



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CP(IB)- 1096(PB)/2018**

**IA-476/2023  
IA-3413/2023  
IA-427/2023  
IA-2048/2023  
IA-1987/2023**

**IN THE MATTER OF:**

**CFM Assets Reconstruction Pvt. Ltd**

**... Financial Creditor**

**VERSUS**

**M/s Action Ispat and Power Private Limited**

**... Corporate Debtor**

**AND**

**IN THE MATTER OF IA 476/2023:**

*Under Section 30(6) of IBC, 2016 r/w Reg. 37 to 39 of IBBI (CIRP Regulations), 2016*

**Ms. Maya Gupta,**

Resolution Professional of M/s Action Ispat and Power Pvt. Ltd

**... Applicant**

**AND**

**IN THE MATTER OF IA-3413/2023**

*Under Section 60(5) of IBC, 2016, objecting the Resolution Plan, read with Rule 11 of the National Company Law Tribunal Rules, 2016*



**NARESH KUMAR AGGARWAL**

**..... Applicant**

**VERSUS**

**MS. MAYA GUPTA AND ANR.**

**..... Respondents**

**AND**

**IN THE MATTER OF IA-427/2023**

*Under Section 60(5) of IBC, read with Rule 11 of the National Company Law Tribunal Rules, 2016*

**Punjab National Bank**

**.... Applicant**

**VERSUS**

**1.Ms. Maya Gupta**

**2.Ocean Capital Pvt. Ltd**

**..... Respondents**

**AND**

**IN THE MATTER OF IA-2048/2023**

*Under Rule 11 of the National Company Law Tribunal Rules, 2016*

**CFM Assets Reconstruction Private Limited** **..... Applicant**

**AND**

**IN THE MATTER OF IA-1987/2023**

*Under Section 60(5) of IBC, read with Rule 11 of the National Company Law Tribunal Rules, 2016*

**Perfect Concast Private Limited**

**.... Applicant**

**Pronounced on: 26.09.2023**



(HEARING THROUGH PHYSICAL MODE & VC)

**CORAM:**

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR**

**HON'BLE PRESIDENT**

**SHRI AVINASH K SRIVASTAVA**

**HON'BLE MEMBER (TECHNICAL)**

**Present:**

**For the Resolution Professional** : Mr. Sandeep Bajaj, Mr. Devansh Jain, Ms. Vasudha Chadha, Advs. along with Ms. Maya Gupta, RP

**For the Applicant** : Mr. Debashis Mukherjee, Adv. in IA-1987/2023 and Adv. Alok Dhir, Adv. Varsha Banerjee and Adv. Karan Grover in IA-3413/2023

**For the Punjab National Bank:** Ms. Nishi Choudhary, Mr. Yashartha Gupta, Adv. in IA-427/2023

**ORDER**

**1. Preliminary**

- 1.1. The present interlocutory application bearing IA No.476 (PB) 2023 is moved on behalf of Ms. Maya Gupta, Resolution Professional ("**RP**" / "**Applicant**") of M/s Action Ispat and Power Limited (CIN: U27109DL2004PTC127305), under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as "**the Code**" or "**IBC**"] read with regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") for



approval of the Resolution Plan in respect of M/s Action Ispat and Power Limited (**“Corporate Debtor”**) and seeking following reliefs:

- a) *Approve the Resolution Plan of M/s Ocean Capital Market Limited under Section 31 of the Code as annexed to the present application as ANNEXURE A-10 and issue appropriate orders/directions for implementation of the Resolution Plan, as may be required from time to time;*
- b) *Allow the applicant to continue to act as the Resolution Professional of Action Ispat and Power Private Limited till disposal of the present application and manage the affairs of the Corporate Debtor till disposal of the present application;*
- c) *Allow the CoC of the Corporate Debtor to function with the same rights and obligations as were available to the CoC during the CIRP Period under the Code and other applicable laws till disposal of the instant application;*
- d) *Ad-interim orders in terms of prayer above;*
- e) *Any other directions which this Hon’ble Tribunal may deem fit in the facts and circumstances of the matter.*

1.2. The underlying Company Petition CP (IB) No.1096(PB)2018 filed by State Bank of India which was later substituted by M/s CFM Asset Reconstruction Pvt. Ltd. under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**“CIRP”**) of the Corporate Debtor was admitted by this Adjudicating Authority



*vide* its order dated 23.03.2022 (“**Admission Order**”). On that date, *i.e.*, 23.02.2022 (“**Insolvency Commencement Date**”) Ms. Maya Gupta, Registration No. IBBI/IPA-002/IP-N00363/2017-2018/11061 was appointed as IRP. The appointment of IRP Ms. Maya Gupta as RP was confirmed by CoC in the 7<sup>th</sup> CoC meeting dated November 14, 2022.

- 1.3. The proceedings were conducted through VC/hybrid hearing as well as physical hearing on various dates.
- 1.4. The applicant submits that the Corporate Debtor was in the business of production of sponge iron which was being used for captive consumption for manufacturing billets.

