

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

IA 3960 of 2019

**In
CP (IB) 2298/MB/C-I/2018**

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

In the Application of

Mr. Shantanu T Ray,

**Resolution Professional of “Shree Vaishnav Casting
Private Limited”**

...Applicant/Resolution Professional

In the matter of

Kay Bee Foundary Services Private Limited

...Petitioner

Versus

Shree Vaishnav Casting Private Limited

...Corporate Debtor

Order Delivered on : 31.07.2023

Coram:

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

Hon’ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Applicant : Mr. Rohit Gupta, Advocate.

For the Resolution Applicant : Mr. Ashish S. Kamat, Sr. Advocate.

ORDER

Per: Anu Jagmohan Singh, Member (Technical)

1. The present application is moved by Resolution Professional **Mr. Shantanu T Ray** (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 C. M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs. Damyanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt. Ltd.) which was approved by CoC with majority voting of 96.97% under the provisions of Section 31(1) of the code, for the Corporate Debtor **Shree Vaishnav Casting Private Limited** (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 11.03.2019 and Mr. Bharat Ramakant Upadhyay was appointed as the Interim Resolution Professional (hereinafter referred to as the IRP). In the First meeting of CoC dated 10.04.2019, the CoC replaced the IRP and proposed to appoint Mr. Santanu T. Ray as Resolution Professional, his appointment was approved by this Tribunal vide order dated 10.05.2019.

3. That on 28.05.2019 the Resolution Professional published Form G inviting prospective Resolution Applicants to submit their Expression of interest in the Business Standard (English), all India edition and Deshdoot (Marathi) Nashik Edition. Pursuant to the publication of Form G, Resolution Professional received Expression of Interest from four resolution Applicants who were declared eligible.
4. Thereafter, in the 4th CoC meeting, at the request of Resolution Applicants the last date for submission of Resolution Plan was extended from 24.07.2019 to 14.08.2019.
5. That in the 5th COC meeting the last date for submission of Resolution Plan was further extended from 14/08/2019 to 05/09/2019. However, 180 days of statutory duration of CIRP was expiring on 07/09/2019, the members of COC passed a resolution for an extension of the CIRP period for 90 days beyond 180 days in order to evaluate the Resolution Plans received from the four Resolution Applicants identified by the RP and also to conduct open bidding process in order to maximize the value of the corporate debtor. This Hon'ble Tribunal was pleased to pass an order dated 03/09/2019 extending the CIRP period further by 90 days.

The office of the Resolution Professional received the Resolution Plans from the following Resolution Applicants:

- I. Madhuban Trade Steels Private Limited
 - II. Mohan Fabtex Limited and Starteck Finance Limited
(Jointly)
 - III. C.M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs. Damayanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt Ltd.)
6. Each of the aforementioned Resolution Applicant briefly presented their plans to before the COC in its 6th Meeting as per the eligibility criteria as have been determined by the members of COC and the Financial Bid were opened in presence of each Resolution Applicant respectively and the members of COC. Madhuban Trade - Steels Private Limited had requested for a waiver of the performance security. As it was a conditional Resolution Plan and requesting to waive the performance security is mere non-compliance to the provisions of the Code, therefore the Resolution Plan submitted by Madhuban Trade - Steels Private Limited was rejected.
7. In the 7th COC Meeting, the members of COC requested both the Resolution Applicants to submit a modified, revised financial offer as the offer at hand was not acceptable to the members of the COC.
8. In the 9th COC meeting, both the Resolution Applicants namely - Mohan Fabtex Limited and Starteck Finance Limited (Jointly) and C.M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs.

Damayanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt Ltd.) submitted their revised financial offer in a sealed envelope and same was opened by the RP before the members of the COC. An open bidding process was conducted between both the Resolution Applicants and C.M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs. Damayanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt Ltd.) was declared as H1 bidder. The bid offer of the CM Shah Consortium (RA) was closed at Rs. 44.10 Crores.

