

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- I

IA No. 3801 of 2023

IN

CP (IB) No. 3568/MB /2019

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”) for seeking approval of the resolution plan under the provisions of Section 31(1) of the code.

In the Application of

Mr. Dharti Kishorbhai Shah,

Resolution Professional of “Jailaxmi Sugar Products (Nitali) Pvt. Ltd.

...Applicant/Resolution Professional

IN IA NO.3801 of 2023

In the matter of

Punjab National Bank

Vs.

M/s. Jailaxmi Sugar Products (Nitali) Pvt. Ltd.

Applicant/Corporate Debtor

Order Delivered on :- 06.12.2023

Coram:

Sh. Prabhat Kumar (Justice) VirendraSingh G. Bisht
Hon'ble Member (Technical) Hon'ble Member (Judicial)

Appearances:

For the Resolution Applicant: Geeta Lundwani and Amey
Handwale Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The present application is moved by Resolution Professional **Mr DhartitKishorbhai Shah** (hereinafter called as “the Applicant”) under section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“Code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the resolution plan of **Jai Laxmi Sugar Products (Nitali) Pvt. Ltd.** (hereafter called as the “**Successful Resolution Applicant/SRA**”) under the provisions of Section 31(1) of the code, for the Corporate Debtor **Jai Laxmi Sugar Products (Nitali) Pvt. Ltd** (hereinafter called as the “**Corporate Debtor**”) and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.
2. The CIRP was initiated against the corporate debtor vide Order dated 06.11.2019 and the Applicant herein was appointed as the IRP. The Interim Resolution Professional (hereinafter referred to as the IRP) made a public announcement inviting Expression of in Form G in the English Newspaper on 15.11.2019, it was further Published in (Marathi), on

13.12.2019. The IRP constituted the Committee of Creditors (hereinafter referred to as the CoC) on 28.11.2019. Subsequently, the First CoC meeting took place on 11.12.2019 wherein the IRP was appointed as the Resolution Professional and the decision to conduct forensic audit as permissible in code was approved unanimously.

3. The Applicant states that in the 2nd CoC meeting dated 10.01.2020, discussions took place and the CoC approved minimum eligibility criteria, Request for Resolution Plan (“*RFRP*”), and Form G for inviting Expression of Interest (“*EOI*”) from the Prospective Resolution Applicants as per Section 25 (2) (h) of the Code. Accordingly, on 21.01.2020 the applicant published a Public announcement inviting EOI in Form G in two newspapers namely Indian Express (Mumbai & pune edition) and Loksatta (Mumbai & pune edition) and in Pudhari (Solapur edition).
4. Pursuant to Form – G dated 21.01.2020, the Applicant received an expression of interest from three Prospective Resolution Applicants. However, all the three EOIs fell short of the eligibility criteria and were rejected. Accordingly, fresh Form G was published for 2nd time on 21.03.2020. However, due to Covid-19 pandemic, the process of inviting EOI from Resolution Applicants couldn’t be completed. Thus, another Form G was published on 17.10.2020 to re-invite EOI’s. In response to the same, one EOI from M/s Sheelaatul Sugar tech Private Limited was received. Thereafter M/s Sheelaatul Sugar tech Private Limited submitted its plan which was put to vote before COC members. However, before the voting could be concluded, the CIRP admission order was challenged before Hon’ble NCLAT by Suspended management and NCLAT vide an order dated 2nd March 2021 set aside

the admission order. The said NCLAT order dated 2nd March 2021 was challenged before Hon'ble Supreme Court by Punjab National Bank (Financial creditor) vide Civil Appeal 2277 of 2021. The Hon'ble Supreme court vide its order dated 30thAug 2022 set aside the NCLAT order. Consequently, the CIRP of Corporate Debtor came to be restored.