## **2. Constitution of CoC & Collation of claims by RP**

- 2.1. The Applicant/RP has submitted that the public announcement in FORM-A was published on 05.04.2022 in:
  - i. Financial Express (English edition) (Delhi & NCR),
  - ii. Jansatta (Hindi edition) (Delhi & NCR),
  - iii. Business Standard (English edition) Bhubaneswar (Orissa);
  - iv. Odisha Bhaskar (Odisha edition) Bhubaneswar (Orissa)
- 2.2. It is submitted that in terms of Regulation 6 (2) (c), the last date for submission of proof of claim was specified as 18.04.2022.
- 2.3. It is submitted that the IRP engaged professionals at Jharsugada (Orissa) where the plant of the CD is situated, to assist the workers and employees in submitting their claims and for distribution of pamphlets in vernacular and English language.
- 2.4. The Applicant/RP submits that the constitution of CoC as on the date of approval of resolution plan is as under:

<b>Sr. No.</b>	<b>Name of the Financial Creditors</b>	<b>% of voting share</b>
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	<b>of CoC</b>	<b>in CoC</b>
1.	Punjab National Bank	12.03%
2.	CFM Assets Reconstruction Pvt. Ltd.	78.24%
3.	Gagandeep Services Pvt. Ltd.	0.98%
4.	Prakash Chemtex India Ltd	1.01%
5.	Saraf Credit and Portfolio	5.48%
6.	Ocean Capital Market Limited	2.26%
	Total	100.00%

- 2.5. The Applicant/RP submits that it prepared the information memorandum in terms of the provisions of Regulation 36(2) of CIRP Regulations based on the financial statement for the FY 2016-17 and 2017-18 and the financials for the period as on date of initiation of CIRP could not be prepared in the absence of records.
- 2.6. The RP submits that a total of 10 (ten) CoC meetings have been held during the CIRP period.

### **3. Valuation of Corporate Debtor**

- 3.1. In terms of Regulation 27 of the CIRP Regulations, the resolution professional engaged the following registered valuers with the IBBI for providing the fair value & liquidation value of the CD:

<b>S.No</b>	<b>Name of Professional</b>	<b>Scope of Work</b>
1.	<b>Mr. Raj Kamal Saraogi</b> Regd. Valuer- Securities & Financial Assets. Valuer Registration No.	To determine the Fair and Liquidation Value of the <b>securities and financial assets</b>



	IBBI/RV/05/2019/10886	
2.	<b>Ms. Alpna Harjai</b> Regd. Valuer- Land & Building. Valuer Registration No. IBBI/RV/02/2019/11077	To determine the Fair and Liquidation value of <b>Land &amp; Building</b>
3.	<b>Mr. Devender Kumar</b> Regd. Valuer-Plant & Machinery Valuer Registration No. IBBI/RV/05/2018/10424	To determine Fair Value and Liquidation Value of the <b>Plant &amp; Machinery</b>
4.	<b>M/s GTech Valuers Pvt Ltd</b> IBBI/RV-E/05/2020/124  Sachin Goel- Registered Valuer Land & Building IBBI/RV/05/2018/10002  Ankit Goel- Registered Valuer Plant & Machinery IBBI/RV/05/2018/10008  CA Priya Gupta- Registered Valuer Securities & Financial Assets IBBI/RV/06/2021/14086	To determine Fair Value and Liquidation Value of <b>all the assets class</b> of the company

3.2. The fair market value and liquidation value of the CD, as per Form-H attached with application is as under:

#### Fair Value

	Valuer 1	Valuer 2
	Amount Rs. In Cr	
Securities and financial assets	0	0
Plant and Machinery	205.05	187.6
Land and Building	104.35	89.73
Total	<b>309.40</b>	<b>277.33</b>

#### Liquidation Value

	Valuer 1	Valuer 2
	Amount Rs. In Cr	



Securities and financial assets	0	0
Plant and Machinery	131.5	140.7
Land and Building	80.19	71.78
Total	<b>211.69</b>	<b>212.48</b>

- 3.3. In pursuance to the resolution passed by the CoC in the 5<sup>th</sup> CoC meeting, the RP also appointed a forensic auditor to carry out the forensic and transaction audit of the CD.
- 3.4. The RP also submits that the CD was under liquidation since 2018 (C.A. No. 1240/2018, in Co. Pet. No. 731/2016 was filed before Hon'ble High Court, Delhi basis which it transferred the proceedings to NCLT by order dated 14.01.2019, upheld by Division Bench of Hon'ble High Court of Delhi on 10.10.2019) and the plant of the CD was shut down since 2016 with no business transactions coupled with the non-cooperation from the suspended directors of the CD and non-contribution by COC members to the CIRP cost, the RP could not get the requisite records of the CD. Furthermore, for the said reasons, the Forensic Audit report is still awaited and the IRP has been unable to ascertain the existence of preferential, undervalued and/or fraudulent transactions in terms of the code.

#### **4. Evaluation and voting**

- 4.1 The applicant RP submits that Form-G was published on 05.09.2022, stating the last date of submission of expression of interest by prospective resolution applicants as 20.09.2022. A copy of Form G dated 05.09.2022 is attached as ANNEXURE A-4 of the application.
- 4.2 That pursuant to the publication of Form G, the IRP received the Expression of Interest from 8 prospective Resolution Applicants





namely:

- a. Rama Motocorp Private Limited along with group companies;
- b. Orissa Metaliks Pvt. Ltd;
- c. Ocean Capital Market Limited
- d. Nalwa Steel & Power Limited
- e. Altrade Pellets Private Limited.
- f. Thakur Prasad Sao & Sons Pvt Ltd.
- g. Tanishq Steels Limited in consortium
- h. United Biotech Pvt ltd

4.3 The Applicant/RP submits that as per Form-G, the last date for submission of plan was 4 November, 2022, however, on receipt of request from the PRAs, the period for submission of resolution plan was extended by 15 days by the CoC and the last date for submission of resolution plan was extended to November 19, 2022.

