

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

I.A. No. 1136 of 2022

IN

C.P. No. 1332 of 2020

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code, 2016.

Mr. Jitendra Palande,

**(Resolution professional of Opal Luxury
Time Products Pvt. Ltd.)**

...Applicant/Resolution Professional

V/s.

Univastu India Ltd.

...Respondent/Resolution Applicant

In the matter of

Supershine Abs Platers Pvt. Ltd.

... Financial Creditor

V/s.

Opal Luxury Time Products Ltd.

... Corporate Debtor

Order Dated : 20.07.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For the Applicant/ Resolution Professional: Mr. Nausher Kohli a/w
Adv. Darshit Dave, Adv. Harshad Vyas i/b AVP Partners

For the Respondent/ Resolution Applicant: Mr. Shyam Kapadia
a/w Adv. Kamini Pansare i/b VRN Legal

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The above captioned Application was filed under Section 30(6) and Section 31, of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) by the Resolution Professional (hereinafter referred as (“**Applicant**”), seeking approval of the Resolution Plan, submitted by the Resolution Applicant - Univastu India Ltd., which was approved unanimously by the members of the Committee of Creditors (hereinafter referred to as ‘**COC**’).
2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated, vide an order dated 03.08.2021, under Section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as ‘**the Code**’) and Mr. Vithal M. Dahake, was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors. The COC in its 2nd meeting held on 18.09.2021 resolved to replace the IRP and appointed the present Applicant, as the Resolution Professional (**RP**), of the Corporate Debtor. The same was confirmed by this Tribunal vide order dated 28.10.2021, passed in I.A. No. 2195(MB)/2021. The IRP published a public announcement as per Section 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
 - b. The Applicant made a Public Announcement dated 11.08.2021, in Form A in terms of Section 15 of the Code, read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

(“**IBBI Regulations, 2016**”) inviting claims against the Corporate Debtor from the creditors.

c. The claims **received** and **admitted** by Interim Resolution Professional are as under:

Sr. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount admitted	Amount provided under the Plan#	Amount provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-Section (2) of Section 21	NIL			
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	NIL 12,48,36,148	12,48,36,148	1,10,00,000	8.81%
		Total [(a) + (b)]	12,48,36,148	12,48,36,148	1,10,00,000	8.81%

Sr. No.	Category of Stakeholder *	Sub-Category of Stakeholder	Amount Claimed	Amount admitted	Amount provided under the Plan#	Amount provided to the Amount Claimed (%)
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-Section (2) of Section 21	4,74,44657	4,74,44657	NIL	NIL
		(b) Other than (a) above:	NIL			
		(i) who did not vote in favour of the resolution Plan	NIL			
		(ii) who voted in favour of the resolution plan	NIL			
		Total [(a) + (b)]	NIL			
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL			
		(b) Other than (a) above:				
		(i) Government	2,24,08,502	2,24,08,502	21,00,000	9.37%
		(ii) Workmen	20,23,960	20,23,960	7,10,658	35.11%

		(iii) Employees	50,96,065	50,96,065	17,89,342	35.11%
		(iv) Other operational creditors	1,14,08,427	1,13,72,339	NIL	NIL
		Total [(a) + (b)]	4,09,36,954.00	4,09,36,954.00	46,00,000.00	11.24%
4	Other debts and dues	NA				
Grand Total			21,32,17,758.72	21,31,81,670.72	1,56,00,000	7.32%

3. After receiving the claims, the Committee of Creditors was constituted. The constitution of COC is as under:

Committee of Creditors	Claim amount	Voting Percentage
Central Bank of India	12,48,36,148	100%

4. The CoC in its 4th meeting, dated 20.11.2021, decided to appoint the registered valuers. The Liquidation and fair value submitted by the registered valuers in their reports are as follows:

	<u>Valuation Report issued by Chirag Shah</u>	<u>Valuation Report issued by Fanendra Munot</u>
FAIR VALUE	NIL	NIL

