

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-III, MUMBAI BENCH**

Application for Submission of Resolution Plan under the provisions of Section 30(6) of the Code for approval of the Resolution Plan under the provisions of Section 31(1) of the Code

**I.A No. 675 of 2023
IN
CP (IB) No: 4001 of 2019**

Filed by

Mr. Gajesh Labhchand
Resolution Professional of
Broadband Pacenet (India) Private Limited

...Applicant

In the matter of:

Reliance Commercial Finance Limited	...Financial Creditor
Versus	
Broadband Pacenet (India) Private Limited	...Corporate Debtor

Order Reserved On: 26.06.2023

Order Pronounced On: 04.08.2023

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Ms Madhu Sinha, Member (Technical)

Appearance

For the Resolution Applicant:. Mr. Ayush J. Rajani, PCS a/w Khushboo Shah i/b AKR Advisors

Per: Ms. Madhu Sinha, Member (Technical)

ORDER

1. This is an Application filed under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) filed by the Resolution Professional of Broadband Pacenet (India) Private Limited (hereinafter referred to as “**Corporate Debtor**”) seeking approval of the Resolution Plan submitted by a **M/s Marwari Media Corporation Private Limited (the Successful Resolution Applicant) (SRA)**. The Resolution Plan submitted by the Successful Resolution Applicant was approved by **78%** of the members of the Committee of Creditors of the Corporate Debtor (hereinafter referred to as “**CoC**”) at the 11th CoC meeting held on 10th January 2023.

2. **Factual Background of the Corporate Debtor:**

1. Before proceeding to the evaluation of the Plan, as to its compliance with Section 30(2) of IBC, it is necessary to set out the factual matrix of the Corporate Debtor.
2. The Financial Creditor i.e., Reliance Commercial Finance Limited filed a Company Petition bearing no: 4001 of 2019 against the Corporate Debtor under Section 7 of the IBC before this Hon’ble Tribunal. By an Order dated 10th March 2022 (**CIRP Order**) the Section 7 was admitted by the Adjudicating Authority and Mr. Ashok Kriplani was appointed as the IRP. Thereafter, a public announcement of CIRP in the present matter was published on 20 March 2022, inviting claims from all creditors to be filed by 31 March 2022.
3. During the 2nd Second meeting of Committee of Creditors held on 22 April 2022, the Coc resolved with 100 % of voting to replace , Mr. Ashok

Kriplani with Mr. Gajesh Labhchand Jain. Accordingly, an order dated 01 June 2022 passed by this Hon'ble NCLT.

4. The Applicant submits that the status of claims received and admitted as exist on the date of filing the present application is as follows:

(Amount in Rupees)

Type of Creditor	Claims Received		Claims Admitted		Under Verification
	No. of Creditors	Amount	No. of Creditors	Amount	
Secured Financial Creditor		NIL		NIL	NIL
Unsecured Financial Creditor	3	6,55,75,93,345	3	3,40,34,82,880	NIL
Operational Creditors - Trade Creditors	3	16,79,500	1	14,554	12,23,725
Operational Creditors – Government Dues	1	7,38,629	1	4,11,617	3,27,012
Employees	36	1,50,82,574	0	NIL	1,50,82,574
Total	43	6,57,50,94,048	5	3,40,39,09,051	1,66,33,311

Note: Claim received from Tata Tele Business Services for their outstanding amount is Rs.12,71,818/-. The said amount includes CIRP cost amounting to Rs. 4,41,221/-.

5. The Applicant submits that, in accordance with Regulation 27 & 35 of IBBI (CIRP), Regulations 2016, Registered Valuers have been appointed to determine the Fair Value and Liquidation Value of the CD. The Applicant submits that since there is no land and building as assets of the Corporate Debtor the Applicant has not appointed any valuer for land and building.

List of Valuers	Class of Valuation
AAA Valuation Professionals LLP	SFA, P&M
Raj Kamal Saraogi	SFA
Paramjeet Singh	P&M

6. The Applicant submits that the above-mentioned valuers have submitted their Valuation Reports containing Fair Market Value and Liquidation Value to the Applicant / Resolution Professional. Accordingly, the fair market value and Liquidation value are as under:

(Amount in Rupees)

Particulars	FAIR VALUE			LIQUIDATION VALUE		
	Valuer 1	Valuer 2	Average	Valuer 1	Valuer 2	Average
Plant & Machinery	2,54,600	2,90,000	2,72,300	2,03,680	2,37,000	2,20,340
S & FA	5,18,688	5,18,689	5,18,689	5,18,688	5,18,689	5,18,689
TOTAL	7,73,288	8,08,689	7,90,989	7,22,368	7,55,689	7,39,029