4.4 Subsequently, till the last date for submission of resolution plans, following Prospective Resolution Applicants (**"PRA"**) submitted the plan along with the requisites as per the terms and conditions mentioned in the Information Memorandum and RFRP documents:

- a. Rama Motocorp Private Limited along with group companies;
- b. Orissa Metaliks Pvt. Ltd; and
- c. Ocean Capital Market Limited,

4.5 The applicant/RP submits that the aforesaid Resolution Plans were opened before the members of the CoC in the 8<sup>th</sup> CoC meeting dated 25.11.2022 in front of respective PRAs in order to maintain transparency as well as confidentiality of the plans.

4.6 In the 9<sup>th</sup> CoC meeting dated 15.12.2022, the CoC members advised the PRAs to increase the offer value and enhance their resolution plans so as to match the required commercial viability



with respect to the CD. Subsequently, only one of the PRAs namely M/s Ocean Capital Market Limited submitted a modified resolution plan and no modification was incorporated by the other PRAs to their resolution plans.

- 4.7 The applicant/RP submits that in the 10<sup>th</sup> CoC meeting, all the PRAs presented their resolution plans again for consideration of the CoC; pursuant to which, on the directions of CFM Asset Reconstruction Private Limited which has the majority voting share in the CoC, all the plans were put for voting. On the request of the CoC members, e-voting platform was made available for the voting on 25.12.2022 and was kept open until 27.12.2022 for all the members of the CoC to cast their vote on the Resolution Plan.
- 4.8 The applicant/RP submits that one of the CoC members, namely Punjab National Bank submitted in the 10<sup>th</sup> CoC meeting that they require an interim forensic audit report for 3 years since the date the account of Corporate Debtor turned into an NPA i.e. from April 2013 to March 2016.
- 4.9 The applicant/RP submits that a clarification statement has been issued by the “PRA” (Ocean Capital Market Limited) stating that it will issue 5% equity shares in the Corporate Debtor as upside to the Secured Financial Creditors. Moreover, these shares shall be issued after implementation of the plan and post restructuring of the capital structure of the Corporate Debtor on a diluted basis. It is further clarified by the “PRA” that it will have the option to purchase the equity shares from the Secured Financial Creditors at a value of Rs. 10.00 Cr. at any time within three years from the effective date. Copy of Clarification Statement dated 22.12.2022 is annexed as Annexure A-9 of the application.
- 4.10 The applicant/RP submits that another CoC member, namely, Gagandeep Services Pvt. Ltd., objected to the 5% equity shares



proposed by the “PRA” (Ocean Capital Market Limited) to the secured financial creditors as mentioned in its resolution plan, stating the same to be in contravention with law and submitted that consideration for plan value by the PRA cannot be proposed as a part of the equity shareholding to the Secured Financial Creditors.

- 4.11 The applicant/RP submits that on the issue raised by Gagandeep Services Pvt. Ltd. in the 10<sup>th</sup> CoC meeting regarding the treatment of avoidance transactions, as per Regulation 38(2)(d) of CIRP Regulations, in the resolution plan submitted by Ocean Capital Market Limited, a clarification statement dated 22.12.2022 was issued by the PRA, wherein it was stated that any Avoidance Transaction which is pending for adjudication after the approval of Resolution Plan by the Adjudicating Authority shall be pursued by the Resolution Applicants and the proceeds shall be credited to the Bank Account of the Corporate Debtor and the same shall not be distributed to the financial creditors or any other creditors.
- 4.12 However, vide affidavit dated 07.08.2023 filed by the SRA in IA No. 1987 of 2023 it is stated that in case any additional amounts are received by the Corporate Debtor towards the preferential transactions, the same shall be disbursed in favour of the members of the CoC in accordance with their respective voting share.
- 4.13 The applicant/RP submits that the CoC approved the Resolution Plan of M/s Ocean Capital Market Limited by 80.5% voting percentage, concluded on 27.12.2022 declaring M/s Ocean Capital Market Limited as the Successful Resolution Applicant.
- 4.14 The Final Minutes of 10<sup>th</sup> CoC meeting of Action Ispat and Power Ltd held at point 5.3 read as under:

***“Resolution Plan submitted by M/s Ocean Capital***



**Market Ltd:**

*RESOLVED THAT the Resolution Plan submitted by M/s Ocean Capital Market Limited be and is hereby approved by the Committee of Creditors of M/s Action Ispat and Power Pvt Ltd under Section 30(4) of IBC, 2016, subject to condition of deposit of 20% of committed contribution, in addition to EMD of Rs. 5.0 Cr. as already provided as Performance Security.*

*“RESOLVED FURTHER THAT, the Interim Resolution Professional be and is hereby authorised to make an application with the Hon’ble Adjudicating Authority under Section 30(6) of IBC, 2016”*

**5.3) Approval of the Resolution Plan submitted by M/s Ocean Capital Market Ltd (after taking into consideration the feasibility and viability of the Resolution Plan in accordance with section 30(4) of the IBC, 2016 read with Regulation 39 of the CIRP Regulations:**

