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IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)
I.A.-09/2024

IN
C.P.(IB)-686(ND)/2019

IN THE MATTER OF:

M/s. India Factoring & Finance Solutions Private Limited

... Financial Creditor

Versus

M/s. Altech Infrastructure Private Limited

... Corporate Debtor

AND IN THE MATTER OF I.A.-09/2024:

Anand Sonbhadra

Resolution Professional

M/s Altech Infrastructure Private Limited

E-10A, Kailash Colony,

New Delhi – 110048.

... Applicant/RP

Order Delivered on: 14.06.2024

UNDER SECTION: 30(6) of IBC, 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH HON'BLE MEMBER (T)

PRESENT:

For the RP: Adv. Amar Vivek, Adv. Aditya Gauri and Adv. Akhand Pratap

Singh Gaur

RP
19/06/2024

IA. No. 09/2024 in (IB)-686(ND)/2019

India Factoring & Finance Solutions Pvt Ltd. Vs. Altech Infrastructure Private Limited.





ORDER

The present I.A. 09 of 2024 has been preferred by Mr. Anand Sonbhadra, Resolution Professional of M/s Altech Infrastructure Private Limited (hereinafter referred to as, the '**Applicant/RP**') under Section 30(6) of IBC, 2016, seeking the following reliefs:

- "a) Allow the present Application;*
- b) Pass an Order for the approval of the Resolution Plan submitted by M/ s Sunrise Industries as approved by the members of the CoC;*
- c) Pass any such other order(s) as this Hon'ble Tribunal may deem fit in the interest of justice."*

2. Stating succinctly, the underlying main Petition CP (IB)- 686/(ND)/2019 was filed by M/s. India Factoring & Finance Solution Private Limited against the Corporate Debtor, namely, M/s. Altech Infrastructure Private Limited under Section 7 of the IBC, 2016, which was admitted vide Order dated 16.09.2022 passed by this Adjudicating Authority and the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor was initiated. This Tribunal appointed Mr. Anand Sonbhadra as the IRP of the Corporate Debtor. Subsequently, the CoC resolved to appoint the IRP as RP in the 1st CoC meeting dated 15.10.2022.

3. It is stated by the Applicant that in terms of Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Applicant made a Public Announcement in Form-A on 18.09.2022 to invite claims, a copy of which was also uploaded on the website of Insolvency and Bankruptcy Board of India (IBBI).



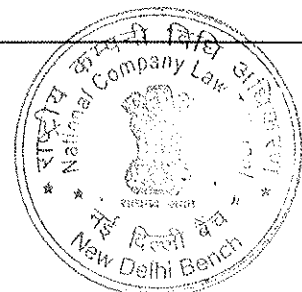


4. The RP has got the assets of the Corporate Debtor valued as per the relevant IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the Fair Value and Liquidation Value are as under:

Sr. No.	Name of Valuer	Fair value	Liquidation Value
1.	Adroit	Rs. 12,38,50,802	Rs. 9,62,76,501
2.	RITE	Rs. 12,21,63,000	Rs. 8,56,79,000

5. There are 3 Financial Creditors constituting the CoC viz. State Bank of India, India Factoring and Finance Solutions Private Limited and Oxyzo Financial Services Private Limited having a total of 100% voting share. Their respective voting shares are as under:

S. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented/ Abstained)
1.	State Bank of India	86.30%	Voted for
2.	India Factoring and Finance Solutions Private Limited	11.20%	Not Voted
3.	Oxygo Financial Services Private Limited	2.50	Not Voted





