creditors in the event of liquidation of the Corporate Debtor under Section 53, whichever is higher. It could be seen that in respect to dues to Operational Creditors (workman/ employees), no claim has been received till submission of the Resolution Plan, thus, no amount shall be paid to Workman/ Employee. Further, the amount owed to Operational Creditors (statutory dues) by the Corporate Debtor is 34,98,664/- (Rupees Thirty-Four Lakhs Ninety-Eight Thousand Six Hundred and Sixty-Four Only) including Rs

1,42,450/- (Rupees One Lakh Forty-Two Thousand Four Hundred and Fifty Only) owed to EPFO. The Resolution Plan provides for a lump sum payment of Rs. 4,00,000/- (Rupees Four Lakhs Only), including the amount owed to EPFO, against the full and final settlement of all claims. With respect to payment to Financial Creditor who did not vote in favour of the Resolution Plan (Chapter VIII- Clause 5 on Page 182 of the Application), it is seen that the Resolution Applicant shall pay the amount which shall not be less than the amount to be paid to such Creditors in accordance with sub-section (1) of Section 53 of the Code. Further, the plan envisages payment of Rs. 3,15,00,000/- (Rupees Three Crores and Fifteen Lakhs Only) to the Unsecured Financial Creditors as full and final settlement of their admitted debt of Rs.3,40,13,510/- (Rupees Three Crores Forty Lakhs Thirteen Thousand Five Hundred and Ten Only), and the Resolution Applicant undertakes to make payment of Rs. 6,00,000/- (Rupees Six Lakhs Only) upfront, and the remaining payment is to be made within 9 months of the approval of the Resolution Plan.

- 29.3. **Section 30(2)(c):** The Resolution Plan (Chapter XI Clause 1 on Page 189 of the IA) provides that all the suspended partners of the Corporate Debtor shall be deemed to have resigned from the designated partners of Corporate Debtor and on approval of the

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Resolution Plan, the Resolution Applicant shall nominate its representatives to join the designated partners of the Corporate Debtor. The new designated partners of the Corporate Debtor shall have management and control of the Corporate Debtor.

29.4. **Section 30(2)(d):** The Resolution Plan (Chapter XII on Page 191 of the IA) provides for the implementation and supervision of the Resolution Plan. Further, the Resolution Plan (Chapter XI Clause 4 at Page 190) provides that the implementation of the Resolution Plan shall be monitored by a committee comprising of RP or its representative (who shall be the chairman of the committee), the representatives of the Resolution Applicant, and representative of the CoC.

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

30. The Resolution Applicant, *M/s Kusumesh Steel Pvt. Ltd.*, through its authorised signatory, *Mr. Dalip Kumar and Rani Yogita*, has submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan. A copy of the

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Affidavit of the Resolution Applicant is filed with the IA as Annexure – A-26.

31. As per the requirement of Regulation 39(4) of the CIRP Regulations concerning performance security, it is stated in Form H that the Resolution Applicant has given bank guarantees of Rs. 52.35 lakhs as performance security for the Resolution Plan.
32. In relation to the compliance under Regulation 35A, it is stated that there are no transactions that have been identified yet in respect of the Corporate Debtor which is required to be avoided under Sections 43, 45, 50, or 66 of the Code.
33. A perusal of Regulation 38 would clearly show that by virtue of the 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.
34. The Resolution Plan *inter-alia* entails the following:
 - 34.1. Revival of operations of the Corporate Debtor through capital expenditure (capex) and infusion of working capital. The plan envisages a capital expenditure of Rs. 0.25 crores for the refurbishment of the unit and infusion of working capital of Rs. 0.75 crores over the resolution period to ramp up capacity utilization.

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- 34.2. The RP/Monitoring Committee will hand over the physical possession of the unit at Khuskhera to the RA upon payment of the first tranche as per the repayment plan.
- 34.3. A total provision of Rupees 2 lakhs has been kept for all the Monitoring committee expenses.
- 34.4. Reset financial debt and operational debt as per the parameters of the Resolution Plan.
- 34.5. 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.
- 34.6. The Resolution Plan provides that the licenses, lease hold rights, and approvals, if any, expired or cancelled due to non-payment of dues and wherever need to be reapplied, the Resolution Applicant will reapply and obtain permission as per applicable procedure, rules, regulation, and law.
- 34.7. If any recovery is made from the transactions falling within the category of Preferential, Undervalued, Extortionate and Fraudulent transactions, then the said recovery amount would go to the Secured Financial Creditors in the same proportion as the fund allocated to them in the Resolution Plan.



- 34.8. On the date of approval of the Resolution Plan, the entire existing partners' capital held by the Promoters group and others of Corporate Debtor shall be extinguished and the Resolution Applicant and its associate will infuse fresh capital that will constitute 100% LLP's capital.
35. In view of the above discussion, the Resolution Plan submitted by *M/s Kusumesh Steel Pvt. Ltd. and Rani Yogita* as approved by the CoC under Section 30(4) of the Code is hereby approved. The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, and 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.
36. Under the provisions of Section 31(3) of the Code, we also direct as under:
- 36.1. The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 21.12.2021 shall cease to have effect; and
- 36.2. The 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.



37. In view of the foregoing, IA (IBC) (Plan) No. 02/JPR/2024 is disposed off.

Sdr
DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

Sdr
RAJEEV MEHROTRA,
TECHNICAL MEMBER