7. The Applicant submits that during 5th CoC held on 27 July 2022, the Applicant has informed the CoC members that he has admitted the claim received from Alchemist Asset Reconstruction Company Limited and reconstituted the CoC on 14 July 2022. The Applicant has also filed an updated list of creditors with NCLT and revised claims have been updated on IBBI website.
8. The Applicant submits that in terms of the provisions of Section 25(2)(h) of the Code, Expression of Interest (“**EoI**”) was called from potential resolution applicants for the purpose of submission of resolution plans for the Corporate Debtor. The advertisement for inviting EoI was published on 11 July 2022 wherein last day for submission of EoI was 26 July 2022 and last day for submission of Resolution Plan was 09 September 2022.

9. The Applicant submits that thereafter few inquiries were received from the below mentioned interested parties.
- i. Nakshatra Corporate Advisors Limited
 - ii. Om Regmi
 - iii. Jindal Steel & Power Ltd.
 - iv. Sukhan Group
 - v. Other Consulting Firms
 - vi. Mohatta Group

However, EoI was not received from any of the above mentioned interested parties.

10. The Applicant submits that during the 6th CoC Meeting held on 05 September 2022, since there were no EoI received from any of the interested party the Applicant has sought views of the CoC members to issue fresh Form G or proceed with liquidation. The CoC members have requested the Applicant to put the matter of issuance of fresh Form G on voting. The CoC members have approved the said resolution for issuance of fresh Form G with 100% votes in favour. The Applicant submits that during 6th CoC meeting held on 05 September 2022, the Resolution (Refer Resolution No. 11) for exclusion of period from 10 March 2022 to 17 March 2022 (7 days) from the period of corporate insolvency resolution process on account of delay in receipt of order and further extension of 90 days as per Section 12(2) of the Code was put for vote and the said Resolution was approved with 100% votes in favour.
11. The Applicant submits that he has filed an application bearing IA No. 2612 of 2022 seeking an exclusion of period from 10 March 2022 till 17 March 2022 (7 days) (since the date order for initiation of the CIRP is 10 March 2022. However, the said order was received on 17 March

2022) from the period of corporate insolvency resolution process under section 60(5)(c) of the Code and subsequent extension of 90 days in terms of provisions of section 12 of the Code. The said IA No. 2612 of 2022 was allowed by this Adjudicating Authority on 13 January 2023. However, till the time of filing this present application order was not uploaded on NCLT portal.

12. The Applicant submits that he has published the fresh Form G dated 11 September 2022 wherein last day for submission of EoI was 26 September 2022 and last day for submission of Resolution Plan was 10 November 2022 as approved by the CoC members during 6th CoC meeting held on 05 September 2022.
13. The Applicant submits that thereafter few inquiries were received from the interested parties i.e. Rajesh Chheda, Nakshatra Corporate Advisors Ltd and Shanti Group.
14. The Applicant submits that he has also received EoIs from below mentioned 3 PRAs:

Sr. No.	Name of the Company	Date of Submission of EOI
1.	Shanti G. D. Ispat and Power Private Limited	20 th September, 2022
2.	Marwari Media Corporation Private Limited	24 th September, 2022
3.	Nakshatra Corporate Advisors Ltd.	26 th September, 2022

15. The Applicant submits that he has received only one Resolution Plan from Marwari Media Corporation Private Limited which was submitted on 10th November 2022. The Applicant submits that during 9th CoC meeting held on 14 November 2022, the said resolution plan received from Marwari Media Corporation Private Limited was opened before the CoC members.

16. The Applicant submits that during 10th CoC meeting held on 24 November 2022, the resolution plan received from Marwari Media Corporation Private Limited (Resolution Applicant) was deliberated and discussed. The CoC members have requested Marwari Media Corporation Private Limited to increase the plan value and also informed the Resolution Applicant that the Resolution Plan should be Code complied and as per the RFRP. Accordingly, requested the Resolution Applicant to revised the resolution plan.
17. The Applicant submits that the IA No. 2612 of 2022 filed for extension of 90 days was allowed by this Adjudicating Authority accordingly, the CIRP period will come to an end on 12 December 2022.
18. The Applicant submits that the Applicant / existing Resolution Professional was appointed vide order dated 01 June 2022 (order received on 21 June 2022) once the existing Resolution Professional took charge all the exercises were carried out. Since no EOI was received at the time of publication of 1st Form G, CoC took time to decide and approve the publication of Second Form G. Now since one resolution plan received from Marwari Media Corporation Private Limited the negotiations are ongoing and a code complied plan has to be placed and approved by the CoC. Thereafter, CoC shall approve the plan and thereafter it shall be placed before Hon'ble Adjudicating Authority for approval.
19. The Applicant submits that accordingly, the CoC members decided to seek additional 45 days from 12 December 2022 (being 270th day). The said resolution (Item No. 9) was put to vote before CoC during 10th CoC meeting held on 24 November 2022 and the same was passed with 100% votes in favour.
20. The Applicant submits that he has filed an application bearing IA 3676 of 2022 on 01 December 2022 seeking further extension of 45 days