9. However, as the members of the COC did not find the financial offer satisfactory, the members of COC further negotiated with the RA and requested them to further increase the bid offer. Thereafter the RA had revised the financial amount from 44.10 crores to 45 crores. With further negotiation by the members of COC, the RA has revised their financial offer on 19/11/2019 received at Rs. 45.60 crores. Thereafter, the Resolution Applicant submitted their Resolution Plan to the Resolution Professional via email on 27/11/2019, 29/11/2019 and 02/12/2019. The Resolution Professional had made necessary observations which required modifications. The necessary modifications to the Resolution Plan were made by the Resolution Applicant and thereafter the same was submitted by the Resolution Applicant on 04/12/2019. On the same

day the adjourned 12th COC Meeting was conducted where the Resolution Professional informed that the final bid offer of Rs. 45.60 crores made by the Resolution Applicant is less than the average Liquidation value which was determined based upon the valuation reports submitted by the registered valuers. However, since the revival of business is the prime objective of the Code and the members of COC are looking forward for a resolution as taking the corporate debtor into liquidation will diminish the value of assets as well as the NPV as liquidation process is likely consume more than a year. Also, keeping in view the objective of IBC 2016, which is to revive such companies and generate employment for the local population, the members of COC approved the Resolution Plan submitted by C.M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs. Damayanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt Ltd.) with 96.97% majority voting share.

10. The salient Features of the Resolution plan as follows:

A. Re-organisation of Share Capital of Shree Vaishnav Casting Private Limited:

The Resolution Plan provides for the cancellation of entire share capital of Shree Vaishnav Casting Private Limited held by all the shareholders of the company.

B. Cost of CIRP:

The Resolution Plan provides for Corporate Insolvency Resolution Process ("CIRP") cost to be paid in full in priority to the other creditors as per section 30(2)(b) of Code. Upon the Hon'ble NCLT Order approving Resolution Plan the Resolution Applicant proposes to pay CIRP cost duly certified by COC within 30 days of the Order.

C. Proposed Allocation of offered Amount on the basis of order of Priority as per Section 53 of IBC, 2016 [in lakhs]:

Sr. No.	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan
1.	Financial Creditors	26684.72	26684.72	4541.94
2.	Operational Creditors	360.95	360.95	3.61
	Government	-	-	13.45
	Workmen & Employees	-	-	1.00
3.	Other Debts and Dues	NIL	NIL	NIL
Total				4560.00

D. Payment to Financial Creditors:

Sr. No.	Name of the Lenders	Types of facility	Amount Claimed & Admitted	Amount to be paid as per Resolution Plan
1.	State Bank of India	CC & TL Facility	2,29,67,41,628	39,09,22,557

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2.	Omkara Assets Reconstruction Pvt. Ltd.	Debt assigned by Andra Bank vide assignment agreement dt. 23.07.18	17,73,79,928	3,01,91,387
3.	Srichand K. Wadhvani HUF	Demand Bill of Exchange dt. 13.04.2011, 14.08.2012, 19.12.2016.	75,39,161	12,83,221
4.	Peggy Tumble	Loan	7,35,00,000	1,25,10,248
5.	Asset Reconstruction Company (India) Limited	Debt assigned by Deewan Housing Finance Corporation (DHFL) vide assignment agreement dt. 20.01.2018	11,33,12,226	1,92,86,586
Total				45,41,94,00045.42

E. Payment to Operational Creditors:

Sr. No.	Name of the Claimant	Amount Claimed in Rs.	Amount Admitted in Rs.	Amount to be paid under RP in Rs.
1.	Kaybee Foundary Services Pvt. Ltd.	29,65,118	29,65,118	29,700
2.	Jajoo EXIM Private Limited	9,02,900	9,02,900	9,000
3.	S K Mehra Constructions	44,78,905	4,78,905	44,800

4.	Madhuban Trade Steels Private Limited	2,00,00,096	2,00,00,096	2,00,000
5.	Hare Krishna Metallica Private Limited	77,48,430	77,48,430	77,500
Total		3,60,95,449	3,60,65,449	3,61,000

F. Payment to Employees/Workers:

The IRP / RP during the CIRP had not received any claim from employees/ workers, however with reference to the Information Memorandum provided, the dues of three employees for two months had been outstanding, therefore the Resolution Applicant proposes to make full payment of Rs. 100,000/- to the employees within one month of the approval.

G. Payment towards Statutory Dues:

The Resolution Plan provides for setting aside a sum of Rs. 13.45 lakhs in a fixed deposit of 12 months for amounts if any found payable to Labour Welfare Fund upto Rs.28,260/- and Provident Fund up to Rs.13,17,111/- both aggregating to Rs.13.45 lakhs as per the Audited Balance Sheet as on 31st March 2018 and to be utilized if the claims are admitted by CoC. The amount if any remaining undistributed shall be utilized for payment of other statutory liabilities if any.