5. The applicant states that the COC in its 13th, 14th and 15th CoC meetings, the COC deliberated on the feasibility and viability of each plan and evaluated the plans as per the evaluation matrix, considered the manner of distribution proposed by Prospective Resolution Applicants and other requirements of Code & CIRP regulations.
6. The applicant has received Seven EOIs from the interested Parties out of which two EOIS have not been accepted and five EOIS was provisionally accepted. After considering the merits and demerits of the available options the applicant in the 16th COC meeting held on 27.04.2023, put the Resolution Plans received from M/s Unniisons Sugars Private Limited, Sanjay Ramchandra Dubey, & Ajay Udrave Halkare (Jointly), M/s Twenty-One Sugars Limited and 'Mr Anand Birdichand Balai' for e-voting. The CoC members requested the applicant to grant some time as the approval/verification of the Resolution Plans was pending from their higher authorities. Hence, on request, the voting lines were finally closed on 01.07.2023. The CoC with 96.86% voting rights approved the revised Resolution Plan along with an addendum submitted by 'Mr. Anand Birdi chand Balai'.
7. The finalized list of members of CoC with their respective voting shares as on the date of filing the present application as detailed below:

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Sr no.	Financial Creditors	Voting share %
1.	PUNJAB NATIONAL BANK	69.95%
2.	UNION BANK OF INDIA	30.05%
	Total	100.00%

8. The finalized list of members of the CoC showing the amount of their claim admitted along with their respective voting shares is enumerated below:

Particulars	Amount of Claim Admitted (Amount in Rs.)	Percentage of their voting share
Punjab National Bank	1,29,76,86,861.57	67.76%
Union Bank of India	55,73,95,062.20	29.10%
Sheelatul Sugars Tech Pvt Ltd	6,00,55,935.80	3.14%
Total	1,91,51,37,859.57	100.00%

9. An extension of 90 days i.e. upto 07.03.2021 was allowed by this Tribunal vide order dated 07.12.2020 passed in IA 1477/2020, and further period

of 191 days on account of lockdown due to COVID-19 was excluded in terms of Order dated 7.12.2020 passed in IA 1804/2020. The COC in the 10th Coc meeting dated 19.10.22 unanimously resolved to seek an extension of the CIRP by further period 90 days, and an application bearing no IA 3610/2022 was filed on 25.11.2022 before this Tribunal, and the same is pending adjudication as on date. The applicant further filed another application bearing IA no. 1049/2023 on 15.03.2023 seeking an extension of CIRP by further 90 days, and the same is also pending adjudication as on date. The Application IA 4562/2023 was filed by the Resolution Professional in the Corporate Insolvency Resolution Process ("CIRP") under Section 12(2) of the Code to seek extension in the CIRP period by further 103 days. All these three applications i.e. IA 3610/2022, IA 1049/2023 & IA 4562/2023 were allowed vide Order dated 21.11.2023.

10. The applicant relies upon the judgement in the matter between Ritu Rastogi RP of Benlon India Ltd Vs Riyal Packers [2020] wherein, the Hon'ble NCLAT held '*that this is a fit case for exercising the jurisdiction by this Appellate Tribunal being an exceptional case to depart from the general rule of 330 days being outer limit prescribed under the law for completion of the CIRP inclusive of period of judicial intervention. We are also of the considered opinion that failure to exercise discretion in a matter of this nature would have serious implications imperilling the legitimate interests of all stakeholders and inevitable conclusion would be to push the Corporate Debtor into liquidation which has to be avoided at all costs.*'
11. The applicant also relies upon the judgement in the matter between Mr. Ravi Shankar Deverakonda Vs Committee of Creditors of Meenakshi Energy Limited (2021) wherein Hon'ble NCLAT held that *the exercise of power by the Adjudicating Authority to extend the time period under section 12(3) of the Code in negation of statutory provision of the Code may be desirable in an exceptional/extraordinary Circumstances of a given case by exercising sound*

Judicial discretion with a view to find a suitable Resolution Plan to prevent an aberration of justice.'