<b>Creditor s</b>	<b>Total Voted</b>	<b>Approvin g Resolutio n</b>	<b>Disapprovin g Resolution</b>	<b>Abstain Resolutio n</b>
Total Voting	100.00 %	80.50%	0.00%	19.50%
Count	6	2	0	4

**Conclusion: Resolution Passed”**



- 4.15 Pursuant to Regulation 36B sub-regulation 4A of the CIRP Regulations, the Successful Resolution Applicant (SRA) has submitted a Performance Bank Guarantee for Rs. 51,20,00,000/- (Rupees Fifty-One Crores Only) on 02.01.2023 issued from Yes Bank in accordance with the provisions of the RFRP and the Resolution Plan and attached as **'Annexure A-19'** of the application. Further, the Monitoring Agency / Committee is hereby directed to ensure that the PBG is coterminous with the tenure of Resolution Plan and accordingly be renewed from time to time.
- 4.16 Pursuant to Regulation 39(4) of the CIRP Regulations, a Compliance Certificate from RP in Form-H is annexed to the application as **'Annexure A-14'**.
- 4.17 That pursuant to section 30(6) of Insolvency and Bankruptcy Code, 2016 read with Regulations 37 to 39 of IBBI (CIRP) Regulations, 2016, Resolution Professional by filing the present application is praying for approval of the Resolution Plan submitted by Resolution Applicant M/s Ocean Capital Market Limited as approved by the Committee of Creditors of the Corporate Debtor with 80.5% voting under section 30(4) of IBC, 2016 in the 10<sup>th</sup> Meeting of CoC held on 22.12.2022, voting concluded on 27.12.2022.

## ***5. Details of Resolution Applicant, Implementation Schedule and Turnaround schedule***

- 5.1 The SRA is M/s Ocean Capital Market Limited and was incorporated on 16<sup>th</sup> February, 1996. The SRA is in same line of activity as the Corporate Debtor and SRA group operates Iron Ore Mines in Keonjhar district in Odisha and has vast mineral reserves of superior grade materials. With the current production capacity of 4 million



tonnes per annum, the SRA group started its 1<sup>st</sup> mining operation in the year 2008 and since then, it has achieved a massive turnover of Rs. 12,000 Crores(approx.) till March 2022.

- 5.2 The SRA group has built itself at a position to command and expand its wings into different segment of Iron & Steel Business, the group is achieving pioneers in the iron and steel sector. The group possess in depth knowledge of CD's business, both managerial and technical, since they are also involved in the same business activity and have an experience of more than 20 years in the same line.
- 5.3 The SRA submits that non availability of Working Capital was the primary reason for CD going in default.
- 5.4 The SRA submits in the Plan that CD shut down its operations in 2016, further, the CD went into liquidation on August 27, 2018 for non-payment of dues to one of the Operational Creditor and due to this the plant was not operational and most of the machines of the require refurbishment to start the operation.
- 5.5 The SRA proposes the following steps to turnaround the CD:
  - i. **Repair and Refurbishment of existing facilities:** The refurbishment is proposed to be implemented within a time schedule of 12 months from the 'Zero Date' which is reckoned as 'Placement of Order' for long lead items. The SRA submits that the plant would achieve a capacity utilisation of 60%, 75%,85% of the rated capacity in the first, second and third year of operation respectively and 100% from the fourth year onwards.
  - ii. **Infusion of Working Capital:** The SRA proposes to infuse working capital of Rs. 100 Cr. for start of the Operation of the CD, the working capital shall be funded by the SRA from its own sources and also from the Bank Finance.
  - iii. **Availability of Raw Material:** The SRA group operating the Unchabali Iron Ore Mines has vast mineral reserves of superior



grade materials.

**6. Compliance of the successful Resolution Plan with various provisions:**

- 6.1. The Applicant has filed a Compliance Certificate in prescribed Form, i.e Form 'H' in compliance with Regulation 39(4) of the CIRP Regulations and the same is annexed with the application as 'Annexure A-14' of the application.
- 6.2. The extract of Form H attached with the Resolution Plan is as under:



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?	Chapter IV Part C	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?	Chapter V	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit in Appendix 10 submitted along with the Resolution Plan	Yes
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Clause No. 2.1 @ Page No. 47	Yes
	(b) provides for the payment to the operational creditors?	Clause No. 2.6(iii) @ Page No. 50 of the Resolution Plan	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause 2.2(v) @ Page No. 48	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Chapter x @ Page No. 60	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Clause 4 in Chapter XI @ Page No. 63	Yes
	(f) contravenes any of the provisions of the law for the time being		





	in force?]	Clause No. 5 @ Page No. 82 read with Appendix 3- Clause (e)	Yes
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?	Clause No. 2 in Chapter VII @ Page No. 41	a. Yes b. Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Chapter X @ Page No. 60	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 2.6(iii) @ Page No. 50	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Chapter VIII, Clause No. 5 @ Page No. 54-55	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?]	Chapter XV Clause No. (v) @ Page No. 82	i. No  ii. NA
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule?  (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Chapter XII @ Page No. 65 Chapter X @ Page No. 60 Clause No. 4 in Chapter XI @ Page No. 63	a) Yes  b) Yes  c) 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 No. II, Chapter VII @ Page No. 41  Clause No. II, Chapter VII @ Page No. 41  Chapter XI, Clause No. 3 @ Page No. 63 and Chapter XII @ Page No. 65  Clause 11 @ Page No. 79  Chapter IV @ Page No. 20	Yes  Yes  Yes  Yes  Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		No
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]		Yes (Copy Attached)