H. Payment Mechanism under the Resolution Plan:

The sum of Rs.45.60Crores shall be paid as under:

Particulars	Rs. Crores
Earnest Money Deposit (EMD) on Expression of Interest	0.05
Earnest Money Deposit (EMD) on Submission of the Detailed Resolution Plan	2.50
Performance Security on approval of Resolution Plan by CoC and receipt of LOI	20.00
Payment within 30 days of approval by NCLT	15.45
Payment at the end of 1 year for which Corporate Guarantee or Zero % NCD or Bond shall be provided to the satisfaction of CoC	4.00
Payment at the end of 2 year for which Corporate Guarantee or Zero % NCD or Bond shall be provided to the satisfaction of CoC	3.60
Total	45.60

I. Schedule of Payment:

Payment	Duration from approval of Resolution Plan
CIRP cost as approved by CoC	1 Month
Settlement of Worker's and Payment of their dues	1 Month
Dues of Operational Creditor	1 Month
Upfront payment to secured and unsecured financial creditor	1 Month or simultaneously with RP handing over control and management of corporate debtor to RA whichever is later
Deferred Payment	
- At the end of One Year Rs.4 Crores	12 Months
- At the end of Two Year Rs.3.60 Crores	24 Months

Section 30(2) of the Code

11. In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant C.M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs. Damayanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt Ltd.) 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) Conforms to such other requirements as may be specified by the Board.
 - g) As per the Affidavit received and the further documents submitted, the Resolution applicants are not covered under 29A.
12. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that
- a) The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.
 - b) It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD.
 - c) A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have contributed to the failure of implementation of any other Resolution Plan approved by the AA in the past.
 - d) The terms of the plan and its implementation schedule.
 - e) The management and control of the business of the CD during its term.
 - f) Adequate means of Supervising its implementation.
 - g) The Resolution Plan Demonstrate that it addresses

- i. It is feasible and viable
 - ii. Provision for effective implementation
 - iii. Provisions for approvals required and the time lines for the same.
 - iv. Capability to Implement the Resolution Plan
13. The Resolution Professional has annexed a certificate at Page 457-572 of the Application under Regulation 39(4) In FORM H of the CIRP Regulations to certify that the resolution plan as approved by the CoC meets all the requirements of the IBC and its Regulations.

**FORM H
COMPLIANCE CERTIFICATE**

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

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

I, **SANTANU T RAY**, insolvency professional enrolled with ICSI Institute of Insolvency Professionals and registered with the Board with registration number **IBBI/IPA-002/IPN00360/2017-18/11055**, the resolution professional for the corporate insolvency resolution process (CIRP) of **SHREE VAISHNAV CASTING PRIVATE LIMITED**.

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	SHREE VAISHNAV CASTING PRIVATE LIMITED

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2	Date of Initiation of CIRP	11.03.2019
3	Date of Appointment of IRP	11.03.2019
4	Date of Publication of Public Announcement	13.03.2019
5	Date of Constitution of CoC	01.04.2019
6	Date of First Meeting of CoC	10.04.2019
7	Date of Appointment of RP	10.05.2019
8	Date of Appointment of Registered Valuers	15.05.2019
9	Date of Issue of Invitation for EOI	28.05.2019
11	Date of Final List of Eligible Prospective Resolution Applicants	01.07.2019
12	Date of Invitation of Resolution Plan	28.05.2019
13	Last date for submission of resolution plan	24.07.2019 as per Form G which was extended upto 05/09/2019
14	Date of Approval of Resolution Plan by CoC	04.12.2019
15	Date of Filing of Resolution Plan with Adjudicating Authority	06.12.2019
16	Date of Expiry of 180 days of CIRP	07.09.2019
17	Date of Order extending the period of CIRP	03.09.2019
18	Date of Expiry of Extended Period of CIRP	06.12.2019
19	Fair Value	Rs. 76.27 Crore
20	Liquidation value	Rs. 50.19 Crore
21	Number of Meetings of CoC held	12

3. I have examined the Resolution Plan received from Resolution Applicant **“MR. C.M. SHAH CONSORTIUM”** and approved by Committee of Creditors (CoC) of **SHREE VAISHNAV CASTING PRIVATE LIMITED.**

4. I hereby certify that-

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

(ii) the Resolution Applicant **Mr. C.M. Shah Consortium** has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the COC in accordance with the provisions of the Code and the CIRP Regulations made there under. The Resolution Plan has been approved by 96.97% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) I sought vote of members of the CoC by physical / electronic voting system which was kept open more than 24 hours as per the regulation 26.