from 12 December 2022 (Day 270 of CIRP). The said IA 3676 of 2022 is pending adjudication and the same is scheduled for hearing on 14 February 2023. Once the said IA 3676 of 2022 will allow by the Hon'ble Adjudicating Authority the CIRP period will come to an end on 26 January 2023 (Day 315 of CIRP).

21. The Applicant submits that during 11th CoC meeting held on 10 January 2023, the deviation between RFRP and the Resolution Plan was discussed. As per the RFRP *"The insolvency resolution process costs shall be paid upfront and upon implementation of the Resolution Plan by the Resolution Applicant in terms of the Resolution Plan"* The Applicant has informed the CoC members that the total CIRP cost incurred till date is Rs.51,40,933/- and the projected cost for next 6 months is Rs.25,26,113/- whereas the Resolution Plan submitted by Marwari Media Corporation Pvt Ltd provides for a total consideration of Rs.40,00,000/- only. Additionally, there is contingent fund of Rs.2,00,000/-. Therefore, the Applicant had sought views of the CoC members that there are changes/deviations in the terms and conditions of the RFRP. Accordingly, resolution was passed in favour via e-voting by 78% of the COC members that *"the CIRP Cost in excess of the total consideration received under the approved resolution plan from the Resolution Applicant shall be borne by the COC Members. The said cost shall include all the cost until approval of Resolution Plan"*.
22. The Applicant submits that as per the Resolution Plan the Resolution Applicant proposed to pay Rs.40,00,000/- as total CIRP Costs. The Resolution Applicant also submits that it has assumed that the amounts standing to the credit of the bank account of the Corporate Debtor and the amounts estimated to be received to the Resolution Applicant on the basis of final Transaction Audit Report shared by the Applicant are sufficient to cover the CIRP Cost. If the internal accruals

of the Corporate Debtor are not sufficient to pay all the outstanding CIRP costs, the Resolution Applicant shall fund the additional CIRP Costs to the extent of Rs.2,00,000/- till the conclusion of the CIRP. The Resolution Applicant has also stated that if the CIRP costs also exceeds the allocated CIRP Costs amount, the excess amount shall be deducted from the operational creditors payment. In case the CIRP cost is more than resolution plan value, the balance CIRP cost shall be borne by the COC members.

23. The Applicant submits that the Revised Resolution Plan dated 23 December 2022 submitted by Marwari Media Corporation Private Limited which was received on 29 December 2022 stood approved by the CoC Members with more than 66% votes as per the requirements of the Code. Details of the e-voting result are summarised as follows:

After E-voting following is the final result:

	Yes	No	Abstain
E- voting Final Result	78%	22%	-

Sr No	Name of Creditor	Voting Share (%)	Voting Decision
1	Alchemist Asset Reconstruction Company Ltd.	78%	Assent
3	Reliance Commercial Finance Limited	22%	Dissent

I. Brief Background of Successful Resolution Applicant:

Marwai Media Corporation Private Limited is a private limited Company, incorporated on 9th October 2017 under Companies Act 2013, having business in the field of Media, Entertainment, Boardcasting and Telecommunication.

II. Brief Background of Corporate Debtor:

Broadband Pacenet (India) Private Limited is an unlisted company, limited by shares, incorporated on 17th April, 2000 under Companies Act, 1956 having business in the field of Telecommunication, Broadcasting and Information supply Services.

III. Implementation/ Monitoring and Supervision

I. Term of the Plan – The Term of the Resolution Plan is 30 days from the Effective Date (Closing Date/ Completion Date).

- a) Supervision by Monitoring Committee (MC) — Monitoring Committee will come into force from the Effective Date. The Monitoring Committee shall be constituted by majority Committee of Creditors in consultation with the Resolution Applicant and it would comprise of three members - one Resolution Professional, one representative of the Resolution Applicant and one representative from the majority Committee of Creditors. This committee shall continue the operations of the CD till the Effective Date when control and management of the CD will, be handed over to the RA. Thereafter the Monitoring Committee will supervise the implementation of the Resolution Plan as per the provisions contained herein.
- b) The Cost of the Monitoring Committee would be paid by the RA on actual basis as may be negotiated and settled by mutual consent.
- c) Dissolution of the Monitoring Committee — Upon making of the payment as per the Plan, issuance of Equity Shares, and handing over management and control of the

Corporate Debtor, including its Assets and Properties on the Effective Date, the Monitoring Committee shall accordingly stand dissolved.