LIQUIDATION VALUE	NIL	NIL
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5. The Applicant states that in the 5th COC meeting, dated 15.12.2021, the COC approved with minimum eligibility criteria, Request for Resolution Plan (**RFRP**) and Form G for inviting Expression of Interest (“**EOI**”) from Prospective Resolution Applicants as per section 25(2)(h) of the Code. Accordingly, Form G for inviting EOI, was published on 25.11.2021. The last date for receiving Expression of Interest (EOI) from Prospective Resolution Applicants was 10.12.2021, and the last date of submission of Resolution Plan was 10.01.2022.
6. In the 6th CoC meeting, dated 20.01.2022, the RP informed the CoC that the CIRP of the Corporate Debtor was getting over on 29.01.2022 and that no resolution plan had been received from the Prospective Resolution Applicant (PRA). The COC therefore resolved to extend the CIRP period by 90 days and the same was allowed by this Tribunal vide order dated 04.02.2022 passed in Interlocutory application bearing no. IA (I.B.C)/250(MB) 2022.
7. Pursuant to the above, the Resolution Applicant again published the Form – G, inviting expression of interest (EOI) from the Prospective Resolution Applicants. The last date for submission of Expression of Interest was 08.02.2022 and the last date of submission of Resolution Plan was 30.03.2022.
8. The Applicant further states that in furtherance of the Form-G issued by Applicant, he received EOI from the one Prospective Resolution Applicant (PRA) i.e. Univastu India Limited, within the stipulated time period.

9. **The COC, in its 7th meeting held on 25.04.2022, approved Resolution Plan submitted by Univastu India Ltd. with a voting share of 100%. Thereafter, the Applicant has issued compliance certificate in Form “H”.**

10. **The Salient Features of the Resolution Plan are as under:**

A. Brief Background of the Company / Corporate debtor

- i. The Corporate Debtor is in the business of manufacturing and marketing of wall clocks and table Clocks.
- ii. The Corporate Insolvency Resolution Process (“**CIRP**”) for Corporate Debtor commenced vide order dated 03rd August 2021 passed by this Tribunal basis the Company Petition No. (IB) 1332(MB)/2020 filed by the Operational Creditor, Supershine Abs Platers Pvt. Ltd., under Section 9 of the Code.

B. Background of the Resolution Applicant

The Resolution Applicant is in the business of infrastructure Construction. The Resolution Applicant is a NSE listed Construction Company with and expertise in handling turnkey government – infrastructure projects and development.

The said Prospective Resolution Applicant is eligible to act as a Resolution Applicant of the Corporate Debtor and is not ineligible under Section 29A of Insolvency and Bankruptcy Code and also satisfies the eligibility criterion as mentioned in clause (h) of sub-section (2) of Section 25 of the Code.

11. **Broad Outlay of the Plan**

- a) The Resolution Applicant proposes to infuse Rs. 6.56 Crore out of which INR 5.00 Crore would be towards working capital to run the business operations over a period of next two years and Rs. 1.56 Crore is proposed to be distributed among the stakeholders / creditors of the Corporate Debtor by the Resolution Applicant, as envisaged in Financial Proposal.
- b) Timing of Infusion – INR 1.56 Crore, which is proposed to be distributed among the stakeholders / creditors of the Corporate Debtor by the Resolution Applicant, as envisaged in Financial Proposal, would be paid within 90 days of Approval of Resolution Plan by Adjudicating Authority.
- c) Terms – Existing Equity will be reduced to NIL and 100% of the Equity Shareholding of the Corporate Debtor would be held by the Resolution Applicant. The Balance sheet shall be recast as on NCLT Approval Date (Date of Approval by Adjudicating Authority). Shares worth Rs. 1.56 Crore to be issued to the Resolution Applicant.