12. The applicant submits that the instant case is a fit one for exercise of power under Rule 11 of the 'NCLT Rules' in terms of the law enunciated by the Hon'ble Apex Court in 'Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors. (Civil Appeal No. 876667/2019). Paragraph 79 thereof relied upon in support of the submission, which reads as follows:

'However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation.'

13. The average Fair value of corporate debtor is Rs. 36.61 Crores and Average Liquidation value is determined at Rs.25.77 Crores.

Summary of the Valuation Report is reiterated below:

		Book Value As On 03-08-2021 (Rs.)	Average Fair Value (Rs.) in Crores	Average Liquidation Value (Rs.) in Crores
Land and Buildings				
1	Land		8.60	6.23
2	Building		5.33	3.29
	TOTAL		13.93	9.52
Plant & Machinery			21.90	15.47
Financial Assets			0.78	0.78
GRAND TOTAL			36.61	25.77

14. The Resolution Applicant has furnished Bank Guarantee of Rs.1,62,32,250 towards performance security in compliance of RFRP and Regulation 36B (4A) of CIRP Regulation.

15. The Resolution Applicant shall infuse 25% to the tune of Rs. 8.1661 Crore out of the total payable amount of through his own sources and the remaining funds of 75% to the tune of 24.4984 cr shall be sourced through the Financial Institution. The Resolution Applicant has furnished sanction letter of Rs. 35 Crores.

16. **FINANCIAL ASPECTS OF THE RESOLUTION PLAN**

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Sr. No.	Category of Creditors	The amount provided in the plan (Amount in Lakhs)	Timelines	Reference
1.	Insolvency Resolution Process Cost	77.90 or actuals whichever is higher	Within X+30 days	Part C, clause 3.2, of Resolution Plan - pg 598 of IA
2.	Operational creditor (other than Government dues)	18.19	Within X + 90 days in proportionate to the outstanding amount	Part C, clause 3.7 of Resolution Plan - pg 605 of IA
3.	Farmers Dues	2,27.52	Within X + 90 days	Part C, clause 3.6 of Resolution Plan - pg 605 of IA
4.	Workmen and Employees	1.14	Within X + 90 days	Part C, clause 3.4 of Resolution Plan- pg 600 of IA
5.	Secured Financial Creditors	29,00	Within X + 90 days	Part C, clause 3.4 of Resolution Plan- pg 608, 609 of IA
6.	Unsecured Financial creditors	6.2	Within X + 90 days	Part C, clause 3.9 of Resolution Plan- pg 610 of IA
7.	Government Dues	2.05	Within X + 90 days	Part C, clause 3.5 of Resolution Plan- pg 602 of IA
8.	Unsecured Financial creditors related parties	33.45	Within X + 90 days	Part C, clause 3.9 of Resolution Plan- pg 610 of IA
9.	Total	32,66.45		

17. Approvals Required for the Plan:

- i) **NCLT:** The Resolution Plan of the Resolution Applicant shall be required to be approved by the NCLT under Section 31 of the IBC.
- ii) **Companies Act:** Explanation to Section 30 (2) of the Code read with MCA circular dated October 25, 2017 bearing No.IBC/01/2017 (Modification) provides that there is no requirement of obtaining approval of shareholder/members of a company under insolvency, for a particular action, required in resolution plan, which would have been required under the Companies Act or any other law and such an approval is deemed to have been given once the resolution plan has been approved by the NCLT. Accordingly, no shareholder's approval under Companies Act is required to be obtained by the Corporate Debtor for issue of Equity Shares to the Resolution Applicant and the procedure for issuance of shares as set out in Section 62 of Companies Act read with Rule 13 of Share Capital and Debenture Rules, 2014 shall be followed only to the extent relevant and required in light of Explanation to Section 30(2) of the Code read with MCA Notification.
- iii) **Re-organization of Corporate Debtor's capital:** The Resolution Plan provides for a transfer of entire share capital held by the Promoters group and institutional shareholders of Corporate Debtor to the RA and its associates. In future if there are any claims from earlier shareholders in the name of Corporate Debtor, the same shall stand null and void.
- iv) **SEBI Approvals** – Waiver of SEBI permission, if any

