

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- I

IA No. 467 of 2021

IA NO.555 of 2020

IN

CP (IB) No. 2839/MB /2018

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the resolution plan under the provisions of Section 31(1) of the code.

IN IA No. 467 of 2021

In the Application of

Mr Neehal Mahamul Pathan,

**Resolution Professional of “Melstar Information Technologies Limited
...Applicant/Resolution Professional**

IN IA NO.555 of 2020

In the matter of

Melstar Information Technologies Limited

Applicant/Corporate Debtor

Order Delivered on :- 01.11.2023

Coram:

Sh. Prabhat Kumar

(Justice) VirendraSingh G.Bisht

Hon’ble Member (Technical)

Hon’ble Member (Judicial)

Appearances:

For the Applicant
Advocate

: Manoj Kumar Mishra,

For the Resolution Applicant
Advocate

: Ms. Prachi Wazalwar,

ORDER

Per: Justice V.G Bisht (Judicial)

1. The present application is moved by Resolution Professional **Mr Neehal Mahamulal Pathan** (hereinafter called as “the Applicant”) under section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the resolution plan of Melstar Information Technologies (hereafter called as the “**Successful Resolution Applicant/SRA**”) under the provisions of Section 31(1) of the code, for the Corporate Debtor **Melstar Information Technologies** (hereinafter called as the “**Corporate Debtor**”) and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.
2. The CIRP was initiated against the Corporate debtor vide Order dated 03.10.2019 and the Applicant herein was appointed as the IRP. The Interim Resolution Professional (hereinafter referred to as the IRP) made a public announcement in Form A on 03.10.2019. The IRP constituted the Committee of Creditors (hereinafter referred to as the CoC) on 28.10.2019. Subsequently, the First CoC meeting took place on 30.10.2019 wherein the IRP was appointed as the Resolution Professional and the decision to conduct forensic audit as permissible in code was approved unanimously.

3. The Applicant is the Resolution Professional of the Corporate Debtor appointed by this tribunal vide order dated 01.10.2019.
4. The Applicant submits that till the date of filing of the present Application, a total of 8 (Eight) CoC meetings of the corporate Debtor have been held from time to time.
5. At the 2nd CoC meeting held on 3rd January 2020, the RP appointed two valuers in each class to value Financial Assets class and Plant & Machinery class of assets, separately in accordance with the requirement of the regulation. The Liquidation value of the corporate debtor as per the valuation report of Sanjoy Gupta is Rs.469.98 Lakhs and as per valuation report of Shri Debashis Nanda is Rs. 469.98 Lakhs. M/s J. Kala & Associates a Chartered Accountant firm was appointed to do the transaction audit in accordance with Section 43,45,49,50 & 66 of the code for the period of 2 years.
6. The RP circulated the Expression of interest (EOI), Form (G) and evaluation matrix and published the same on 5th January 2020 with last date of receipt of the EOI on 20th January 2020. In absence of any EOI, the publication of fresh Form G was contemplated vide email dt. 20th Jan ,2020 circulated to members of CoC. In response to revised Form G, the RP received three EOI's which were duly scrutinized in accordance with Regulation 36A (7).

7. In 3rd CoC Meeting the RP presented the list of the parties interested and their EOI's to the CoC members. The Operational Creditors raised the apprehension as how the CD can submit the EOI as they are prohibited by Section. 29A of I.B.C 2016. The RP informed that the CD is a registered MSME and thus not barred by Section 29A of I.B.C 2016. The 3rd CoC meeting was held on 7th February 2020. The RP presented the provisional list of Resolution Applicant (RA) before the CoC on 7th February 2020. The CoC extended the time period of acceptance of EOI's from 4th February to 15th February 2020 by 100% of vote.

8. *Claims admitted as per the Code*

a. **Financial Creditor:** Various Financial Creditors have filed their claims with the Resolution Professional as financial creditors of MITL. As per the Information Memorandum shared by RP and based on latest data available total claims filed by Banks/FI's (as on Insolvency Commencement Date) amounted to INR 3.63Crores. Of this, the Resolution Professional admitted claims of Financial Creditors to the extent of INR 3.63 Crores. The detail of individual admitted claims of Financial Creditors is set out below: -

