

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- I**

IA No. 1950 of 2021

IN

CP (IB) No. 1633/MB/C-I/2019

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 the Application of

Mr. Manoj Kumar Agarwal,

**Resolution Professional of “D.S. Kulkarni
Developers Limited.”**

...Applicant/Resolution Professional

In the matter of

Bank of Maharashtra

...Petitioner

Versus

D.S. Kulkarni Developers Limited

...Corporate Debtor

Order Delivered on : 23.06.2023

Coram:

Hon’ble Member (Judicial) : Mr. H.V. Subba Rao

Hon’ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant : Sr. Adv. Vikram Nankani a/w Adv.
Shyam Kapadia, Advocate.

ORDER

Per Coram:

1. The present application is moved by Resolution Professional **Mr. Manoj Kumar Agarwal** (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 Ashdan Properties Private Limited (hereafter called as the “**Successful Resolution Applicant/SRA**”) under the provisions of Section 31(1) of the code, for the Corporate Debtor **D.S. Kulkarni Developers** (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 26.09.2019 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 30.09.2019. The IRP constituted the Committee of Creditors (hereinafter

referred to as the CoC) on 18.10.2019. Subsequently, the First CoC meeting took place on 25.10.2019 wherein the IRP was appointed as the Resolution Professional.

3. Thereafter, the Resolution Professional filed an application for extension under Section 12(3) seeking an extension of 90 days on 12.03.2020. The Applicant submits that due to Covid-19 pandemic the matter was delayed. Finally, the extension Application was heard and disposed off on 03.12.2020. The CIRP period was extended for a period of 90 days from the date of the Order.
4. The Applicant filed an exclusion Application in light of the Hon'ble Supreme Court and NCLAT Orders extending the timelines, this Tribunal granted an exclusion for a period from March 2020 to 14.03.2021. Accordingly, it is submitted that the CIRP stood extended from 15.03.2021 till 13.06.2021.
5. In the meantime, Form G was published in newspapers on 10.12.2019, 27.12.2019, 27.02.2019 and 16.03.2021. The last date for submitting the EOI was fixed on 22.04.2021 as per latest Form G published on 16.03.2021. However, pursuant to the requests of the prospective Resolution Applicants the CoC by a majority vote of 59.56% granted the PRA's an extension till 22.05.2021.

6. The Applicant received Resolution Plans from 3 prospective Resolution Applicants:

i. Mantra Properties and Developers Pvt. Ltd.

ii. Ashdan Properties Pvt. Ltd., Classic Promoters and Builders Pvt. Ltd.,

Atul Builders-Consortium

iii. Hemendra D Shah, Kanhaiyalal H Matani and Ghanshyam J

Sukhwani- Consortium.

7. The Applicant submits that in 2nd adjourned 25th CoC meeting the CoC resolved to approve the Resolution Plan of Ashdan Properties Pvt. Ltd., Classic Promoters and Builders Pvt. Ltd., Atul Builders-Consortium by majority vote of 83.37%. The minutes of the meeting and voting sheet is placed at page 70-84 of the Petition. The plan is approved by 83.37% of CoC members which exceeds the minimum threshold of 66% for approval of Resolution Plan as per Section 30(4).

8. The Applicant has annexed the summary of claims as on 09.08.2021 as Exhibit H. The average Liquidation value is Rs. 596.73 Crores.

9. The SRA proposes to make the following payments

Amount in Crores.

Creditor	Total	Upfront	Series-I NCD's	Series-II NCD's
Secured Debentures	161.01	10.00	104.96	46.05
Fixed Deposit	4.68	4.68		
Unsecured Financial Creditors	0.13	0.13		
Operational Creditors	0.94	0.94		
Employees	0.06	0.06		
Secured Financial Creditors (other than secured debentures)	658.76	13.59	431.22	213.95
ESIC	0.28	0.28		
PF	0.45	0.45		
CIRP Cost	-	-		
	826.30	30.12	536.18	260.00

10. The Applicant submits that the CIRP costs will be paid at actuals. Further clause 10.1.2.1 provides that a lumpsum amount of Rs.30,12,00,000/- and CIRP cost shall be paid by the Resolution Applicant at actuals (the estimated CIRP Cost is Rs.5,23,80,112/-) shall be paid upfront out of the total payment. Further, the payment schedule provides for payment to stakeholders in 8 different tranches. The said schedule is at page 267-268 of the Application.
11. The Applicant submits that he has received a Performance Bank Guarantee of Rs.25 Crores dated 21.08.2021.