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

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

18. *Monitoring and Supervision*

- i) In order to ensure that the Resolution Plan is implemented in accordance here of and that the obligations undertaken herein are adhered to in letter and spirit, an appropriate monitoring agency/entity shall be appointed.
- ii) The Committee of Creditors shall constitute the monitoring agency, which may comprise of professionally qualified person / persons as may be decided.
- iii) The monitoring agency/entity, so appointed, shall have interalia the following responsibilities:
 - a. To supervise the implementation of the Resolution Plan and ensure that the Resolution Plan is implemented as approved without any deviations;
 - b. To ensure timely disbursement of funds to the financial and operational creditors, as per the payment terms set out above;
 - c. To ensure that approvals, to the extent required for implementation of the Resolution Plan, are applied for and obtained in a timely manner.
 - d. To bring to the notice of NCLT, any deviations/violations, of the Resolution Plan, by any person;

- e. To provide regular updates to the NCLT, as and when required;
 - f. Support the RA in Control and management of Corporate Debtor from NCLT Approval Date till the date of payment of Second Tranche within 60 days.
 - g. To assist RA in case of any hurdle is raised by any operational creditor, govt/semi govt department or any other creditor which is waived by NCLT as per the resolution plan.
19. In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant and confirms that this Resolution Plan:
- a) provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the corporate debtor;
 - b) Provides for payment of debts of operational creditor in such manner as may be specified by the board which shall not be less than:
 - (i) The amount to be paid to such creditors in the event of liquidation of the corporate debtor under Section 53; or
 - (ii) The amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distribute in accordance with sub-section (1) of Section 53 in the event of liquidation of the corporate debtor.

- c) Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;
- d) The implementation and supervision of Resolution Plan;
- e) Does not prima facie contravene any of the provisions of the law for time being in force,
- f) Confirms to such other requirements as may be specified by the Board.
- g) As per the Affidavit received from each of the three members of the consortium and the further documents submitted, the Resolution Applicants are not covered under 29A.

20. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that:

- (i) The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.
- (ii) It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD.
- (iii) A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have

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contributed to the failure of implementation of any other Resolution Plan approved by the AA in the past.

(iv) The terms of the plan and its implementation schedule.

(v) The management and control of the business of the CD during its term.

(vi) Adequate means of Supervising its implementation.

(vii) The Resolution Plan Demonstrate that it addresses:

i. The cause of the Default;

ii. It is feasible and viable;

iii. Provision for effective implementation;

iv. Provisions for approvals required and the time lines for the same;

v. Capability to Implement the Resolution Plan.

21. The Resolution Professional has annexed Form H of the Application under Regulation 39(4) In FORM H of the CIRP Regulations to certify that the resolution plan as approved by the CoC meets all the requirements of the IBC and its Regulations. The relevant extracts thereof are reproduced here as under :

a. The details of the CIRP are as under:

Sr. No.	Particulars	Description
1	Name of the CD	JAILAXMI SUGAR PRODUCTS (NITALI) PRIVATE LIMITED
2	Date of Initiation of CIRP	06.11.2019 (Order received 13.11.2019)
3	Date of Appointment of IRP	06.11.2019 (Order received 13.11.2019)
4	Date of Publication of Public Announcement	14.11.2019