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	NA	NA	NA
2	Undervalued transactions under section 45	NA	NA	NA
3	Extortionate credit transactions under section 50	NA	NA	NA
4	Fraudulent transactions under section 66	NA	NA	NA

6.3. The Ld. Counsel for the RP has filed an affidavit stating that an amount of Rs. 4,86,84,078/- is the likely CIRP cost which includes provisional costs as may incurred by the RP till September 30, 2023 and the Regulatory fee under Regulation 31A (wherein Rs. 75.52 lakh (i.e., 0.25% of the resolution plan value) which shall be payable on passing of the Resolution Plan by this Adjudicating Authority has also been considered as part of total CIRP cost.

6.4. In compliance of Regulation 37 of CIRP Regulations, the following has been provided:

Regulation 37(1)	Requirement	How dealt with in the Plan
(a)	transfer of all or part of the assets of the corporate debtor to one or more persons;	The SRA has stated no such sales are envisaged under the Resolution Plan
(b)	sale of all or part of the assets whether subject to any security interest or not;	The SRA has stated no such sales are envisaged under the Resolution Plan



Regulation 37(1)	Requirement	How dealt with in the Plan
(ba)	restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	The SRA Classifies that the merger or reverse merger/demerger shall not be an integral part of the Resolution Plan.
(c)	the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	The SRA i.e. M/s Ocean Capital Market Limited (OCML) shall replace the Existing Promoter and accordingly, shareholding of OCML only shall be treated as Promoter Shareholding and OCML (including the nominees and assigns) shall constitute the Promoter Group for the Corporate Debtor
(ca)	cancellation or delisting of any shares of the corporate debtor, if applicable;	Chapter IX at Pg- 53 of the Resolution Plan deals with Change in Shareholdings. The Resolution Applicant submits that it proposes reorganization of capital restructure in the manner as set out in the Resolution Plan.
(d)	satisfaction or modification of any security interest;	
(e)	curing or waiving of any breach of the terms of any debt due from the corporate debtor;	The SRA has stated the debts of various category of creditors are proposed to be settled, restructured/waived as provided under the Resolution Plan
(f)	reduction in the amount payable to the creditors;	The SRA has stated the resolution amount proposed by the Resolution Applicant shall result in partial recovery of the dues of the creditors.



Regulation 37(1)	Requirement	How dealt with in the Plan
(g)	extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	The SRA has stated that the Resolution Plan proposes upfront settlement of the entire debt and hence there are no change of terms.
(h)	amendment of the constitutional documents of the corporate debtor;	The SRA has stated that the memorandum and article of association of the CD are propose to be amended without further reference to the board of directors or the shareholders of the CD
(i)	issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	The resolution Plan proposes issuance of 50,00,000 equity shares of Rs 10/ each amounting to INR 5,00,00,000 (Indian Rupees Five Crores) by way of cash contribution towards resolution amount.
(j)	change in portfolio of goods or services produced or rendered by the corporate debtor;	The SRA has stated that it intends to carry the business in the same line of the activity as that of the CD
(k)	change in technology used by the corporate debtor; and	The SRA has stated it proposes to modernize and upgrade the processes of the CD
(l)	Obtaining necessary approvals from the Central and State Governments and other authorities.	The SRA has stated that post the effective date, it shall obtain necessary approvals from the respective authorities within a period of 12 months and renew any permission, regulatory approval that may have expired in the Interim



Regulation 37(1)	Requirement	How dealt with in the Plan
		period on the basis of certified copies of the Resolution Plan approved by this Adjudicating Authority

6.5. The Applicant submits that the SRA has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. The same has been attached as Annexure A-16 of the application.

## **7. Details of Resolution Plan/ Payment Schedule**

7.1. The Applicant submits that the application of funds under the Resolution Plan as approved CoC is tabulated as under:

(Amount in Rs. Lakh)

S. No	Category of stakeholders	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	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution plan	31,933.44	31,933.44	3,264.15	10.22%
		(ii) who voted in favour of the resolution plan	214,150.60	213,622.05	21,835.45	10.22%
		Total[(a)+(b)]	246,084.04	245,555.49	25,100.00	10.22%
2	Unsecured	(a) Creditors	NIL	NIL	NIL	NIL



	Financial Creditors	not having a right to vote under sub-section (2) of Section 21				
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution plan	137,616.22	19,814.40	30.00	0.15%
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		Total[(a)+(b)]	137,616.22	19,814.40	30.00	0.15%
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) Government	3,665.06	3,665.06	120.00	3.27%
		(ii) Workmen	NIL	NIL	NIL	NIL
		(iii) Employees	1,955.22	1677.52	230.00	13.71%
		(iv) Suppliers	7,891.53	3667.39	120.00	3.27%
		Total[(a)+(b)]	13,511.80	9,009.96	470.00	5.22%
4	Other debts and dues		NIL	NIL	NIL	NIL
Grand Total			397,370.37	274,379.86	25,600.00	9.33%

7.2. The Applicant/Resolution Applicant submits that under the Resolution Plan of the Successful Resolution Applicant, the interest of existing shareholders has been altered as under:

S.No	Category of Shareholder	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	13,69,79,469	50,00,000	100%	100%
2	Preference	18,00,00,000	18,00,00,000	0	0



7.3. The **Resolution Plan Size is Rs.256,00,00,000/-** (Rupees Two Hundred Fifty-Six Crores Only). The Resolution Plan defines **“Effective Date”** as the date of approval of this Plan by the Adjudicating Authority and **“Closing Date”** being the date when the Financial Creditors receives Rs. 251.30 Crores from the SRA.