IV. Salient Features Of the Resolution Plan

FINANCIAL PROPOSAL

1. The Resolution Plan proposes a Total Consideration of **Rs. 44.25 Lacs** for the settlement of claim by the Resolution Applicant and for taking over all the tangible assets and business permits as defined herein including interest and investment in subsidiary companies, associate companies and joint ventures of the Corporate Debtor.
2. A status of Claims received and admitted upto 20th October, 2022 by the Resolution Professional is tabulated as under:

(Amount in Rupees)

Sr . N o.	Type of Creditor	Claims Received		Claims Admitted		Under Verification
		No. of Cred itors	Amount	No. of Cre ditors	Amount	
1	Secured Financial Creditor		NIL		NIL	NIL
2	Unsecured F inancial Cre ditor	3	6,55,75,93,345	3	3,40,34,82,880	NIL

3	Operational Creditors (Except Workmen and Employee and Government) Dues	3	16,79,500	1	14,554	12,23,725
4	Operational Creditors - Government Dues	1	7,38,629	1	4,11,617	3,27,012
5	Operational Creditors (Workmen and Employees)	36	1,50,82,574	0	NIL	1,50,82,574
	Total	43	6,57,50,94,048	5	3,40,39,09,051	1,66,33,311

3. As per Regulation 38 (1) (A), the resolution plan has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor. The RA submits that the Total Plan Value/ Consideration is Rs. 44,25,000 and provides further details of Treatment To All Stakeholders is as under:

A. PROPOSAL FOR CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP) COSTS

- i. The Resolution Applicant sought CIRP Costs incurred by the Resolution Professional and the RP sent vide mail dated 26 November 2022 the following CIRP costs incurred till 20th November, 2022.

CIRP cost incurred till 20th November, 2022

Particulars	Paid	Unpaid	Total
Valuers Fees (including OPE)	-	2,93,900	2,93,900
Transaction Auditor Fees	-	3,54,000	3,54,000
RP Fees (from 21st June, 2022 to 20th November, 2022)	-	17,70,000	17,70,000
Erstwhile RP Cost (Tentative)	13,19,700	2,36,394	15,56,094
RP Out of Pocket Expenses till date	-	28,500	28,500
Tata Teleservices (Maharashtra) Limited	-	4,41,221	4,41,221

E Voting	-	7,080	7,080
Public Announcement (Form G Issuance)	-	39,656	39,656
Professional Fees of ATSJ and Associates	-	34,720	34,720
AKR Advisors LLP *	-	1,50,300	1,50,300
Provision for IBBI @ 1.18%	-	10,380	10,380
Total	13,19,700	33,66,151	46,85,851

- i. In terms of Section 30(2) (a) of IBC, the CIRP costs are to be paid in full and in priority over the payments to be made to any other creditors. CIRP Costs shall, amongst other things, include the costs, fees and charges incurred by the Resolution Professional in running the operations of the Company as a going concern. The Resolution Professional has provided 46.8 lakhs against these costs.
- ii. The Resolution Applicant has proposed to pay Rs. 40,00,000 (Rupees Forty Lakhs) as total CIRP Costs within 30 days from the Effective date (in priority to any other payments in

terms of section 30(2)(a) of the Code.).

- iii. The RA submits that it has assumed that the amounts standing to the credit of the bank account of the CD and the amounts/ proceeds estimated to be received to the RA on the basis of the final Transaction Audit Report shared by the Resolution Professional are sufficient to cover the CIRP costs. If the internal accruals of the CD are not sufficient to pay all the outstanding CIRP Costs, the RA shall fund the additional CIRP Costs to the extent of INR 200,000 (Indian Rupees Two Lakhs only) ("**Allocated CIRP Costs Amount**") till the conclusion of the CIRP.
- iv. If the unpaid CIRP Costs also exceeds the Allocated CIRP Costs Amount, the excess amount shall be deducted from the OC Payment ("**Excess CIRP Costs**").

B. Financial Creditors – Unsecured and Related

- i. The Unsecured Financial Creditors including related Unsecured Financial Creditors debt as admitted by the Resolution Professional i.e. Rs 340.34 Cr is grossly unsustainable given the Company's asset value, current state of operations, projected turnover and profitability margins of the Company. Thus, the Resolution Applicant is proposing to pay NIL amount to 'Unsecured Financial Creditors including Related Unsecured Financial Creditors'.
- ii. No Interest shall be paid to Unsecured Financial Creditors.
- iii. The RA submits that it has studied the findings in the final

transaction report shared by the Resolution Professional and further states that the proceedings in respect of avoidance transactions, if any, under Chapter III of the Code or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued by the COC after the approval of the resolution plan and the proceeds, if any, from such proceedings shall be distributed to the Unsecured Financial Creditors including related Unsecured Financial Creditors proportionately.