6. The details of the meetings of CoC as stated in the Application read as under:

Particulars	Date of CoC Meeting	Main Agenda From Discussion	Important Decision
1st COC Meeting	15/10/2022	<ul style="list-style-type: none"> To take note of the claims received by the Interim Resolution Professional. To take note of the Committee of Creditors constituted by the Interim Resolution Professional. To take note of the actions taken by Interim Resolution Professional. To appoint the services of India Juris for handling all the litigations of the Corporate Debtor. To appoint the services of Varma Anil and Associates for the purpose of GST and INC-28 Compliance. To discuss on the appointment of the Valuers. To discuss on the appointment of Transaction Auditor in the matter. Discussion on Interim Finance and appointment of Operation and Management Agency. 	<ul style="list-style-type: none"> To appoint Interim Resolution Professional as Resolution Professional. To ratify and approve the remuneration of the Interim Resolution Professional (IRP), the Resolution Professional (RP) and the Insolvency Professional Entity to which IRP/RP is a partner. To ratify and approve the cost incurred on Corporate Insolvency Resolution Process during the period of IRP. To Approve Delegation of the Authority of Resolution Professional to any Other Person. To approve the appointment of M/s India Juris for the purpose of handling litigation during CIRP in the matter of Altech Infrastructure Private Limited. To approve the appointment of Varma Anil and Associates for the purpose of handling the accountancy and compliance as required under the Insolvency and Bankruptcy Code, 2016 during the CIRP in the matter of Altech Infrastructure Private Limited. To approve the fee pertaining to the Valuers appointed in the CIRP of Altech Infrastructure Private Limited. To approve the fee pertaining to the Transaction Auditor in the CIRP of Altech Infrastructure Private Limited.



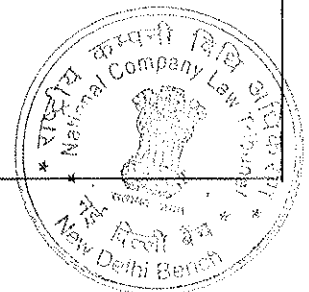


2 nd COC Meeting	14/11/2022	<ul style="list-style-type: none">• To take note on reconstitution of COC and claims received by the Resolution Professional after 1st COC meeting.• To update on the appointment of Valuers in the matter of Altech Infrastructure Private Limited.• To update on the appointment of Transaction Auditor in the matter of Altech Infrastructure Private Limited.• To discuss on the publication of Expression of Interest (Form G) and to approve the eligibility criteria for the PRA.• To discuss on filing of 19(2) application against the Suspended Director of the Corporate Debtor.• Contribution towards CIRP cost by the Financial Creditors and Opening of Bank Account.• To appoint AAA Insolvency Professional as IPE for providing support services in the matter of Altech Infrastructure Private Limited and to approve the fees of such IPE.	<ul style="list-style-type: none">• To approve the publication of the Expression of Interest (FORM-G) and Eligibility Criteria for the Prospective Resolution Applicant.• To revoke the resolution no.2 passed in the 1st Meeting of Committee of Creditors, Facts & Explanatory.• To approve the appointment of Insolvency Professional Entity (IPE) in the matter of Altech Infrastructure Private Limited.• To approve the Opening of a Bank Account during CIRP of Altech Infrastructure Private Limited.• To reduce the notice period for convening Meeting of Committee of Creditors.
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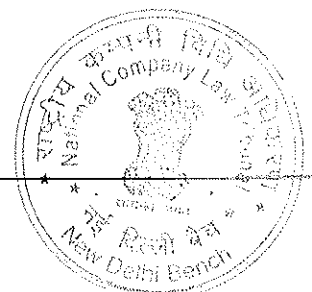