7.4. The Applicant/Resolution Applicant submits that under Chapter-IX of Resolution Plan read with clarification for change in Shareholdings clause no 1(d) of the Resolution Plan dated 17.12.2022, it has been stated that the Successful Resolution Applicant shall issue 5% equity shares of the Corporate Debtor as an upside to the “Secured Financial Creditors”

## **8. Infusion and Source of Funds**

8.1. The Applicant/Resolution Professional submits that the SRA proposes to Infuse Funds for implementing the Resolution Plan in the following manner:

- a. Upfront amount to be paid by OCML as full and final settlement of debt of Secured Financial Creditors (i.e. within 30 days of effective date)- INR 256.00 Crores (Correct figure is INR 251.30 Cr as per Page 138 of the Application and Page 12 of the Plan)
- b. Upfront Equity/unsecured Loan towards payment of other creditors- INR 5,00,00,000.
- c. In addition to the above amount of INR 256.00 Crores committed towards Resolution Plan for the CD, the Resolution Applicant shall also infuse INR 100.00 Crores towards working capital infusion and a sum of INR 223.00 crores towards capital expenditure for repair and



refurbishment of the CD.

*(The infusion of working capital and capex is on the sole discretion of the Resolution Applicant and not binding upon the Resolution Applicant)*

- d. The Applicant submits that the SRA proposes to settle the upfront consideration payable to the various stakeholders as proposed under the Resolution Plan out of its liquid funds and internal cash flow by way of recall of the Loans and advances.

**9. Details on Management/Implementation and Term of the Plan  
(From new document to be added here)**

9.1. The Resolution Plan also provides details of management and control, implementation and supervision of the Resolution Plan and term of plan. The same is already set out in Chapter XI at Page 62 of the Resolution Plan.

9.2. It is stated that from the Effective Date, Monitoring Committee shall be constituted comprising of the Resolution Professional, two representatives as appointed by the SRA and two representatives of the Financial Creditors. The Resolution Professional shall act as the Chairman of the Monitoring Committee and shall hold office from the effective date till the Closing Date.

9.3. The Resolution Plan defines Term of the Plan as a period of 30 days from the effective date, or until all payments envisaged in the Resolution Plan have been duly disbursed, whichever occurs first. This defined period is known as the “Implementation Period” outlining the timeframe during which the requisite payments to all stakeholders must be completed, adhering to the specific timelines





delineated within the Resolution Plan.

#### **10. Details on fraudulent and avoidance transaction**

10.1. The SRA in its affidavit dated 07.08.2023 as filed in IA No. 1987 of 2023 has stated that in case any additional amounts are received by the Corporate Debtor towards the preferential transactions, the same shall be disbursed in favour of the members of the CoC of the Corporate Debtor in accordance with their respective voting share.

#### **11. Waivers, Reliefs and Exemptions**

11.1. The SRA has prayed for the reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC, namely, that from the plan approval date all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn, satisfied and discharged, from the date of approval of the 'Resolution Plan'. In this regard, it is ordered that the reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law..

#### **12. Objections**

12.1. Before considering the application for approval of Resolution Plan there are two interlocutory applications i.e. IA-3413/2023 and IA-427/2023 filed by Mr. Naresh Kumar Aggarwal (Erstwhile Director of the Corporate Debtor) and Punjab National Bank objecting to the approval of Resolution Plan.

#### **IA-3413/2023**



12.2. The Prayer made in the application read as follows:

- a. Allow the instant application filed by the Applicant; and*
- b. Reject the Resolution Plan of Respondent No. 2 in terms of Section 31(2) of the Code; and*
- c. Pass any other order that this Ld. Tribunal deems necessary in the interest of justice.*

12.3. Ld. Counsel Alok Dhir appeared for the applicant and placed on record certain objections to the Resolution Plan. Through this application the Ld. Counsel contends that the resolution plan as submitted by SRA is contrary to the provisions of IBC and allied regulations as well as the law laid down by Hon'ble NCLAT in the case of Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd. & Ors. Company Appeal (AT) (Ins) No. 752 of 2021, dated 21.10.2022 as upheld by Hon'ble SC in the case of Jalan Fritsch Consortium v. Regional Provident Fund Commissioner and Another being 2023 SCC Online SC 106, as well as in judgement of Hon'ble Supreme Court in the matter of State Tax Officer v. Rainbow Papers Limited (2022 SCC Online SC 1162).

12.4. Ld. Counsel raises his objections as follows i.e.

- a. The Resolution Plan does not provide for the entire admitted claim of the Regional PF Commissioner and Value Added Tax (VAT) amounting to Rs. 36,65,05,611/-
- b. The Resolution Plan has not provided for the outstanding dues amount payable to employees and workers towards the gratuity amounting to Rs. 3,94,73,765/- and has only proposed a payment of Rs.