C. Dissenting Financial Creditors

- i. The Payments to the Dissenting Financial Creditors shall be made in accordance with Section 30 (2) (b) of the IBC. The financial creditors who do not vote in favor of the Resolution Plan (“Dissenting Financial Creditors”) shall be paid an amount which shall not be less than the amount to be paid to such creditors in accordance with subsection (1) of section 53 in the event of a liquidation of the corporate debtor. The Dissenting Financial Creditor will be paid in priority to the assenting Financial Creditor. Such amount shall be reduced in proportion from the amount proposed to be paid to Financial Creditors who vote in favour of the Resolution Plan.

D. Operational Creditors

- a. Workmen and Employees
 - i. As per the claims received by the Workmen and Employees of the Company amount to Rs 1.51 crores out

- of which claims aggregating to Rs Nil have been admitted for the purposes of CIRP by the Resolution Professional.
- ii. Resolution Applicant is proposing that out of total funds infused, Rs NIL shall be earmarked for payment to workmen and employees.
 - iii. No Interest shall be paid to Workmen or Employees.

Operational Creditors (Except Workmen and Employee and Government Dues)

- i. Resolution Applicant is proposing that out of total funds infused, Rs NIL shall be earmarked for payment to Operational Creditors (Except Workmen and Employee and Government) dues.
- ii. No Interest shall be paid to Operational Creditors (Except Workmen and Employee and Government) dues.

b. Operational Creditors (Statutory dues)

- i. Resolution Applicant is proposing that full admitted claim of Rs 4,11,617 by the Resolution Professional shall be earmarked for payment to Operational Creditor (Statutory Dues).
- ii. No Interest shall be paid to Operational Creditor (Statutory Dues).

E. Unsecured Loan/ Working Capital/ Promoter Equity

- i. The Resolution Applicant shall infuse upto Rs. 20,00,000

(Twenty lakhs only) as Unsecured Loan/ Working Capital/ Promoter Equity in the first year of operations. This fund shall be used only for running the business operations going forward.

F. Remaining Debts:

- i. The RA and the CD shall not be liable to pay a hidden/ unknown liability/ undisclosed liability/ off balance sheet transactions with respect to the period prior to the Insolvency Commencement Date (ICD) but surfacing at any future date and if in case it arises then same shall be settled at NIL amount.
- ii. The RA and the CD shall not be liable to pay unclaimed liabilities or persons whose claims were not accepted by the Resolution Professional. All unclaimed liabilities of other creditors shall be settled at NIL amount.

4. Summary Proposal of Resolution Plan

The detail of the summary of payments with indicative timeline is as under. The Net present value (NPV) is equivalent to the proposed Total Consideration which will be paid in 30 days from the Effective Date as defined herein above. Therefore, no NPV is determined in this case. (Amount In Rupees)

Sr. no	Particulars	Admitted Claim Amount	Payment as per Resoluti on Plan	Within 30 days from Effecti ve Date
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IN THE NATIONAL COMPANY LAW TRIBUNAL,
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I.A No. 675 of 2023
IN
CP (IB) No: 4001 of 2019

A.	<u>Settlement of Stakeholders.</u> The basis of settlement is provided under Part E (clause 7) Treatment to All Stakeholders. This should be deemed as the basis of settlement to all stakeholders.			
1	Secured Financial Creditors	0.00	0.00	NA
2	Unsecured Financial Creditors (2 Nos.)	1,08,07,82,880	0.00	NA
3	Unsecured Financial Creditors (Related Party)	2,32,27,00,000	0.00	NA
4	Operational Creditors (Employees and Workmen dues)	0.00	0.00	NA
5	Operational Creditors (Except Workmen and Employee and Government) dues	14,554	0.00	NA
6	Operational Creditors (Statutory dues)	4,11,617	4,11,617	4,11,617
	Total (A)	3,40,39,09,051	4,11,617	4,11,617

Sr. No	Particulars	Verified Claim Amount	Payment as per Resolution Plan	Within 30 days from the Effective Date
1	CIRP Cost		40,00,000	40,00,000
2	Working Capital over a period of one year (For Future Business Operations)		20,00,000	

(Amount In Rupees)