Section 30(2) of the Code

12. 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.
13. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that
- a) The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.
 - b) It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD.
 - c) 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.
 - d) The terms of the plan and its implementation schedule.
 - e) The management and control of the business of the CD during its term.
 - f) Adequate means of Supervising its implementation.

- g) 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
14. 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.

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, Manoj Kumar Agarwal, an Insolvency Professional enrolled with IIPICAI and registered with the Board with registration number IBBI/IPA-001/IP-Poo714/2017-18/11222, am the Resolution Professional for the Corporate Insolvency Resolution Process (CIRP) of D S Kulkarni Developers Limited (DSKDL).

2. The details of the CIRP are as under:

Sr. No.	Particulars	Description
1.	Name of the CD	D S Kulkarni Developers Limited (DSKDL)
2.	Date of Initiation of CIRP	Date of Order – 26.09.2019 Date of Receipt of Order – 27.09.2019
3.	Date of Appointment of IRP	26.09.2019
4.	Date of Publication of Public Announcement	39.09.2019
5.	Date of Constitution of CoC	18.10.2019

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6.	Date of First Meeting of CoC	25.10.2019
7.	Date of Appointment of RP	25.10.2019
8.	Date of Appointment of Registered Valuers	08.11.2019
9.	Date of Issue of Invitation for EoI	10.12.2019, 27.12.2019, 27.02.2019, 16.03.2019
10.	Date of Final List of Eligible Prospective Resolution Applicants	01.02.2020 (As per the EoI published on 27.12.2019) 30.03.2021 (As per the EoI published on 16.03.2021)
11.	Date of Initiation of Resolution Plan	25.01.2020 (As per the EoI published on 27.12.2019) 23.03.2021 (As per the EoI published on 16.03.2021)
12.	Last Date of Submission of Resolution Plan	As per the revised Form G published on 16.03.2021, the last date of submission of the Resolution Plan was 22.04.2021. However, based on the extension request received from the Prospective Resolution Applicants, the last date to submit the Resolution Plan was extended till 22.05.2021 by CoC members.
13.	Date of Approval of Resolution Plan by CoC	13.08.2021
14.	Date of Filing of Resolution Plan with Adjudicating Authority	18.02.2022
15.	Date of Expiry of 180 days of CIRP	On March 12, 2020, the RP had filed an application for extension of 90 days and the same was granted by Hon'ble NCLT. The RP further filed exclusion applications twice on March 2, 2021 and June 10, 2021. However, the 2 nd Exclusion Application dated June 10, 2021 has never been listed. Therefore, the last date of the CIRP is subject to the outcome of the second Exclusion Application dated June 10, 2021.
16.	Date of Order extending the period of CIRP	03.12.2020 (90 days extension was granted from the date of extension order)
17.	Date of Expiry of Extended Period of CIRP	13.06.2021 (after considering the extension and exclusion granted by the Hon'ble NCLT Mumbai Bench). Subsequent to the above, last exclusion application filed on 10.06.2021 for seeking a further exclusion of time till 23.05.2021 is awaiting hearing.
18.	Fair Value	Valuer 1-Rs.805.39 Crores Valuer 2-Rs.866.16 Crores Average Fair Value is Rs. 835.78 Crores
19.	Liquidation Value	Valuer 1-Rs.560.90 Crores Valuer 2-Rs.632.57 Crores Average Liquidation Value is Rs. 596.73 Crores
20.	Number of Meeting of CoC held	25 CoC meetings and 6 adjourned meeting

3. I have examined the Resolution Plan received from Resolution Applicant Ashdan Properties Pvt. Ltd. Classic Promoters & Builders Pvt. Ltd. and Atul Builders-Consortium and approved by Committee of Creditors (CoC) of D S Kulkarni Developers Limited.