2.30 Crores in its Resolution Plan, making the Resolution Plan to be non-compliant of Section 30 of the Code.

- c. The Resolution Plan has not provided for payment of Regulatory fee, which is mandatorily required to be paid in terms of Regulation 31A of the CIRP Regulations.

12.5. Ld. Counsel also contend that in terms of Section 55 of the Orissa Value Added Tax Act, 2004, the dues towards outstanding VAT is a secured debt as per the judgement of Hon'ble Supreme Court in *State Tax officer vs. Rainbow Paper Limited*. Ld. Counsel also referred to paragraphs no. 125 and 126 of the judgement of Hon'ble NCLAT in the case of *Jet Aircraft Maintenance Engineers Welfare Association vs. Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd. & Ors. Company Appeal (AT) (Ins) No. 752 of 2021* which read as under:



125. We may also notice a recent judgment of the Hon'ble Supreme Court in "**Civil Appeal No. 1661 of 2020, State Tax Officer vs. Rainbow Papers Limited**". In the above case, the Hon'ble Supreme Court had occasion to consider Section 48 of the Gujarat Value Added Tax Act, 2003. Section 48 was set out in Para 2 of the judgment, which is to the following effect:

*"2. The short question raised by the appellant in this appeal is, whether the provisions of the IBC and , in particular, Section 53 thereof, overrides Section 48 of the GVAT Act which is set out herein below for convenience:*

**"48. Tax to be first charge on property. –** *Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer for which he is liable to pay to the Government shall be a first charge on the property of such dealer, or as the case may be, such person."*




126. The Hon'ble Supreme Court held that Section 48 of the Gujarat Value Added Tax, 2003 is not contrary to Section 53 of the I&B Code and the State was held to be secured creditor on the strength of the charge under Section 48. In Para 55, 56 & 57 of the judgment following has been laid down:

*"55. In our considered view, the NCLAT clearly erred in its observation that Section 53 of the IBC over-rides Section 48 of the GVAT Act. Section 53 of the IBC begins with a non-obstante clause which reads :-*

*"Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority....."*

*56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.*

*57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of*



*secured creditor in the IBC does not exclude any Government or Governmental Authority.”*

12.6. We observe that recently Hon’ble Supreme Court in the case of ***Paschimanchal Vidyut Vitran Nigam Ltd. v. Praman Ispat Private Limited & Ors.*** Civil Appeal No. 7976 of 2019, while upholding the waterfall mechanism as enshrined under Section 53 of the Code, in paragraph nos. 49 and 53 held as under:

49. *Rainbow Papers* (supra) did not notice the ‘waterfall mechanism’ under Section 53 – the provision had not been adverted to or extracted in the judgment. Furthermore, *Rainbow Papers* (supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in *Rainbow Papers* (supra) or was missed altogether. In any event, the judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government.

53. In view of the above discussion, it is held that the reliance on *Rainbow Papers* (supra) is of no avail to the appellant. In this court’s view, that judgment has to be confined to the facts of that case alone.

12.7. On the basis of above judgement of Hon’ble Supreme Court and



waterfall mechanism as enshrined under Section 53 of the Code, we find no infirmity in providing for VAT dues in the Resolution Plan. As far as making a provision in Resolution Plan for Provident Fund Dues and Payment towards Regulatory fees in terms of Regulation 31A of the CIRP Regulations, we find that the Ld. Counsel for the Resolution Professional in its written submissions dated 23.08.2023 as filed with this Tribunal has acknowledged the liability towards payment of provident dues. **Accordingly, we direct the RP to include in the Resolution Plan full amount of provident fund till the date of commencement of the insolvency.** Further for payment towards Regulatory fee, the Ld. Counsel for RP has said that the same shall be included in the CIRP cost and accordingly be paid.

12.8. In so far as objection to the Resolution Plan on the ground of non-inclusion of gratuity amount in the plan is concerned, we take note of Counsel for RP's contention along with his written submissions dated 23.08.2023, the Plant of the CD was closed in 2016, further we observe that objection to the Resolution Plan with respect to the gratuity dues payment has been raised by the promoter, rather than the employees themselves. No claim has been filed by the so called workers for gratuity. Moreover, the CD has not even established a gratuity fund. **Reliance is placed on the Judgement of Hon'ble NCLAT in the matter of Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd.** Company Appeal (AT) (Ins) **No. 752 of 2021** by the applicant, however it is to be noted that in that case it was the aggrieved workmen of the CD numbering more than 270 workmen who were before the Hon'ble NCLAT contending that the provident fund and gratuity have not been taken into account in the resolution plan. We observe that claims of this



nature cannot be raised at the behest of individuals who bear the responsibility for their payment in the initial instance.

12.9. In view of the above, IA- 3413/2023 stands disposed of.

**I.A No. 427 of 2023**

12.10. This application is filed by Punjab National Bank in the form of objection to the Resolution Plan. The applicant primarily raises two issues in the application with respect to the valuation of the CD as carried out by the registered valuers appointed by RP during the CIRP and no compliance being made by the RP for determining the Transactions covered under Section 43, 45,50 and 60 of the Code.