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5	Date of Constitution of CoC	28.11.2019
6	Date of First Meeting of CoC	05.12.2019
7	Date of Appointment of RP	11.12.2019
8	Date of Appointment of Registered Valuers	30.12.2019, 16.03.2020, 3.02.2021
9	Date of Issue of Invitation for EoI	21.01.2020, 21.03.2020 ,17.10.2020, 22.11.2022
10	Date of Final List of Eligible Prospective Resolution Applicants	19.12.2022
11	Date of Invitation of Resolution Plan	12.12.2022
12	Last Date of Submission of Resolution Plan	17.01.2023
13	Date of Approval of Resolution Plan by CoC	01.07.2023
14	Date of Filing of Resolution Plan with Adjudicating Authority	To be filed
15	Date of Expiry of 180 days of CIRP	03.05.2020
16	Date of Order extending the period of CIRP	07.12.2020
17	Date of Expiry of Extended Period of CIRP	06.09.2022
18	Fair Value	36.61
19	Liquidation value	25.77
20	Number of Meetings of CoC held	18

- a. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in:

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Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed (Amount in Lakh)	Amount Admitted/ Amount out -standing in the books of accounts.	CP (IB) No. 3568/MB/2019 Amount Provided under the Plan	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:	18550.81	18550.81	2900	15.63

b. The amounts provided for the stakeholders under the Resolution Plan is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	Punjab National Bank, ARMB Branch, Pune	67.76	Assented
2.	Union Bank of India, Asset Recovery Branch(ARB), Pune	29.10	Assented
3.	M/s Sheelaatul Sugar Tech Private Limited	3.14	Abstained/Not Voted

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	i.who did not vote in favour of the resolution Plan	-	-	-	-
	ii.who voted in favour of the resolution plan	18550.81	18550.81	2900	15.63
	Total[(a) + (b)]	18550.81	18550.81	2900	15.63
2.Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	1982.71	600.55	6.2	1
	(b) Other than (a) above:	NIL	3345.33	33.45	1
	i. who did not vote in favour of the resolution Plan	1982.71	619.53	6.2	1
	ii. who voted in favour of the resolution plan	-	-	-	-
	Total[(a) + (b)]	1982.71	3964.86	39.65	1
3.Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
	(b) Other than (a) above:	NIL	2119.44	21.38	1

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		i)Government	NIL	205.16	2.05	1
		(ii)Workmen		94.84	1.14	1.08
		iii.Employees	NIL		Nil	
		iv.Suppliers.....	NIL			
		v.		1819.44	18.19	1
		Total[(a) + (b)]		2119.44	21.38	1
4	Other debts and dues	Farmers Due	NIL	227.52	227.52	100
Grand Total			20533.52	24862.63	3188.56	

*If there are sub-categories in a category, please add rows for each sub-category. # Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

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

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	2,00,00,000	0	100	0
2	Preference	0	0	0	0
3					

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4. 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?	Page no.56	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?	(As per Para 3.1.1)	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	(As per Para 3.8.6)	Yes
¹⁵³ [Section 30(2)]	Whether the Resolution Plan- a. provides for the payment of insolvency resolution process costs? b. provides for the payment to the operational creditors? c. provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Section 30(2)(a) of the code (As per Para 3.2.3) (As per Para 3.8.6) -	Yes Yes NA

	d. provides for the management of the affairs of the corporate debtor?	(As per Para 6) Page no.33	Yes
	e. provides for the implementation and supervision of the resolution plan?	As per Para 4.3)	Yes
	f. contravenes any of the provisions of the law for the time being in force?]	Page no.30	No

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		-	
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?	As per Para 4.7) Page no.31 -	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	As per Para 4) Page no.30	Yes
¹⁵⁴ [***]		-	
¹⁵⁵ [Regulation 38 (1)]	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	(As per Para 3.7.2) Page no.20	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	(As per Para 3.3) Page no.14	Yes
¹⁵⁶ [Regulation 38(1B)]	i. Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of ii. implementation of any resolution plan approved under the Code. iii. If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	(As per Para 3.8.6) Page no.24 (As per Para 3.7)	No Not Applicable

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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?	(As per Para 6)	Yes Yes Yes
38(3)	Whether the resolution plan demonstrates that – a. it addresses the cause of default? b. it is feasible and viable? c. it has provisions for its effective implementation? d. it has provisions for approvals required and the timeline for the same? e. the resolution applicant has the capability to implement the resolution plan?	(As per Para 8.22)	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Undertaking, Page 65	Yes
¹⁵⁷ [Regulation 39(4)]	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Para 5 , Page 32	Yes