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4. I hereby certify that-

(i) the said Resolution Plan complies with all/, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the Resolution Applicant M/s. Ashdan Properties Pvt. Ltd., Classic Promoters & Builders Pvt Ltd. and Atul Builders-Consortium 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 83.37% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

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 D S Kulkarni Developers Limited (DSKDL) 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.	Home Buyers – AR Girish Juneja	16.3710%	Voted For
2.	State Bank of India	13.9960%	Voted For
3.	Catalyst Trusteeship Limited	10.1106%	Voted For
4.	ICICI Home Finance Company Limited	8.6541%	Voted For
5.	Bank of Maharashtra	8.0573%	Voted For
6.	Central Bank of India	7.5059%	Dissented
7.	Canara Bank (Erstwhile Syndicate Bank)	6.9609%	Voted For
8.	Asset Care and Reconstruction Enterprise Limited (ACRE -102 -Trust)	6.7587%	Voted For
9.	Union Bank of India	5.2719%	Voted For
10.	IDBI Bank	4.1730%	Dissented
11.	ICICI Bank	2.3872%	Voted For
12.	STCI Finance Limited	1.9899%	Dissented
13.	Encore Asset Reconstruction Company Private Limited	1.7494%	Abstained
14.	Bank of Baroda (Erstwhile Vijaya Bank)	1.3768%	Voted For
15.	Tata Capital Housing Finance Limited	0.9812%	Voted For
16.	Phoenix ARC Private Limited	0.9716%	Voted For
17.	Aditya Birla Finance Limited	0.7508%	Voted For
18.	Seksaria Industries Private Limited	0.3478%	Voted For
19.	Fixed Deposit Holders – AR Rajendra Agrawal	0.3016%	Voted For
20.	Patodia Forging & Gears Limited	0.2770%	Dissented
21.	Patodia Glass Industries Limited	0.2705%	Dissented
22.	India Ener-Gen Private Limited	0.1954%	Abstained
23.	Citric India Limited	0.1665%	Abstained
24.	Shashi Dhawal Hydraulics Private Limited	0.0852%	Abstained
25.	Seksaria Behta Sugar Factory Private Limited	0.0737%	Abstained
26.	Shashi Rag Agencies Private Limited	0.0709%	Abstained
27.	Iresco Electricals Pvt Ltd	0.0647%	Abstained
28.	Seksaria Biswan Sugar Factory Private Limited	0.0338%	Voted For

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29.	Bhavnagar Oil Mills Private Limited	0.0169%	Voted For
30.	The Shri Krishna Rice and Oil Mill Private Limited	0.0136%	Voted For
31.	Seksaria Real Estate and Farms Private Limited (Seksria Opticals Private Limited)	0.0113%	Voted For
32.	Ruia Fabrics Pvt Ltd	0.0028%	Abstained
33.	Bombay Mercantile & Leasing Company Limited	0.0019%	Abstained

6. The Resolution Plan includes a Statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interest 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.	Secured Financial Creditors*	(a) Creditors not having a right to vote under sub-section (2) of section 21 (Related Party Debenture Holders)	425.62	425.62	425.62	100.00
		(b) Other than (a) above:				
		(i) Who did not vote in favour of the resolution plan	18,296.31	18,107.19	Liquidation Value i.e. Rs. 8,941.43	48.87
		(ii) Who voted in favour of the resolution plan:				
		A. Debenture Holders	15,675.54	15,675.54	15,675.54	100
		B. Banks/Financial Institutions	85,660.68	85,574.87	56,934.57	66.47
		Total [(a) + (b)]	1,20,058.15	1,19,783.22	81,977.16	68.28

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2.	Unsecured Financial Creditors #	(a) Creditors not having a right to vote under sub-section (2) of section 21	172.96	-	-	-
		(b) Other than (a) above:				
		(i) Who did not vote in favour of the resolution plan	7,671.29	7,671.29	-***	0.00
		(ii) Who voted in favour of the resolution plan				
		A. Homebuyers				
		B. Fixed Deposit Holders	33,063.17 476.97	25,381.84 467.59	25,381.84* 467.59	76.77 98.03
		C. Other Unsecured Financial Creditors	2,163.05	2,163.05	12.50	0.58
Total [(a) + (b)]		43,547.44	35,683.77	25,861.93	59.39	

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3.	Operational Creditors	(a) Related Party Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i) Government				
		A. PF and ESIC	73.12	73.12	73.12	100
		B. Other Government Dues	20,457.25	20,457.25	75.41	0.37
		(ii) Workmen	-	-	-	-
		(iii) Employees				
		A. Dues preceding 12 months of CIRP Commencement	6.16	6.16	6.16	100
		B. Others	1,306.83	1,011.32	3.73	0.29
		(iv) Other than workmen and Employees and Government Dues	5,848.32	3,443.39	12.71	0.22
	Total [(a) + (b)]	27,691.68	24,996.25	171.13	0.62	
4.	Other debts and dues	76,350.71	537.70	1.98	0.0026	
Grand Total		2,67,647.96	1,81,000.94	1,08,012.20	40.36	