Sr. No	Name of Creditors	Amount admitted in respect of such claim (in Rs)
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1	Birla Edutech Limited	1,04,00,000/-
2	Nikola Infrastructure Technologies Limited	2,06,96,223/-
3	Yash Society	53,02,055/-
	Total	3,63,98,278

b. **Operational Creditors (Workmen/Employees)** : As per the information memorandum the total outstanding salary payable to them upto 31/03/2020 is Rs 26,90,000/-

c. **Operational Creditors (Other than Workmen/Employees):**
The Corporate Debtor has, in the course of its business and operations, incurred operational debts from Operational Creditors. As per the Information Memorandum, the following non-workmen dues have been admitted by the Resolution Professional:

Sr. No	Name of Creditors	Amount admitted in respect of such claim (in Rs)
1	Nityo Infotech Services Pvt Ltd.	2,87,82,493.58/-
2	Ami Computer Consultancy	3,51,440/-
3	Govt of Karnataka, Department of Taxes (Profession Tax)	1,80,046/-
4	Ms. Sukhada Satish Joshi	2,24,854/-
5	Abhishek Furniture	3,90,983

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6	Directorate General of GST Intelligence	1,55,80,042
7	Integrity Verification Services Pvt ltd.	68,282/-
8	Daman Mehta	29,100/-
9	D J Mediaprint & Logistics Limited	1,67,477/-
10	GST Department	1,23,76,074
11	Prakash Salkar	66,000/-
12	Rahul Bharadwaj	82,644/-
13	S P Palaniappan	23,31,753
	Total	6,06,31,188.58/-

d. The 4th CoC meeting was held on 18th March, 2020. The RP informed the COC that subsequent to the 3rd Meeting of COC the RP has received few more claims from OC's. The RP further informed the COC that as per the code the CIRP process shall be completed within 180 days ending on 29th March 2020.

9. After deliberation in the 8th CoC meeting held on 10.11.2020, the CoC unanimously voted in favor of the Resolution Plan submitted by Mr. Shivasons Solution India Pvt Ltd. ("SRA"). The SRA proposes to make the following payments:

Particulars	in Rs Lakhs
Financial Outlay	

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Upfront Consideration (Cash) toward CIRP Cost	42.95
Payment towards Employees	13.45
Payments to Financial Creditors	325.00
Payments to Operational Creditors	51.50
Total	389.95
Source of Funds	
From Promoter of Resolution Applicant / Associates:	-
1st Tranche Infusion (to be infused within 60 days of Effective Date) in the form of shares/debentures/ unsecured loan /secured loan	225.00
2nd Tranche Infusion (to be done within 90 days of Effective Date) in the form of shares/debentures/ unsecured loan /secured loan	39.20
3rd Tranche within 24 months of Effective Date in the form of recovery from capital receipt and existing debtors cash flow.	125.75
Total	389.95

A. Synopsis of financial proposal

A synopsis of the financial proposal of the Resolution Applicant is provided below (detailed break up is provided in Chapter VIII of the Plan)

B. Indicative %Age Recovery of Each Stakeholder

Assuming that: (i) the CIRP cost will be INR 42.95 Lakhs, (ii) Outstanding dues of Workman / Employees (other than related parties of CD), including dues of PF/Gratuity/etc. is Rs. 26.90 Lakhs (iii) Unsecured Financial Creditors is INR 363.98 Lakhs, and (iv) Operational creditors (other than Employees and Workmen) is INR 299.52 Lakhs, payment to various stakeholders shall be as under:

INR Lakhs

Particulars	Admitted Claim as on date of Resolution Plan (INR Lakhs)	Settlement Amount * Upfront Payment (INR Lakhs)	Value as %age of admitted Debt * (INR Crore)		
			Deferred Payment (C)	Total (D=B+C)	%age (E=D/A)
Unsecured Financial Creditors	363.98	225.00	100.00	325.00	89%
Workman & Employees Dues	26.90	13.45	NIL	13.45	50%
Operational Creditors	606.31	25.75	25.75	51.50	8.32%
Sub-Total	997.91	264.20	125.75	388.95	39%
Shareholders belonging to category of Public Shareholders	NIL	NIL	NIL	NIL	NIL
Shareholders belonging to category of Promoter / Promoter Group Shareholders	NIL	NIL	NIL	NIL	NIL
CIRP Cost	42.95	42.95	NIL	42.95	100%
Total	1040.14	45.64	394.29	439.94	42%

*Settlement Amount & % age are indicative in nature

10. IMPLEMENTATION AND SUPERVISION

A. Term of the Plan

The Resolution Plan shall continue till such time the dues of the financial and operational creditors, as specified in Chapter IX Clause D herein are paid.