5. Financial Outlay and Sources of Funds:

	Stakeholder	Amount (in Rs.)
A	Financial Outlay	
1	CIRP cost -(Incurred + Likely to be incurred)	40,00,000
2	Operational Creditors (Statutory dues)	4,11,617
3.	Working Capital over a period of one year	20,00,000
	Total	64,11,617
B	Sources of Funds	
1	Upfront Fresh Equity Infusion by the RA	44,25,000

	(from internal accruals and own sources)	
2	Unsecured Loan/ Working Capital/ Promoter Equity by the RA (from internal accruals and own sources)	19,86,617
	Total	64,11,617

6. Upfront Cash Recovery for the Stakeholders

In view of the above, the upfront Cash Recovery for the Stakeholders is as under:

Sr. No.	Particulars	Amount in Rs.
1.	Provision for CIRP Cost	40,00,000
2.	Payment towards Operations Creditors (Statutory Dues)	4,11,617
	Total upfront cash recovery	44,11,617

7. CIRP Timelines:

7.1 The Applicant submits that he has filed an application bearing IA No. 2612 of 2022 seeking an exclusion of period from 10 March 2022 till 17 March 2022 (7 days) (since the date order for initiation of the CIRP is 10 March 2022. However, the said order was received on 17 March 2022) from the period of corporate insolvency resolution process under section 60(5)(c) of the Code and subsequent extension of 90 days in terms of provisions of section 12 of the Code. The said IA No. 2612 of

2022 was allowed by this Adjudicating Authority on 13 January 2023. However, till the time of filing this present application order was not uploaded on NCLT portal.

7.2 The Applicant submits that accordingly, the CoC members decided to seek additional 45 days from 12 December 2022 (being 270th day). The said resolution (Item No. 9) was put to vote before CoC during 10th CoC meeting held on 24 November 2022 and the same was passed with 100% votes in favour. The Applicant has filed an application bearing IA 3676 of 2022 on 01 December 2022 seeking further extension of 45 days from 12 December 2022 (Day 270 of CIRP). The said IA 3676 of 2022 is pending adjudication and the same is scheduled for hearing on 14 February 2023. Once the said IA 3676 of 2022 will allow by the Hon'ble Adjudicating Authority the CIRP period will come to an end on 26 January 2023 (Day 315 of CIRP).

8 CIRP Cost:

Following table provide the details of CIRP cost from 10 March 2022 (Insolvency Commencement Date) till 20th January 2023.

Cost Particulars	From 10th March 2022 to 20th January 2023
(A) CIRP Process related costs:	
IRP/RP Fees & OPE	40,71,594
IPE Fees & OPE	NIL
Public Announcement (Form A & Form G)	39,656
CoC Meeting Expenses	7,080

Valuer Fees & OPE	2,93,900
Fees of Legal Advisors	3,24,611
Transaction Auditor Fees & OPE	3,54,000
Total (A)	50,90,841
Cost for running CD as a Going Concern (B)	453,248
Total (A+B)	55,44,089
Less: CIRP Cost already received	33,19,700
Balance CIRP Cost	22,24,389

9. The Applicant outlines the various compliances envisaged within the Code and the CIRP Regulations in respect of a Resolution Plan received, considered and approved by the CoC and the same is provided hereunder:

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	Yes

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I.A No. 675 of 2023
IN
CP (IB) No: 4001 of 2019

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
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	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Additional Affidavit provided	Yes

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<p>Section 30(2)</p>	<p>Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs?</p>	<p>Clause Reference is made to: Part E, Clause 7A (ii) at Page No.31. It may be noted that CIRP cost to the extent of INR 40,00,000/- has been proposed to be paid. Balance cost to be borne by COC. In addition to the same contingency cost of INR 2,00,000. Refer Part E, Clause 7A(iii) at Page No.32. This is a deviation to the terms of RFRP. Deviations from RFRP</p>	<p>Yes</p>
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	<p>(b) provides for the payment to the operational creditors in such manner as may be specified by the Board which shall not be less than-</p> <p>(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or</p> <p>(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,</p> <p>whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such</p>	<p>were put forward for consideration and approved by e-voting in the 11th COC meeting dated 10.01.2023</p> <p>Clause Reference is made to: Part E, Clause 7D at Page No. 34, provides for payment to Operational Creditors.</p>	<p>Yes</p>
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	<p>creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.</p> <p>(c) provides for the management of the affairs of the corporate debtor?</p>	<p>Clause Reference is made to: Part F(III) at Page No.42.</p> <p>Provide for the management of the affairs of the Corporate Debtor after approval of the resolution plan;</p>	<p>Yes</p>
	<p>(d) provides for the implementation and supervision of the resolution plan?</p>	<p>Clause Reference is made to: Part F at Page No. 40.</p>	<p>Yes</p>
	<p>(e) does not contravenes any of the provisions of the law for the time being in force?</p>	<p>Clause Reference is made to: Part F(A)(III) at Page No. 44.</p>	<p>No contravention</p>
		<p>Clause</p>	<p>Yes</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-III, MUMBAI BENCH