*An interest of 0.5% will be paid on the NCD's issued which is over and above the amount offered to the secured financial creditor (except to the dissenting financial creditors) for the period from the date of issue till redemption

**Homebuyers will be given flats against their claim amount.

***The liquidation value for dissenting Unsecured Financial Creditors is NIL.

Claim of Unsecured Financial Creditors namely Sangli Urban Co Operative Bank Ltd has not been admitted as they have withdrawn their claim of Rs. 323.27 lacs

8. The interest 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	Voting Share (%) held after CIRP
1	Equity	25,80,10,080	NIL	100.00%	0.00%

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2	Preference	-	-	-	-
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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?	-	Yes
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?	Page 29, Part II, clause 8.1 and Page 41, Part IV, clause 10.2.1.2	Yes
	(b) Provides for the payment to the operational creditors?	Page 29, Part II, clause 8.1.1 and 8.1.2	Yes
	(c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Page 40, Clause 10.1.3.8	Yes
	(d) Provides for the management of the affairs of the corporate debtor?	Page 30, Part II, clause 8.3	Yes
	(e) Provides for the implementation and supervision of the resolution plan?	Page 30, Part II, clause 8.3.3	Yes

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	(f) Contravenes any of the provisions of the law for the time being in force?	Page 35, Part II, clause 8.6.1	Yes
Section 30(4)	Whether the Resolution plan (a) is feasible and viable, according to the COC? (c) Has been approved by the CoC with 66% voting share?		Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Page 29, part II, clause 8.2 and Schedule 4	Yes
Regulation 35A	Where the resolution professional made 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?	Page 29, part II, clause 8, 1.2	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how dealt with the interests of all stakeholders?	Page 34, Part II, Clause 8.5 Part IV of financial plan	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	Page 35, part II, Clause 8.6.2	Yes

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	statement giving details of such non-implementation?		
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?	Page 29, Part II, Clause 8.2 and Schedule 4 Page 30, Part II, Clause 8.3 Page 33, part II, Clause 8.3.3	Yes Yes 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?	Page 35, part II, Clause 8.6.3 and 8.6.4 Page 35, part II, clause 8.6.4 Page 29, Part II clause 8.2 and Schedule 4 Page 37, Clause 7.10.3 -	Yes Yes Yes Yes Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B	Page 41, 10.1.3.9	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
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	27.09.2019

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Regulation 6(1)	Publication of Public announcement	T+ 3	30.09.2019
Section 15(1)(c) / Regulation 12(1)	Submission of Claims	T + 14	09.10.2019
Regulation 13(1)	Verification of Claims	T + 21	18.10.2019
Section 26(6A)/ Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T + 23	Application was filed 22.10.2019 and the order was received on 25.10.2019
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T + 23	18.10.2019
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T + 30	25.10.2019
Regulation 35A	Determination of fraudulent and other transactions	T + 115	04.11.2020
Regulation 27	Appointment of Two Registered Valuers	T + 47	08.11.2019
Regulation 36(1)	Submission of Information Memorandum to CoC	T + 54	27.01.2020
Regulation 36A	Invitation of EoI	T – 75	10.12.2019, 27.12.2019, 27.02.2021 16.03.2021
	Publication of Form G	T+75	10.12.2019, 27.12.2019, 27.02.2021 16.03.2021
	Provisional List of Resolution Applicants	T+100	20.01.2020 (As per the EoI published on 27.12.2019) 22.03.2021 (As per the EoI published on 16.03.2021) (As per the EoI published on 16.03.2021)
	Final List of Resolution Applicants	T+115	01.02.2020 (As per the EoI published on 27.12.2019)

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			30.03.2021 (As per the EoI published on 16.03.2021)
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	21.07.2020 (As per the EoI published on 27.12.2019) 23.03.2021(As per the EoI published on 16.03.2021)
Section 30(6)/Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	
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
1	Demarcation & 7/12 for sub-divide plot	Not provide in the plan	Not provide in the plan	Within 1 (one) year from the Effective Date
2	Aviation NOC	Not provide in the plan	Not provide in the plan	Within 1 (one) year from the Effective Date
3	Tree Cutting & Shifting Permission	Not provide in the plan	Not provide in the plan	Within 1 (one) year from the Effective Date
4	Provisional Fire NOC	Not provide in the plan	Not provide in the plan	Within 1 (one) year from the Effective Date
5	Environmental Clearance from SEAC	Not provide in the plan	Not provide in the plan	Within 1 (one) year from the Effective Date
6	IOD layout plan	Not provide in the plan	Not provide in the plan	Within 1 (one) year from the Effective Date
7	Commencement Certificate	Not provide in the plan	Not provide in the plan	Within 1 (one) year from the Effective Date