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

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	6.11.2019
Regulation 6(1)	Publication of Public Announcement	T+3	14.11.2019

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Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	27.11.2019
Regulation 13(1)	Verification of Claims	T+21	27.11.2019
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	Not Applicable
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	28.11.2019
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	05.12.2019
Regulation 35A	Determination of fraudulent and other transactions	T+115	24.09.2020
Regulation 27	Appointment of two Registered Valuers	T+47	30.12.2019, 16.03.2020, 3.02.2021
[¹⁵⁸ Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54	04.03.2023 12.12.2022
Regulation 36A	Invitation of EoI	T+75	21.01.2020, 21.03.2020, 17.10.2020, 22.11.2022
	Publication of Form G	T+75	21.01.2020, 21.03.2020, 17.10.2020, 22.11.2022
	Provisional List of Resolution Applicants	T+100	09.12.2022
	Final List of Resolution Applicants	T+115	19.12.2022
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and	T+105	12.12.2022

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	Information Memorandum to Resolution Applicants		
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	To be submitted
Section 31(1)	Approval of Resolution Plan	T=180	NCLT has not yet approved

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

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
There are no such transactions that require obtaining necessary approvals from the central and state governments and other authorities.				

- h. The Resolution Plan is not subject to any contingency.
- i. There are no deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):
- j. The Resolution Plan is being filed **578** days before the expiry of the period of CIRP provided in section 12 of the Code.
- k. Provide details of section 66 or avoidance application filed / pending.

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IA No. 3801 of 2023

IN

CP (IB) No. 3568/MB /2019

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	15.12.2022	06.11.2019	Order not yet awarded.
2	Undervalued transactions under section 45	Not applicable	Not applicable	Not applicable
3	Extortionate credit transactions under section 50	Not applicable	Not applicable	Not applicable
4	Fraudulent transactions under section 66	Not applicable	Not applicable	Not applicable

1. The committee has approved a plan providing for contribution under regulation 39B as under:
 - a. Estimated liquidation cost:Rs. 1.11 Crores/-
 - b. Estimated liquid assets available:NIL
 - c. Contributions required to be made:Rs 1.11 Crores/-
 - d. Financial creditor wise contribution is as under
: Rs.

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1	Punjab National Bank (69.95 %)	78,22,508.5
2	Union Bank of India (30.05 %)	33,60,491.5
Total		1,11,83,000

- m. The committee has recommended under Regulation 39C as under:
- a. Sale of corporate debtor as a going concern: Yes
 - b. Sale of business of corporate debtor as a going concern: Yes

The details of recommendation are available with the resolution professional.

- n. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D.]: Yes as per the table given in Regulation 4 (2) (b) of the Liquidation Regulations, 2016 plus out of pocket expense plus applicable taxes.

22. Hence, the Interlocutory Application is not maintainable at that stage and thus, the same was dismissed and disposed of, vide order Dated.12.09.2023.

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

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
- c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
- d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

24. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.
25. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the CoC in the 16th meeting held on 27.04.2023, approved the Revised Resolution Plan dated 29.03.2023 along with addendum dated 25.04.2023 submitted by Mr. Anand Birdichand Balai with 96.86% voting share.
26. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No. 10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Tribunal observed the role of the NCLT is 'no more and no less'. The Hon'ble Tribunal further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when

the Resolution Plan does not conform to the stated requirements.

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

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

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

29. The **Application IA No. 3801 of 2023 in CP (IB) 3568 of 2019 is allowed.** The Resolution Plan annexed to the

Application is hereby **approved**. It shall become effective from this date and shall form part of this order.

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

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status of its implementation before this Authority from time to time, preferably every quarter.

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

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE V. G. BISHT
MEMBER (JUDICIAL)**