3 rd COC Meeting	01/12/2022	<ul style="list-style-type: none"> • To update on the Valuation Process. • To update on the Transaction Auditing Process. • To update on the Expression of Interest received till date in the matter of Altech Infrastructure Private Limited. • To update on the 19(2) Application filed against the Suspended Management • To discuss on the Operation Management Agreement. • To discuss on the revocation of the resolution no.2 passed in the 2nd Meeting of Committee of Creditors. • To approve the appointment of Insolvency Professional Entity (IPE) in the matter of Altech Infrastructure Private Limited. 	<ul style="list-style-type: none"> • To approve the Revocation of the part in Resolution no. 2 passed in the 1st Meeting of Committee of Creditor. • To approve the remuneration of the resolution Professional after the revocation of the part of resolution No. 2 passed in the 1st Meeting of COC. • To approve the appointment of Insolvency Professional Entity (IPE) in the matter of Altech Infrastructure Private Limited. • To approve the Operation and Management Agreement and Interim and Finance Agreement in the matter of Altech Infrastructure Private Limited.
4 th COC Meeting	15/12/2022	<ul style="list-style-type: none"> • To update on the Expression of Interest received till date in the matter of Altech Infrastructure Private Limited. • To Discuss on the Bid Evaluation Matrix (BEM) and the Request for Resolution Plan (RFRP) in the matter of Altech Infrastructure Private Limited. • The Resolution professional discussed the claims received till 15.12.2022. • Revocation of the Resolution No.4 passed in the 3rd Meeting of the Committee of creditors. 	<ul style="list-style-type: none"> • To approve the Request for Resolution Plan and Bid-Evaluation Matrix in the matter of Altech Infrastructure private limited. • To approve the Revocation of the Resolution no. 4 passed in the 3rd Meeting of Committee of Creditor. • To approve the Operation and management Agreement after revocation of the Resolution no. 4 passed in the 3rd COC meeting.
5 th COC Meeting	24/01/2023	<ul style="list-style-type: none"> • To update on the Valuation Process. • To update on the Transaction audit. • To update on the Resolution Plans received till 16.01.2023 against EOJ and discussion thereon • To update on the 19(2) Application filed against the Suspended Management. • To update on the Operation Management Agreement. • To ratify and approve the cost incurred on Corporate Insolvency Resolution Process during the period of CIRP 	No resolution ratified





6 th COC Meeting	27/02/2023	<ul style="list-style-type: none">• To update on the Valuation Process• To update on the Transaction audit• To update on the Expression of Interests received till 15.02.2023 against Form G published on 31st January 2023.• To update on the 19(2) Application filed against the Suspended Management.• To ratify and approve the cost incurred on Corporate Insolvency Resolution Process during the period of CIRP.• To discuss and approve extension of 90 days CIRP period beyond 180 days.• To Update on O & M contract.	<ul style="list-style-type: none">• To approve extension of 90 days CIRP period beyond 180 days.• To approve the cost incurred on Corporate Insolvency Resolution Process during the period of CIRP.
7 th COC Meeting	13/04/2023	<ul style="list-style-type: none">• To update on the Valuation Process.• To update on the Transactions audit.• To update on the Resolution Plans received till 01.04.2023 against EOI and discussion thereon.• To update on the 19(2) Application and Application of contempt filed against the Suspended Management.• To update on the Operations and Management Contract.• To ratify and approve the cost incurred on Corporate Insolvency Resolution Process during the period of CIRP.• To discuss on the liquidation of the Corporate Debtor, if required	<ul style="list-style-type: none">• To approve the cost incurred on Corporate Insolvency Resolution Process during the period of CIRP.