5. The list of financial creditors of the CD, Shree Vaishnav Casting Limited, being members of the COC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	State Bank of India	86.07%	Voted For
2	Omkara Assets Reconstruction Pvt. Ltd.	6.64%	Voted For
3	Srichand K. Wadhvani HUF	0.28%	Abstained

4	Peggy Tumbe	2.75%	Abstained
5	Asset Reconstruction Company (India) Limited	4.24%	Voted For

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

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

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder *	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Claimed (%)
1	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	NIL	NIL	NIL	NIL
		(ii) Who voted in favour of the resolution plan	25874	25874	4404	17.02%
		Total [(a)+(b)]	25874	25874	4404	17.02%

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2	Unsecured 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:				
		(iii) Who did not vote in favour of the resolution plan	810	810	137	16.91%
		Who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		Total [(a)+(b)]	810	810	137	16.91%
3	Operational Creditors	(a) Related party of Corporate Debtor				
		(b) Other than (a) above				
		(i) Government	NIL	NIL	13	
		(ii) Workmen	NIL	NIL	NIL	
		(iii) Employees	NIL	NIL	1	
		(iv) Operational Creditors	360	360	3	0.83%
4	Other Debts and Dues		NIL	NIL	NIL	NIL
Total			27045	27045	4560	34.76%

*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 noncash components. It is not NPV.

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 Shares (Existing Shareholders)	22,77,700	NIL	100	NIL

8. The interests of existing shareholders have been altered by the Resolution plan 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?	Approved in the Bid Evaluation Matrix.	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?	Eligibility Criteria under Section 29A given by Resolution Applicant.	YES
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	The Resolution Applicant had provided an affidavit under Section 29A.	Yes
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment of the debts of operational creditors?	Page No. 45, point no. 4.1 (B) of the Resolution Plan Page No. 45, point no. 4.1 (D) of the	Yes Yes

	<p>(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?</p> <p>(d) provides for the management of the affairs of the Corporate debtor?</p> <p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?</p>	<p>Resolution Plan</p> <p>Page No. 49, point no. 4.1 (E) of the Resolution Plan</p> <p>Page No. 79, Section 7, Point No. 7.1 of the Resolution plan.</p> <p>Page No. 80, Section 7, Point No. 7.1 and Page No. 84 Section 8 of the Resolution Plan.</p> <p>No</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p>
Section 30(4)	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	<p>As per the Profitability Projections in Page No. 43 Point No. 3.7 of the Resolution Plan.</p> <p>Approved with majority voting of 96.97%</p>	<p>Yes</p> <p>Yes</p>
Section 31(1)	<p>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</p>	<p>Page 76, Section 6 of the Resolution Plan</p>	<p>Yes</p>

Regulation 35A	Where the resolution profesional 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?	According to the report submitted by forensic auditor, the RP could not determine any adverse transactions which have been made by the corporate debtor which falls under Section 43, 45, 50 and 66.	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Page No. 47 and 77 of the Resolution Plan	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Page No. 44 - 51 of the Resolution Plan.	YES
Regulation 38 (1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	No No	No No
Regulation 38(2)	(a) Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule?	(a) Page 52; Page 77 of the Resolution	Yes

	<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>Plan</p> <p>(b) Page 79 - 83 of the Resolution Plan</p> <p>(c) Page No. 77 phase III and Page 79 of the Resolution Plan.</p>	<p>Yes</p> <p>Yes</p>
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>Page No. 24 point no. 1.13 of the Resolution Plan.</p> <p>As per the profitability projections as per Page 43, Point 3.7 of the Resolution Plan</p> <p>Page 77, Section 6 of the Resolution Plan Plan.</p> <p>Page 76 of the Resolution Plan</p> <p>Page 43 of the Resolution Plan.</p>	