12. **Summary of Payments under the Resolution Plan**

Sr. No	Particulars	Total Admitted Claim Amount	Amount Proposed to be Paid	Amount Proposed to the Claim Amount Admitted (%)
1.	Insolvency Resolution Process Cost ("CIRP Cost")	Actual CIRP cost is not provided by RP.	Payment of CIRP cost incurred by RP and duly approved by CoC till the date of receipt of Certified True Copy of NCLT order. The same would be paid in priority and within 30 days from the NCLT Approval Date.	On Actuals (100%) Note: The entire CIRP Cost and CoC Cost would be paid in priority and within 30 days from the

	CoC Cost	Actual CoC cost amount is not provided by RP	Payment of CoC cost as defined in RFRP under Other Essential Requirements - clause 1.1.1 I (r). The same would be paid in priority and within 30 days from the NCLT Approval Date.	NCLT Approval Date.
2.	Secured Financial Creditors	INR: 12,48,36,147.52/-	INR 1,10,00,000/- (including the CIRP Cost and CoC Cost)	The said recovery percentage in the case of Secured Financial Creditors is presently not quantifiable as the exact amount of CIRP Cost and CoC Cost is not yet known / disclosed to the Resolution Application.
3.	Unsecured Financial Creditors	INR: 4,74,44,657.00/-	Nil	Nil
4.	Operational Creditors (Employees & Workman)	INR: 71,20,025/-	INR 25,00,000/- to be distributed between Employees and Workmen in proportion to their claim.	56.18%
	Employees	INR: 50,96,065/-	INR: 17,89,342/-	
	Workmen	INR: 20,23,960/-	INR: 7,10,658/-	
5.	Operational Creditors	INR: 1,13,72,339.20/-	Nil	Nil

6.	Statutory Claims	INR: 2,24,08,502.00/-	INR 21,00,000/- towards the outstanding liability and admitted claim of EPFO only.	9.62%
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13. **Sources of Funds:**

The Resolution Applicant intends to fund the resolution amount from its internal sources of funds which inter alia, includes amount receivables from its debtors and cash and cash equivalents. The Resolution applicant is profitable company with the net-worth of Rs. 33 crore and PAT of Rs. 9.49 crore as on March 31, 2021. Accordingly, if required, Resolution Applicant would be able to raise funds from the market to ensure timely payments as proposed in resolution plan.

14. **Snapshot of Terms and Conditions of the Proposal are as below:**

1.	Amount of upfront payment to creditors* (Upfront Cash Recovery)	Rs. 1.56 crore
2.	Balance repayment obligations to creditors (other than upfront payment)	NA
3.	Proposed instruments for repayment	NA
4.	Interest Rate/ Coupon and frequency of payment	NA
5.	Repayment Schedule	NA
6.	Security	NA

7.	Amount of fresh equity being infused into the Corporate Debtor	<p>a. Purpose – Towards acquiring shareholding of the Company.</p> <p>b. Amount – INR 6.56 Crore out of which the Resolution applicant proposes to infuse INR 5.00 Crore toward working capital to run the business operations over the period of next two years and Rs. 1.56 Crore is proposed to be distributed among the stakeholders / creditors of the Corporate Debtor by the Resolution Applicant as envisaged in Financial Proposal.</p> <p>c. Timing of Infusion – INR 1.56 Crore, which is proposed to be distributed among the stakeholders / creditors of the Corporate Debtor by the Resolution Applicant as envisaged in Financial Proposal would be paid within 90 days of Approval of Resolution Plan by Adjudicating Authority. Further, INR 5.00 Crore toward working capital to run the business operations over the period of next two years.</p> <p>d. Terms – Existing Equity to be reduced to NIL and 100% of the Equity Shareholding of the Corporate Debtor would be held by the Resolution Applicant. The Balance sheet to be recast as on NCLT Approval Date (Date of Approval by Adjudicating Authority). Shares worth Rs. 1.56 Crore to be issued to the Resolution Applicant.</p>
8.	Corporate Guarantee or additional collateral / security being offered by the Resolution Applicant	No Corporate Guarantee offered by the Resolution Applicant