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

Or

The Resolution Plan is subject to the following contingencies (Elaborate the contingencies):

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As per **Annexure A** herein

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

Sl. No.	Deviation/Non-compliance observed	Section of the Code/ Regulation No. /Circular No.	Reasons	Whether rectified or not
1.	Submission of IM to CoC Members	Regulation 36	Non-availability of Data and access to the documents.	Yes
2.	Determination of Preferential and other Transactions	Regulation 35A	The books and Records of the Company were attached by ED and EOW, No employee was available. MA filed for access to records and for handing of possession of assets are pending to be adjudicated. From 23 rd March 2020, lockdown is in place. Received cooperation from EOW and received Tally Data, then accounting and transaction audit was undertaken during Lockdown period, all these resulted into delay, still the records and registered office is not accessible.	Yes

14. The Resolution Plan is being filed on which is within the extended CIRP period subject to the outcome of the Exclusion Application dated June 10, 2021.

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	18.11.2020	The application is filed by the RP and the matter is pending for hearing.	
2	Undervalued transactions under section 45	18.11.2020		
3	Extortionate credit transactions under section 50	-		

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- I

IA. No. 1950 of 2021

IN

CP No. (IB) 1633/MB/C-I/2019

4	Fraudulent transactions under section 66	18.11.2020	
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15A. The committee has approved a plan providing for contribution under regulation 39B as under:

- a. Estimated liquidation cost : Rs. 1.92 Crores
- b. Estimated liquid assets available : NIL
- c. Contributions required to be made : Rs. 1.92 Crores
- d. Financial Creditor wise contribution is as under:

Sr. No.	Name of Financial Creditor	Amount to be contributed (Rs.)
1	State Bank of India	36,70,250
2	ICICI Home Finance Company Limited	22,69,401
3	Bank of Maharashtra	21,12,901
4	Central Bank of India	19,68,316
5	Canara Bank (Erstwhile Syndicate Bank)	18,25,380
6	Asset Care and Reconstruction Enterprise Limited (ACRE – 102 – Trust)	17,72,361
7	Union Bank of India	13,82,488
8	IDBI Bank	10,94,308
9	ICICI Bank	6,25,994
10	STCI Finance Limited	5,21,824
11	Encore Asset Reconstruction Company Private Limited	4,58,763
12	Bank of Baroda (Erstwhile Vijaya Bank)	3,61,047
13	Tata Capital Housing Finance Limited	2,57,315
14	Phoenix ARC Private Limited	2,54,791
15	Aditya Birla Finance Limited	1,96,875
16	Seksaria Industries Private Limited	91,204
17	Patodia Forging & Gears Limited	72,630
18	Patodia Glass Industries Limited	70,928
19	India Ener-Gen Private Limited	51,230
20	Citric India Limited	43,667
21	Shashi Dhawal hydraulics Private Limited	22,352
22	Seksaria Behta Sugar Factory Private Limited	19,330
23	Shashi Rag Agencies Private Limited	18,599
24	Iresco Electricals Pvt Ltd	16,960
25	Seksaria Biswan Sugar Factory Private Limited	8,870
26	Bhavnagar Oil Mills Private Limited	4,435
27	The Shri Krishna Rice and Oil Mill Private Limited	3,579
28	Seksaria Real Estates and Farms Private Limited (Seksaria Optical Private Limited)	2,975
29	Ruia Fabrics Pvt Ltd	737
30	Bombay Mercantile & Leasing Company Limited	492
	TOTAL	1,92,00,000

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. – The RP has quoted a fee of 50% of the fees as per the Table under regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 subject to maximum of Rs. 5 Crores

16. I, Manoj Kumar Agarwal here by 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 therefrom.

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. 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 Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

19. 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).”

20. 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.
21. The Application IA No. 1950 of 2021 in CP No.1633 of 2019 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 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/-

SHYAM BABU GAUTAM
Member (Technical)
23.06.2023
SAM

Sd/-

H.V. SUBBA RAO
Member (Judicial)