39(2)	(b) Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No	Not adverse transactions reported
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	The members of COC had approved Rs. 20 crores as performance security to be paid by the successful Resolution Applicant once the Plan is approved by the members of COC and before it is filed with NCLT, Mumbai	Yes

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

The CIRP of Shree Vaishnav Casting Private Limited commenced on 11/03/2019 and 180 days expired on 07/09/2019. The Hon'ble Tribunal was pleased to extend the CIRP process for a period of 90 days to a total of 270 days vide order dated 03/09/2019, thereby the extended date of CIRP to end on 06/12/2019. During the time period of 180 days, the RP had received Expression of Interest from four prospective resolution applicants, 1) Madhuban Trade Steels Private Limited; 2) Omkara Assets Reconstruction Private Limited; 3) Mohan Fabtex Limited and Starteck Finance Limited (Jointly) and 4) C.M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs. Damayanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt Ltd.). Eventhough the last date for submission of Resolution Plan as mentioned in Form G was 24/07/2019, however the last date for submission of Resolution Plan was extended upto 05/09/2019. Thereafter, the Resolution Professional

received Resolution Plans from 1) Madhuban Trade Steels Private Limited; 2) Mohan Fabtex Limited and Starteck Finance Limited (Jointly) and 3) C.M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs. Damayanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt Ltd.). it was observed that the Resolution Plan submitted by Madhuban Trade Steels Private Limited was not compliant to the RFRP and eligibility criteria as approved by the members of COC. Furthermore, as they had submitted a conditional Plan and were not interested in rectifying the same, the Resolution Professional rejected their Plan submitted. Thereafter, Mohan Fabtex Limited and Starteck Finance Limited (Jointly) and C.M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs. Damayanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt Ltd.), being eligible Resolution Applicants were requested to modify their financial offer as the members of COC were not satisfied with the offer made in the Resolution Plan submitted on 05/09/2019. Thereafter, in the 9th COC Meeting held on 16th October, 2019, an open bidding process was conducted between both the eligible Resolution Applicants. After two rounds of bidding, C.M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs. Damayanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt Ltd.) was declared as the H1 Bidder as Mohan Fabtex Limited and Starteck Finance Limited (Jointly) was not interested in further bidding. The COC Member further negotiated with the H1 Bidder and thereafter, the H1 Bidder submitted their revised Resolution Plan to the Resolution Professional on 04/12/2019. Thereafter, on 04/12/2019, the members of COC through physical voting approved the Resolution Plan submitted by C.M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs. Damayanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt Ltd.) with majority voting share of 96.97%. However, since two COC Members were not present in the said voting, the said agenda was put for e-voting and thereafter the Resolution Plan submitted by C.M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs. Damayanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt Ltd.) is approved with majority voting share of 96.97%.

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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	11.03.2019
Regulation 6(1)	Publication of Public Announcement	T+3	13.03.2019
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	25.03.2019
Regulation 13(1)	Verification of Claims	T+21	01.04.2019
Section 26(6A) / Regulation 15A	Application for Appointment of Authorized Representative, if necessary	T+23	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	01.04.2019
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	10.04.2019
Regulation 35A	Determination of fraudulent and other transactions	T+115 (04.07.2019)	09.11.2019
Regulation 27	Appointment of two Registered Valuers	T+47 (27.04.2019)	15.05.2019
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54 (04.05.2019)	26.06.2019
Regulation 36A	Invitation of EoI	T+75 (25.05.2019)	28.05.2019

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH - I
IA 3960 of 2019 In CP (IB) 2298/MB/C-I/2018

	Publication of Form G	T+75 (25.05.2019)	28.05.2019
	Provisional List of Resolution Applicants	T+100 (19.06.2019)	19.06.2019
	Final List of Resolution Applicants	T+115 (04.07.2019)	01.07.2019
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105 (24.06.2019)	24.06.2019
Section 30(6) / Regulation 39(4)	Submission of COC approved Resolution Plan	T+165 (23/08/2019)	05.12.2019
Section 31(1)	Approval of Resolution Plan	T+180 (07/09/2019) CIRP extended to 270 days vide order dated 03/09/2019 T+270 (06/12/2019)	10.01.2020

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

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1	Exemption of statutory liabilities	MVAT, CVAT, Bombay Sales Tax, Central Sales Tax, Service Tax, GST, Income Tax, Central and State Excise,	All Statutory authorities	Immediate