15. **Monitoring Committee**

Post the approval of the Resolution Plan by the CoC and subsequently post approval of NCLT, Univastu India Limited (“UNIVASTU”) shall take over the Company. The UNIVASTU shall depute competent management personnel to manage the affairs of the Company and UNIVASTU shall have all control over the affairs of the Company. A

Monitoring Committee shall be formed comprising of the one member of CoC, Independent Insolvency Professional and one member designated by Resolution Applicant to supervise over the affairs of the Company till the Resolution Plan Consideration, which is proposed to be distributed among the stakeholders / creditors of the Corporate Debtor by the Resolution Applicant, as envisaged in Financial Proposal i.e INR 1.56 Crore, is paid in full. However, the Monitoring Committee shall have no control and shall only be a supervising body. The cost for the period, when the Monitoring Committee would be in place and supervising the affairs of the Corporate Debtor, would be borne by the Resolution Applicant. The Monitoring Committee can seek any information, as may be, sought by an Independent Director under Companies Act, 2013.

16. **Payments proposals of the various stakeholders under the Resolution Plan:**

A. Payment of the Insolvency Resolution Process Cost (CIRP Cost):

The CIRP Costs will be paid in full within 30 days from the date of Approval by NCLT. This payment is in priority to the payment of other creditors of the Company.

B. Payment of CoC Cost

CoC cost be paid in full and within 30 days from the NCLT Approval Date along with the payment of the Insolvency Resolution Process Cost.

C. Payment to Operational Creditors

The liquidation value payable to Operational Creditors is expected to be NIL. However, an amount of INR 21,00,000/- is

proposed to be paid towards the outstanding liability and admitted claim of EPFO.

I. Proposal for Workmen and Employee Dues:

Admitted claim of Employees and Workmen is INR 71,20,025/-. Resolution applicant is proposing INR 25,00,000/- to be paid between employees and workman in proportion to their claim. Further the Resolution Applicant proposes to continue the services of workmen and employees working with the Corporate Debtor

II. Proposal for Operational Creditors (other than Employees and Workmen)

Admitted claim of Operational Creditors (other than Employees and Workmen) including Government Authority Dues is INR 3,37,80,841.20/-. The liquidation value payable to Operational Creditors is expected to be NIL. However, an amount of INR 21,00,000/- is proposed to be paid towards the outstanding liability and admitted claim of EPFO.

III. Proposal for Secured Financial Creditors

Admitted claim of Secured Financial Creditor is INR 12,48,36,147.52/-. The Resolution Applicant is proposing to pay INR 1,10,00,000/- (including the CIRP Cost and CoC Cost) to the Secured Financial Creditors against their entire outstanding liability and claim admitted by the Resolution Professional.

IV. **Proposal for Un-secured Financial Creditors**

Admitted claim of Un-secured Financial Creditor is INR 4,74,44,657.00/-. The liquidation value payable to unsecured financial creditors is expected to be NIL and hence no payment is proposed to be paid towards the claim of Un-secured Financial Creditors.

17. **The compliance of the Resolution Plan is as under:**

Section of the Code / Regulation	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 CD?	Chapter 3	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 4 (Clause M) Chapter 10 Section 29A undertaking	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Chapter 10 Clause 4	Yes
Section 30(2)	Whether the Resolution Plan:		Yes
	Provides for the payment of insolvency resolution process costs?	Chapter 4 (Clause A) Chapter 5 (Part 2)	Yes

Section of the Code / Regulation	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
		Clause 4(A)	
	Provides for the payment of the debts of operational creditors?	Chapter 4 (Clause A-ii) Chapter 5 (Part 2) Clause 4(A)	Yes
	Provides for the management of the affairs of the corporate debtor?	Chapter 4 Clause A (VII) and B (a)	Yes
	Provides for the implementation and supervision of the resolution plan?	Chapter 4 (A) (VI)	Yes
	contravenes any of the provisions of the law for the time being in force	Chapter 4 (A) (ix) Chapter 8	Yes
Section 30(4)	Whether the Resolution Plan		Yes
	is feasible and viable, according to the CoC?	Annexure – A	Yes
	has been approved by the CoC with 66% voting share?		Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Chapter 4 (A) (vii) and Chapter 5, part 2, clause 4	Yes
Regulation 38 (1)	Whether the amount due to operational creditor under the resolution plan has been given the priority in payment over the Financial creditors?	Chapter 5, part 2, point no 4	Yes