I.A No. 675 of 2023
IN
CP (IB) No: 4001 of 2019

	<p>(f) conforms to such other requirements as may be specified by the Board</p>	<p>Reference is made to: Part F(A)(VI) at Page No. 45.</p>	
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IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-III, MUMBAI BENCH

I.A No. 675 of 2023
IN
CP (IB) No: 4001 of 2019

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / 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 Yes, approved by 78% of the COC members	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause Reference is made to: Part F at Page No. 40.	Yes

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-III, MUMBAI BENCH

I.A No. 675 of 2023
IN
CP (IB) No: 4001 of 2019

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
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?	However, COC in its commercial wisdom decided not to file an application with AA. The same was discussed in the 8 th COC, 9 th COC, 10 th COC and 11 th COC meetings and the agenda has been put for e-voting in the 11 th COC meeting held on 10.01.2023 and approved by COC members with 78% of voting.	Yes

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
Regulation 38 (1)(a)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause Reference is made to: Point 7(D)(a)(iii) at Page No. 35.	Yes
Regulation 38(1)(b)	Whether the amount payable to the financial creditors who have a right to vote under sub section 2 of Section 21 and did not vote in favour of the resolution plan shall be paid in priority in payment over financial creditors who voted in favour of plan?	Clause Reference is made to: Clause 7(C)(i) at page No. 33. The financial creditors who do not vote in favor of the Resolution Plan (“Dissenting Financial Creditors”) shall be paid in priority to the assenting Financial Creditor.	Yes

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-III, MUMBAI BENCH

I.A No. 675 of 2023
IN
CP (IB) No: 4001 of 2019

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause Reference is made to: Part E (3) at Page No. 29.	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 Reference is made to: Point 9 at Page No. 5.	No NA

<p>Regulation 38(2)</p>	<p>(i) Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p> <p>(b) for the management and control of the business of the corporate debtor during its term?</p> <p>(c) adequate means for supervising its implementation?</p> <p>(d) provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:</p>	<p>Clause Reference is made to: Part F at Page No. 40.</p> <p>Clause Reference is made to: Part F(III) at page 42.</p> <p>Clause Reference is made to: Part F at Page No.40</p> <p>Clause Reference is made to: Part C (5) at Page No.25</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
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38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default?</p> <p>(b) it is feasible and viable?</p> <p>(c) it has provisions for its effective implementation?</p> <p>(d) it has provisions for approvals required and the timeline for the same?</p> <p>(e) the resolution applicant has the capability to implement the resolution plan?</p>	<p>Clause Reference is made to: Part C(2)(a) at Page No. 23.</p> <p>Clause Reference is made to: Part C(2)(b) at Page No. 24.</p> <p>Clause Reference is made to: Part C (5) at Page No. 25.</p> <p>Clause Reference is made to: Part F(II) at Page No. 40.</p> <p>Clause Reference is made to: Part</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-III, MUMBAI BENCH

I.A No. 675 of 2023
IN
CP (IB) No: 4001 of 2019

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IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-III, MUMBAI BENCH

I.A No. 675 of 2023
IN
CP (IB) No: 4001 of 2019

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
Regulation 39(1)(a)	Whether affidavit of eligibility under Section 29A to submit Resolution Plan is provided?	Additional Affidavit provided	Yes
Regulation 39(1)(c)	Whether an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code	Declaration was provided by way of Affidavit	Yes

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-III, MUMBAI BENCH

I.A No. 675 of 2023
IN
CP (IB) No: 4001 of 2019

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
39(2)	(i) Whether the RP has filed applications in respect of transactions observed, found or determined by him?	However, COC in its commercial wisdom decided not to file an application with AA. Please refer minutes of 8 th COC, 9 th COC, 10 th COC and 11 th COC meetings and the agenda has been put for e-voting in the 11 th COC meeting held on 10.01.2023 and was approved by COC with 78% voting power.	No