B. Approvals Required for the Plan

i) NCLT

The Resolution Plan of the Resolution Applicant shall be required to be approved by the NCLT under Section 31 of the IBC.

ii) Companies Act

Explanation to Section 30 (2) of the Code read with MCA circular dated October 25, 2017 bearing No. IBC/01/2017 (Modification) provides that there is no requirement of obtaining approval of shareholder/members of a company under insolvency, for a particular action, required in resolution plan, which would have been required under the Companies Act or any other law and such an approval is deemed to have been given once the resolution plan has been approved by the NCLT.

In light of the above, no shareholder's approval under Companies Act is required to be obtained by the Corporate Debtor for issue of Equity Shares to the Resolution Applicant and the procedure for issuance of shares as set out in Section 62 of Companies Act read with Rule 13 of Share Capital and Debenture Rules, 2014 shall be followed only to the extent relevant and required in light

of Explanation to Section 30(2) of the Code read with MCA Notification.

a) Re-organization of Corporate Debtor's capital

The Resolution Plan provides for a transfer of entire share capital held by the Promoters group and institutional shareholders of Corporate Debtor to the RA and its associates.

In future if there are any claims from earlier shareholders in the name of Corporate Debtor, the same shall stand null and void.

iii) SEBI Approvals – Waiver of SEBI permission, if any

iv) Takeover Code Exemption – Does not apply in case of Corporate Debtor

v) Competition Commission of India (CCI) – Does not apply in case of Corporate Debtor

C. Monitoring and Supervision

i) In order to ensure that the Resolution Plan is implemented in accordance here of and that the obligations undertaken herein are adhered to in letter and spirit, an appropriate monitoring agency/entity shall be appointed.

ii) The Committee of Creditors shall constitute the monitoring agency, which may comprise of professionally qualified person / persons as may be decided.

iii) The monitoring agency/entity, so appointed, shall have interalia the following responsibilities:

a. To supervise the implementation of the Resolution Plan and ensure that the Resolution Plan is implemented as approved without any deviations;

- b. To ensure timely disbursement of funds to the financial and operational creditors, as per the payment terms set out above;
- c. To ensure that approvals, to the extent required for implementation of the Resolution Plan, are applied for and obtained in a timely manner.
- d. To bring to the notice of NCLT, any deviations/violations, of the Resolution Plan, by any person;
- e. To provide regular updates to the NCLT, as and when required;
- f. Support the RA in Control and management of Corporate Debtor from NCLT Approval Date till the date of payment of Second Tranche within 60 days.
- g. To assist RA in case of any hurdle is raised by any operational creditor, govt/semi govt department or any other creditor which is waived by NCLT as per the resolution plan.

11. In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant and confirms that this Resolution Plan:

- a) Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the corporate debtor;
- b) Provides for payment of debts of operational creditor 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 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 distribute in accordance with sub-section (1) of Section 53 in the event of liquidation of the corporate debtor.
- c) Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;
 - d) The implementation and supervision of Resolution Plan;
 - e) Does not prima facie contravene any of the provisions of the law for time being in force,
 - f) Confirms to such other requirements as may be specified by the Board.
 - g) As per the Affidavit received from each of the three members of the consortium and the further documents submitted, the Resolution Applicants are not covered under 29A.
12. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that

- (i) The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.
 - (ii) It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD.
 - (iii) A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have contributed to the failure of implementation of any other Resolution Plan approved by the AA in the past.
 - (iv) The terms of the plan and its implementation schedule.
 - (v) The management and control of the business of the CD during its term.
 - (vi) Adequate means of Supervising its implementation.
 - (vii) The Resolution Plan Demonstrate that it addresses
 - i. The cause of the Default
 - ii. It is feasible and viable
 - iii. Provision for effective implementation
 - iv. Provisions for approvals required and the time lines for the same.
 - v. Capability to Implement the Resolution Plan
13. The Resolution Professional has annexed Form H of the Application under Regulation 39(4) In FORM H of the CIRP Regulations to certify that the resolution plan as approved by the CoC meets all the requirements of the IBC and its Regulations:

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**14. FORM H
COMPLIANCE CERTIFICATE**

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

I, **NEEHAL MAHAMULAL PATHAN** an insolvency professional enrolled with Indian Institute of Insolvency Professionals of ICAI and registered with the Board with registration number IBBI/IPA-001/IP-P/01561/2018-19/12406, am the resolution professional for the corporate insolvency resolution process (CIRP) of **MELSTAR INFORMATION TECHNOLOGIES LIMITED**.