Section of the Code / Regulation	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
Regulation 38 (1A)	Whether the Resolution plan includes the statements as to how it has dealt with the interest of all stakeholders?	Chapter 4 part 1 para 3 Chapter 5, part 2, point no 4	Yes
Regulation 38 (1B)	Whether the RA 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.	Chapter 4 part 1 (A) (a) (V)	Yes
Regulation 38(2)	Whether the Resolution Plan provides:		Yes
	the term of the plan and its implementation schedule?	Chapter 5 part-2	Yes
	for the management and control of the business of the corporate debtor during its term?	Chapter 4 Part 1, Clause A (vi)	Yes
	adequate means for supervising its implementation?	Chapter 4 Part 1, Clause A (vii)	Yes
38(3)	Whether the resolution plan demonstrates that		Yes
	it addresses the cause of default?	Chapter 4 Part 1 clause B (a)	Yes
	it is feasible and viable?	Chapter 4 Part 1 clause B (b)	Yes

Section of the Code / Regulation	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
	it has provisions for its effective implementation?	Chapter 4 Part 1 clause B (c)	Yes
	it has provisions for approvals required and the timeline for the same?	Chapter 4 Part 1 clause B (d)	Yes
	the resolution applicant has the capability to implement the resolution plan?	Chapter 4 Part 1 clause B (e)	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes	Yes
39 (4)	Provided the details of performance security received, as referred to in sub-regulation (4A) of regulation 36B	Yes	Yes

18. **Implementation and supervision of the Proposed Transaction**

The timeline for completion of the proposed transaction is Ninety Days, the details about its cost is given in Financial Proposal. The project will be completed under the supervisions and control of the Resolution Applicant's existing team which has a proven track record in running business operations.

Upon the approval of the Resolution Plan, necessary steps will be taken to file for approvals, with various Governmental Authorities, including tax authorities/ department, other government departments, and before various courts, tribunals and regulatory authorities where proceedings with respect to the Company are

pending, for disposal of all such proceedings within the stipulated time period mentioned in the IB Code.

After Approval by Adjudicating Authority, the implementation of the Resolution Plan will be supervised by the members of Monitoring Committee.

19. **Affidavit Dated 20th June 2022 Filed by The Resolution Applicant Seeking Modification of the Resolution Plan:**

The Resolution Applicant vide its **reply** to the Application I.A. 1136 of 2022, filed for approval of Resolution Plan, sought the following modification / changes in Resolution Plan:-

- i. To replace the current RP who is in the Monitoring Committee with an independent Resolution Professional to be appointed by the NCLT Bench.
- ii. The costs with respect to pursuing of the Applications under Section 66 of the Code, shall not be borne by the Resolution Applicant.
- iii. The Resolution Applicant assured that the pay-out consisting of Rs 1.56 crores to the creditors will be paid within a period of 90 days, and the remaining Rs. 5 crores will be infused as working capital of the Corporate Debtor over two-year span. However, in the event, the RA fails to make payment to the creditors, then RP is free to approach the NCLT with Liquidation Application.
- iv. Approved Resolution Plan at **Resolution 6** provides that Cost of Resolution Professional after approval of Resolution Plan shall be borne by the CD and treated as part of CIRP costs.