		Customs, Octroi, Professional Tax, Gram Panchayat, Land Revenue, Revenue Laws, FEMA, Import Export Licence		
2	Package Scheme of Incentives and other schemes of relief to continue	State and Central Government Industrial policy and MSME Act	Government of Maharashtra	Within 6 months
3	CBDT exemption	Income Tax Act, 1961	Income Tax Department	Immediate
4	Compliance with Transfer of plots B-3, B-9, B-10 & B-11	MIDC	MIDC	Immediate
5	Usage of power from its adjoining plot of land in MIDC, Palkhed	Electricity Act 2003	MSEB / MSEDCL, MSETCL / Interstate Grid	Immediate
6	Grant consent / renewal/ revalidation and extension of permit for recommencement of operations	Environment Protection Act, 1986	Maharashtra Pollution Control Board and the Environment Clearance Authority	Immediate
7	MCA	MCA	MCA	Immediate
8	ROC	ROC	ROC	Immediate
9	SEBI	SEBI	SEBI	Immediate

12. The Resolution Plan is subject to the following Contingencies:-

The Resolution Plan submitted by C.M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs. Damayanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt Ltd.) does not contain any contingencies.

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued

thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	NOT APPLICABLE	NOT APPLICABLE	NOT APPLICABLE	NOT APPLICABLE

14. The Resolution Plan is being filed on 06.12.2019 before the expiry of the period of CIRP provided in section 12 of the Code.

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

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	NIL	NIL	NIL
2	Undervalued transactions under section 45	NIL	NIL	NIL
3	Extortionate credit transactions under section 50	NIL	NIL	NIL
4	Fraudulent transactions under section 66	NIL	NIL	NIL

(Note: The Forensic Audit Report has been submitted by the Forensic auditor. According to the Report submitted no adverse transaction could be observed, therefore the Resolution plan shall not file any transaction application with Hon'ble NCLT Bench, Mumbai.)

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

- a. Estimated liquidation cost: NA
- b. Estimated liquid assets available: NA
- c. Contributions required to be made: NA
- d. Financial creditor wise contribution is as under: NA

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

- a. Sale of corporate debtor as a going concern: No
- b. Sale of business of corporate debtor as a going concern: No

The details of recommendation are available with the resolution professional.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D.] NA

16. I **Santanu T Ray** hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed there from.

Name of the Resolution Professional : SANTANU T RAY
IP Registration No : IBBI/IPA-002/IP-N00360/2017-18/11055

Address:
301, a Wing, BSEL Tech Park, Opp. Vashi station, Sector 30A, Vashi, Navi
Mumbai-400705.

Email id as registered with the Board: santanutrayer@aaainsolvency.com

Date: 06.12.2019
Place: Mumbai

14. The Resolution Professional has found the Resolution Plan compliant with the requirements of Section 30(2) of the Code read with Regulation 38 of the IBBI (CIRP) Regulations, 2016 and the Resolution Applicant is eligible to submit resolution plan and doesn't fall under any of the category as mentioned in Section 29A as inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018.
15. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
 - a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
16. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.
17. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the CoC in the 12th meeting held on 03.12.2019 with 96.97% (Ninety-Six Point Ninety-Seven Percent).

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

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

"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar

as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar(supra).”

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

ORDER

- i. The Interlocutory Application No. 3960 of 2019 in CP 2298 of 2018 is allowed. The Resolution Plan submitted by C. M. Shah Consortium (Mr. Champshi Manekji Shah, Mrs. Damyanti Champshi Shah, Mr. Atul Champshi Shah and M/s MITC Rolling Mills Pvt. Ltd.), is hereby approved. It shall become effective from this date and shall form part of this order. 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 payment of dues arising under any law for the time being in force is due.
- ii. 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;

(ii) 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.”

- iii. We shall clarify here that any amount recovered under any avoidance applications relating to the Corporate Debtor being allowed by the Adjudicating Authority would ensure unto the benefit of the Financial Creditors.
- 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 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.
- viii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

- ix. The Interlocutory Application No. 3960 of 2019 in CP 2298 of 2018 is accordingly **allowed and disposed of**.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)
31.07.2023
SAM

Sd/-
H. V. SUBBA RAO
Member (Judicial)