- 9 The Applicant submits that the plan submitted by Marwari Media Corporation Private Limited was approved with requisite majority of **78% votes in favour which is more than the requisite threshold of 66% as required under the Code**. The Applicant states that the resolution plan stood approved by requisite majority in accordance with Section 30 (4) of the Code. Copy of the Final Resolution Plan dated 23 December 2022 submitted by Marwari Media Corporation Private Limited received on 29 December 2022 which has been voted in favour by the CoC members is annexed herewith and marked as "**Annexure 15**".
- 10 The Applicant submits that subsequently in view of provision of Code a Letter of Intent dated 17 January 2023 to the successful Resolution Applicant calling upon Resolution Applicant to furnish an unconditional and irrevocable Performance Guarantee or Direct Deposit of Rs. 4,62,500 (Indian Rupees Four Lacs Sixty Two thousand five hundred only). Copy of Letter of Intent dated 17 January 2023 is annexed herewith and marked as "**Annexure 16**" and Copy of the letter dated 18 January 2023 received from the Resolution Applicant for acceptance of letter of intent dated 17 January 2023 issued by the Applicant is annexed herewith and marked as "**Annexure 17**".
- 11 The Applicant submits that the Compliance Certificate in Form H dated 23 January 2023 as prepared by the Applicant RP is also annexed herewith and marked as "**Annexure 18**" in compliance with Regulation 39(4) of the CIRP Regulations, 2016.
- 12** The Applicant submits that in compliance with the RFRP, Regulation 39(4) of the CIRP Regulations, 2016 and the letter of intent dated 17 January 2023 the successful resolution applicant has provided the amounting to Rs. 4,62,500 (Indian Rupees Four Lacs Sixty Two thousand five hundred only) towards his performance guarantee. Copy of the Proof

of receipt of payment dated 20 January 2023 of Rs. 4,62,500/- (Indian Rupees Four Lacs Sixty Two thousand five hundred only) towards performance guarantee is annexed herewith and marked as “**Annexure 19**”. Hence, the present application seeking approval of the said resolution plan under section 31 from this Hon'ble NCLT. The Successful Resolution Applicant has attached the Form H - the compliance Certificate certifying the eligibility.

FINDINGS AND OBSERVATIONS

- a) As per IBC Code 30(2)(a) – A Resolution Plan 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) As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- c) Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- d) Provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under IBC Section 30 (2)(d) & IBBI Regulation 38(2)(c).
- e) The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.

- f) The Resolution Plan does not contravene any of the provisions of the law for the time being in force - please include a statement to this effect in the Resolution Plan as per Section 30(2)(e).
- g) The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- h) As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan - to the financial creditors, who have a right to vote under Sub-section (2) of Section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- i) The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - i. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors [Regulation 38(1)].
 - ii. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2)(c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - iii. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company [Regulation 38(1)(a)].

- iv. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
- v. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under Sub- section (2) of Section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- vi. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- vii. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- viii. Provides for the management and control of the business of the Corporate Debtor during its term.

- ix. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
 - x. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
 - xi. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other Creditors, Guarantors, Members, Employees and other Stakeholders of the Company, keeping in view the objectives of the Code [Regulation 38(1A)].
1. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** 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.

2. The Hon’ble Apex Court at para 42 in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online**, 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.

*“Para 42- 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).”*

3. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is

no more an untouched-matter.

4. 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 Resolution Plan is feasible and viable. The Resolution Plan is duly approved with 78% of voting by CoC as per the Code. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved. Accordingly, the same is approved by passing the following:

ORDER

- i. The Interlocutory Application No **675 of 2023** is **allowed**, The Resolution Plan submitted by the Resolution Applicant **M/s Marwari Media Corporation Private Limited (the Successful Resolution Applicant) (SRA)** is hereby **approved**. It shall become effective from the date of this Order and shall form part of this Order. It shall be binding on the Resolution Applicant, Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- ii. The Resolution Applicant submits that the treatment of the transactions done under sec 43,45,50 or 66 of IBC, 2016 may be pursued by the COC after the approval of the resolution plan. The proceeds, if any, from such transactions shall be distributed to the Unsecured Financial Creditors including related Unsecured

Financial Creditors proportionately. The cost of filing application and pursuing legal proceedings under such transactions shall not be the responsibility of the Resolution Applicant and the COC shall bear full costs of such proceedings. The RA submits that it has studied the findings in the final transaction report shared by the Resolution Professional and further states that the proceedings in respect of avoidance transactions, if any, under Chapter III of the Code or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued by the COC after the approval of the resolution plan and the proceeds, if any, from such proceedings shall be distributed to the Unsecured Financial Creditors including related Unsecured Financial Creditors proportionately.

- iii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of which are extracted herein below:

“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen

and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(i) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- iv.** The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned 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.

- v. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vi. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- vii. The Applicant, i.e. RP, shall forthwith send a copy of this Order to the COC and the Resolution Applicant for necessary compliance.
- viii. The Interlocutory Application No. **675 of 2023** is accordingly **allowed** in the above terms and stands disposed of.

SD/-

MADHU SINHA
MEMBER (TECHNICAL)

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)