20. **Resolution Professional's rejoinder to modification sought by Resolution Applicant**

The Applicant/ Resolution Professional has filed a rejoinder dated 30.01.2023. The Applicant has submitted that no changes to the Resolution Plan is permissible after approval of the Plan by the CoC. The Applicant submits that the representatives of the Resolution Applicant were present during the Seventh Meeting of CoC, when the approved Resolution Plan was discussed and approved by the CoC. The Applicant has relied upon the following Judgments of the Hon'ble Apex Court to support its contentions: -

- i. ***Ebix Singapore v. Educomp Solutions (2022) 2 SCC 401*** lays down a binding nature of the COC with the Resolution Applicant and the Supreme Court held that the Adjudicating authority cannot compel **COC** to further negotiate with the Resolution Applicant and Section 31 (2) of the Code only warrants the Tribunal to see the validity of the Resolution Plan.
- ii. As per the Resolution Plan, Rs 5 crores is the minimum amount the Resolution Applicant has to infuse within a period of 2 years from the date of approval of the Resolution plan and cannot be allowed to wriggle out of his promise to revive the Corporate Debtor by modifying the Approved Resolution Plan.

The Resolution Professional vehemently objected to any modification sought by the Resolution Applicant.

Finding:

This Bench is of the considered view that the Resolution Applicant will have to fulfil the commitment of infusing Rs. 5 Cr working capital in 2 years and that no relief will be given to the Resolution Applicant on

this front while approving the Resolution Plan. Furthermore, the request for appointment of an Independent Resolution Professional in the Monitoring Committee is considered favourably by this Bench while approving Resolution Plan. This Bench hereby appoints *Vijay Suwalaj Jain*, IBBI Registration No. *IBBI/IPA-001/IP-P-02787/2022-2023/14273* having Email ID : *vj72195@gmail.com* and Contact No. *9987137581* as Resolution Professional. Further, the learned counsel for the Applicant has brought to the notice of this Bench that Para E(s) of Chapter 4(Part1) of the Resolution Plan states that:

“Resolution Applicant undertakes that in the event of any transaction is avoided/ set aside by the NCLT in terms of Sections 43, 45, 47, 49, 50 or 66 of the IB Code, and any amount is received by the Resolution Professional or the Corporate Debtor in furtherance thereof, such sums shall be for the benefit of the Financial Creditors and shall be a pass-through amount to the Financial Creditors”

Hence, pursuant to the above, this Bench is of the considered view that the Financial Creditor, who will be the ultimate beneficiary of any receivable from Application under Section 66 of the Code, shall bear the costs/expenses for pursuing the same.

21. **Observations and Findings:**

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to

such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.

- iii. The plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- iv. The plan provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d) & Regulation 38(2)(c).
- v. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - Resolution Plan provides for the implementation and supervision of the resolution plan as per Section 30(2) (e)
- vi. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- vii. As per IBBI Guidelines 38(1)(b) - the amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- viii. The resolution applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- ix. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required

- under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
- c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
 - d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
 - f. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
 - g. The plan provides for the management and control of the business of the Corporate Debtor during its term.
 - h. All the above factors demonstrate that the plan addresses as the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
 - i. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.

22. The Resolution Plan has been approved in the 7th COC meeting held on 25.04.2022 with 100% voting in accordance with the provisions of the Code.
23. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
24. In ***India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)*** the Hon'ble Apex Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing

dissent over the value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

25. The Hon'ble Apex Court at para 42 in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online**, has clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

*“Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

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

Code.

27. In view of the discussions, this Bench is of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved. Accordingly, it is approved in terms of the following:

ORDER

- a) The Interlocutory Application No. 1136 of 2022 is **allowed**. The Resolution Plan submitted by **Univastu India 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.
- b) 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 has 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.”

- c) 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.
- d) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- e) The Applicant shall supervise the implementation of the Resolution Plan and shall file status of its implementation before this Authority from time to time, preferably every quarter.
- f) 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.
- g) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- h) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- i) 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.

- j) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- k) The Interlocutory Application No. 1136 of 2022 is accordingly allowed.**

SD/-

Anuradha Sanjay Bhatia
Member (Technical)

SD/-

Kuldip Kumar Kareer
Member (Judicial)