12.11. The applicant contends that the valuation carried out by the registered valuers is far less as compared to the one carried out by the valuers appointed by the applicant. To counter these submissions, the Respondent/ Resolution Professional has filed its reply and affidavit dated 08.08.2023 stating that there are certain anomalies in the valuation reports as submitted by the valuers appointed by applicant and by the RP, the same being highlighted in detail in affidavit dated 08.08.2023.

12.12. The RP submits that primarily there is difference in the two valuations reports as there are many items which are missing from the plant which were mentioned in the books of accounts as on March 31, 2017 and thus, have been included in the valuation of the assets by the valuers appointed by the applicant but not by registered valuer appointed by RP, and since the assets are missing from the plant, the same cannot be included in the valuation of the plant. The RP also submits that after the point in time when the valuation report by the valuers appointed by the applicant has been made till the time the valuation report by the independent registered





valuer appointed by RP was made, a damage of approximately Rs. 173 crores had taken place at the Plant of the CD by way of theft and obsolescence. In any event the valuation is not contemporaneous and the applicant's valuation has no binding effect on the COC.

12.13. On perusing the documents, we find that the appointment of the Registered Valuers by the RP during the CIRP was duly approved by the CoC of the Corporate Debtor including the applicant Punjab National Bank with 92.53% voting share and the applicant voted in favour of the appointment of the said registered valuers. Further in compliance to our order dated 15.06.2023 an interim transaction audit report has been filed with this tribunal. Also, the SRA in its affidavit dated 07.08.2023 as filed in IA No. 1987 of 2023 has stated that in case any additional amounts are received by the Corporate Debtor towards the preferential transactions, the same shall be disbursed in favour of the members of the CoC of the Corporate Debtor in accordance with their respective voting share. We find no justification for rejecting the valuation already approved by the valuer appointed by COC. Application bearing IA No. 427 of 2023 is accordingly disposed of, in terms of above.

#### **I.A No. 2048/2023**

12.14. This application is filed by applicant seeking impleadment as applicant in I.A No. 427 of 2023. In view of the order passed in IA.No 427 of 2023 above, IA- 2048/2023 stands dismissed as being infructuous.

#### **I.A No. 1987 of 2023**

12.15. This application has been filed by the applicant seeking release of the slag crushing unit set up by the applicant in the factory premises



of the Corporate Debtor in terms of work order dated 16.02.2016.

12.16. The Resolution Professional in its submission as filed with this tribunal on 23.08.2023 states that the said unit in question does not constitute the asset of the CD and the same was also not incorporated in the Information Memorandum dated 30.09.2022. Further the RP submits that the said unit cannot be subject to any transfer or inclusion under the Resolution Plan as proposed by the SRA.

12.17. The RP also submits that the applicant in this application has already identified and demarcated the said unit to establish its unequivocal ownership and control over the said unit.

12.18. In view of the above and approval of the plan we allow the applicant to dismantle and take out its slag crushing unit from the factory premises of the CD forthwith.

Accordingly, IA-1987 of 2023 is allowed.

### **13. Findings**

13.1. On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC with 80.50% of voting share of the members voting in favour of the Resolution Plan. As per the CoC, the Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor.

13.2. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



13.3. The SRA has prayed for certain reliefs, waivers and concessions as enumerated under Chapter-XIV of the Resolution Plan. Thus, it is ordered that the reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law.

13.4. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities required under any law is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code or within such period as provided for in such law, whichever is later.

13.5. In case of non-compliance of this order or withdrawal of Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the Performance Bank Security/Guarantee amount already paid by the Resolution Applicant.

#### 14. **Orders**

14.1. Subject to the observations made in this Order, the Resolution Plan of **₹256,00,00,000/-** (Rupees Two Hundred Fifty-Six Crores Only) is hereby **approved**. We further direct the RP to include in the Resolution Plan full amount of provident fund till the date of commencement of insolvency. The said amount payable to Workers/Employees be paid after changing the inter-se distribution amongst the creditors by the RP. By this we only confirm what has been approved by the CoC. **The Resolution Plan shall form part of this Order.**

14.2. The Resolution Plan is binding on the Corporate Debtor and other



stakeholders involved so that the revival of the Debtor Company shall come into force with immediate effect.

- 14.3. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 14.4. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. The RP will also ensure compliance of para 6.3 in respect of payment of regulatory fee of 0.25% of plan value to the IBBI.
- 14.5. Accordingly, **IA(IB) No.476 (PB)/2023** filed for seeking approval of resolution plan is allowed.
- 14.6. The liberty is hereby granted for moving any appropriate application, if required in connection with the implementation of this Resolution Plan.
- 14.7. A Certified copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.
- 14.8. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- 14.9. The Resolution Professional is further directed to hand over all the records, premises/factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting of the operation.



14.10. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

14.11. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

14.12. **To summarise:**

- a. IA-476/2023 filed for seeking approval of resolution plan is **allowed**.
- b. IA-3413/2023 which is an objection to the Resolution Plan is disposed of.
- c. IA-427/2023 and IA-2048/2023 are disposed of in above terms.
- d. IA-1987/2023 is allowed.

14.13. File be consigned to records.

-sd-

**RAMALINGAM SUDHAKAR**  
**PRESIDENT**

-sd-

**AVINASH K. SRIVASATVA**  
**MEMBER (TECHNICAL)**