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	Melstar Information Technologies Limited
2	Date of Initiation of CIRP	1st October 2019
3	Date of Appointment of IRP	1st October 2019
4	Date of Publication of Public Announcement	3rd October 2019
5	Date of Constitution of CoC	28th October 2019 (Original CoC) 24th December 2019 (Reconstituted CoC)
6	Date of First Meeting of CoC	30th October 2019
7	Date of Appointment of RP	30th October 2019
8	Date of Appointment of Registered Valuers	07th February 2020
9	Date of Issue of Invitation for EoI	5th January 2020 – First EOI 21st January 2020 – Second EOI 7th February 2020 – Third EOI
10	Date of Final List of Eligible Prospective Resolution Applicants	25th February 2020
11	Date of Invitation of Resolution Plan	15th February 2020
12	Last Date of Submission of Resolution Plan	25th March 2020
13	Date of Approval of Resolution Plan by CoC	10th November 2020
14	Date of Filing of Resolution Plan with Adjudicating Authority	15th January 2021
15	Date of Expiry of 180 days of CIRP	29th March 2020
16	Date of Order extending the period of CIRP	16th October 2020
17	Date of Expiry of Extended Period of CIRP	13th January 2021
18	Fair Value (of Enterprise on DCF method)	Rs.13,55,000/-
19	Liquidation value	Rs.4,69,98,000/-
20	Number of Meetings of CoC held	Eight (08)

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3. I have examined the Resolution Plan received from Resolution Applicant **SHIVASONS SOLUTIONS INDIA PRIVATE LIMITED** and approved by Committee of Creditors (CoC) of **MELSTAR INFORMATION TECHNOLOGIES LIMITED**

4. I hereby certify that-

- (i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
- (ii) the Resolution Applicant **SHIVASONS SOLUTIONS INDIA PRIVATE LIMITED** has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.
- (iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made there under. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
- (iv) I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.

5. The list of financial creditors of the CD **MELSTAR INFORMATION TECHNOLOGIES LIMITED** being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Birla Edutech Limited	66.23	100.00
2	Yash Society	33.77	100.00
	TOTAL :	100.00	100.00

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made there under.

7. The amounts provided for the stakeholders under the Resolution Plan is as under:
(Amount in Rs. lakh)

Sl. 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	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	206.96	206.96	193.32	93.41%
		(b) Other than (a) above: (ii) who voted in favour of the resolution plan	157.02	157.02	146.68	93.41%

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		Total[(a) + (b)]	363.98	363.98	340.00	93.41%
2	Dues to Workman / Employees (Other than related parties of CD)		31.43	31.43	13.45	42.79%
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	750.56	606.31	51.50	8.49%
		Total[(a) + (b)]	750.56	606.31	51.50	8.49%
Grand Total			0	1001.73	404.95	40.42%

*If there are sub-categories in a category, please add rows for each sub-category.

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	14283139	14283139	100%	100%
2	Preference	--	--	--	--

9. The compliance of the Resolution Plan is as under:

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 5	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Applicants or Order, if any, of the Adjudicating Authority?	Clause 8.1	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Clause 6.1	Yes
Section 30(2)	(a) provides for the payment of insolvency resolution process costs?	Clause 6.1	Yes
	(b) provides for the payment to the operational creditors?	Clause 6.1	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause 6.1	NA
	(d) provides for the management of the affairs of the corporate debtor?	Clause 6.1	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Clause 6.1	Yes
Section 30(4)	(f) contravenes any of the provisions of the law for the time being in force?	Clause 6.1	No
	(a) is feasible and viable, according to the CoC?	--	Yes

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	(b) has been approved by the CoC with 66% voting share?	--	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	--	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	--	Yes
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 5.10	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 5.10	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. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Clause 5.10	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?	Clause 5.10	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? (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?	Clause 5.10	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Clause 5.10	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	--	Yes

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

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date [Order passed on 01.10.2019 and order received on 01.10.2019 hence CIRP date is considered as 01.10.2019]
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	01.10.2019
Regulation 6(1)	Publication of Public Announcement	T+3	03.10.2019

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Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	15.10.2019
Regulation 13(1)	Verification of Claims	T+21	22.10.2019
Section 26(6A) / Regulation 15A	Application for Appointment of Authorized Representative, if necessary	T+23	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	24.10.2019
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	30.10.2019
Regulation 35A	Determination of fraudulent and other transactions	T+115	24.01.2021
Regulation 27	Appointment of two Registered Valuers	T+47	07.02.2020
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54]	14.11.2019
Regulation 36A	Invitation of EoI	T+75	07.02.2020
	Publication of Form G	T+75	07.02.2020
	Provisional List of Resolution Applicants	T+100	18.02.2020
	Final List of Resolution Applicants	T+115	25.02.2020
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	07.02.2020
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	14.01.2021
Section 31(1)	Approval of Resolution Plan	T=180	--

11. The time frame proposed for obtaining relevant approvals is as under:

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
		NIL		

12. The Resolution Plan is not subject to any contingency.

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13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1		-----NIL-----		
2				
3				

14. The Resolution Plan is being filed **67** days before the expiry of the period of CIRP provided in section 12 of the Code.

15. Provide details of section 66 or avoidance application filed / pending.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	29.01.2020 TO 26.02.2021	NA	NA
2	Undervalued transactions under section 45	No such application is required to file	NA	NA
3	Extortionate credit transactions under section 50	No such application is required to file	NA	NA
4	Fraudulent transactions under section 66	No such application is required to file	NA	NA

15A. The committee has approved a plan providing for contribution under regulation 39B as under:

- a. Estimated liquidation cost: Rs.4,69,98,000/-
- b. Estimated liquid assets available: NIL
- c. Contributions required to be made: Rs.4,69,98,000/-

15B. The committee has recommended under regulation 39C as under:

- a. Sale of corporate debtor as a going concern: Yes / ~~No~~
 - b. Sale of business of corporate debtor as a going concern: ~~Yes~~ / No
- The details of recommendation are available with the resolution professional.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D.] -
No, will be fixed once the order is passed.

16. I (Name of Resolution Professional) hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed there from.

15. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.

- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
16. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.
17. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the CoC in the 2nd Adjourned 25th meeting held on 13.08.2021 with 83.37% (Eighty-Three-point three seven percent).
18. One Operational Creditor I.e. M/s Nityo Infotech Services Private Limited filed an IA no. 555/2020 for the removal of M/s Birla Edutech Ltd., and M/s Yash Society from the Committee of Creditors and replacement of Shri Neehal Mahamul Pathan as the Resolution Professional of the Corporate Debtor, alleging that M/s Birla Edutech Ltd., and M/s Yash Society are related person of the Corporate Debtor and the Resolution Professional has failed to take note of that.

Both of these creditors are Financial Creditors of the Corporate Debtor and part of Committee of Creditors, who approved the resolution plan in consideration before this bench in IA 467 of 2022.

- (i) For this purpose, the applicant has placed reliance upon the Related Party disclosure made by M/s Birla Edutech Ltd. in the uploaded XBRL file for the FY 2015 – 2016 onwards showing that the Corporate Debtor is its related party.
- (ii) It is submitted by the Applicant that M/s Yash Society has been established by Mr. Yashovardhan Birla, who controls Yash Birla Group. The management of the M/s Yash Society is vested in the hands of Mr. Yashovardhan Birla and exercise control over the bank account. Thus, even the Yash Society is under the control of Yash Birla and is a related party to the Corporate Debtor, which is a Yash Birla Group company.
- (iii) This Bench finds that the CoC was comprised of three Financial Creditors, of which M/s Birla Edutech Ltd., and M/s Yash Society. There is a third Financial Creditor who individually holds 56.86% of CoC which voted in favor of plan. Even if these two members are considered disqualified as contented by the Applicant, there will remain one financial creditor, and such financial creditor shall still constitute a valid CoC holding 100% voting rights. If we find that the plan was approved by 100% of CoC members meaning thereby the 3rd member also voted in favor of plan. Accordingly, we do not find any prejudice having been

caused to the applicant by the Vote of M/s Birla Edutech Ltd., and M/s Yash Society in favor of the Plan. As regards conduct of the Resolution Professional in this relation is concerned, this Bench feels that the appropriate forum to deal with such grievance is IBBI.

(iv) **In view of above, the I.A. 555/2020 is dismissed.**

19. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Tribunal observed the role of the NCLT is 'no more and no less'. The Hon'ble Tribunal further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

20. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar(supra).”

21. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

22. **The Application IA No. 467 of 2021 in CP (IB) 2839 of 2018 is allowed.** The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

- i. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- I

IA. No. 467 of 2021
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status of its implementation before this Authority from time to time, preferably every quarter.

- vi. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

SH. PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

JUSTICE VIRENDRASINGH G. BISHT
MEMBER (JUDICIAL)