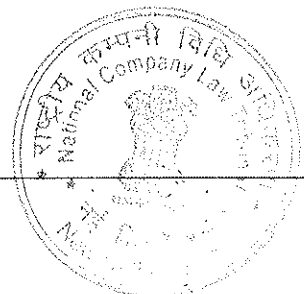


8 th COC Meeting	29/05/2023	<ul style="list-style-type: none"> • To update on the Valuation Process. • To update on the Transaction Auditor. • To update on the Resolution Plans received by the Resolution Plan. • To discuss on the liquidation of the Corporate Debtor. • To update on the extension of CIRP period. • To discuss and appoint Chartered Accountants for the purpose of Preparation of books of the Accounts of the Corporate Debtor. • To discuss and approve the appointment of Statutory Auditor for the Corporate Debtor. • To ratify and approve the cost incurred on Corporate Insolvency Resolution Process during the period of CIRP. 	<ul style="list-style-type: none"> • To approve and ratify the appointment of the third Registered Valuer Facts and Explanatory Statement. • To approve the cost incurred during the process. • To approve the Resolution Plan submitted by Sunrise Industries Private Limited. • To Approve the Resolution Plan submitted by Rustagi Impex Private Limited • To Approve the Resolution Plan submitted by Sunrise Industries Private Limited • To ratify and approve the appointment and fee pertaining to the Chartered Accountants for the purpose of preparation of books of accounts of the Corporate Debtor. • To ratify and approve the appointment and fee pertaining to the Statutory Auditors for the Corporate Debtor. • To approve the liquidation of the Corporate Debtor.
9 th COC Meeting	13/06/2023	<ul style="list-style-type: none"> • To approve and ratify a shorter notice period. • To discuss and approve the extension of CIRP period beyond 270 days. • To update on the proceedings before the EPFO Department. 	<ul style="list-style-type: none"> • To approve extension of 60 days CIRP period beyond 270 days. • To approve the extension of voting period of the 8th meeting of the COC for an extended duration of 25 days.
10 th COC Meeting	08/08/2023	<ul style="list-style-type: none"> • To discuss and approve the extension of CIRP period beyond 330 days 	<ul style="list-style-type: none"> • To approve extension of CIRP period beyond 330 days.
11 th COC Meeting	06/09/2023	<ul style="list-style-type: none"> • Discussion on Negotiation with the Prospective Resolution Applicants through open challenge mechanism process on the Resolution Plans received in the matter to further enhance the Resolution value. 	<p>RESOLUTIONS PROPOSED IN THE 11th COC MEETING OF ALTECH INFRASTRUCTURE PRIVATE LIMITED</p> <p>The relevant resolution for the approval of the decision to opt for an Open Challenge Mechanism and the Process consent document after due discussion and deliberation were put to vote during the meeting of the COC and passed with a majority of 97.5%. State Bank of India (86.3%) and India Factoring and Finance Solutions Pvt. Ltd. (11.2%) have provided their approval by the show of hands. The representatives of Oxyzo Financial Services Private Limited (2.5%) were not present in the meeting.</p>





12 th COC Meeting	12/09/2023	<ul style="list-style-type: none">• To conduct negotiations with the Prospective Resolution Applicants through open challenge mechanism process on the Resolution Plans received in the matter.• To approve the application for extension of the Corporate Insolvency Resolution Process for a period of 30 days.	<ul style="list-style-type: none">• To approve the Resolution Plan submitted by Sunrise Industries – thru e voting• To approve the Resolution Plan submitted by Rustagi Impex Private Limited thru e-voting
13 th COC Meeting	23/10/2023	<ul style="list-style-type: none">• To discuss and approve the extension of CIRP period beyond 405 days.• To discuss the appointment of Chartered Accountant for the completion of books of accounts..• To discuss the appointment of Statutory Auditor.• To ratify and approve the cost incurred on Corporate Insolvency Resolution Process during the period of CIRP.• To update on O & M Contractor.• To update on Insurance.• To update on Litigation.	<ul style="list-style-type: none">• To approve the extension of CIRP period beyond 405 days.• To appoint Chartered Accountant for the completion of books of accounts.• To appoint statutory auditor for auditing the books of accounts.• To approve the expenses incurred by resolution professional.
14 th COC Meeting	22/11/2023	<ul style="list-style-type: none">• To discuss and approve the extension of CIRP period beyond 435 days.• To ratify and approve the cost incurred on Corporate Insolvency Resolution Process during the period of CIRP.	<ul style="list-style-type: none">• To approve the extension of CIRP period beyond 435 days.• To approve the expenses incurred by resolution professional (CIRP Cost).
15 th COC Meeting	04/03/2024	<ul style="list-style-type: none">• To discuss the amendments in CIRP Regulations vide notification dated 15-02-2024.• To update on the litigation.• To ratify and approve the cost incurred on Corporate Insolvency Resolution Process during the period of CIRP.	<ul style="list-style-type: none">• To approve the expenses incurred by resolution professional.(CIRP Cost)





7. The 'Form-G' was published on 17.11.2022, 31.01.2023 to invite Expressions of Interest (EOI) from the Prospective Resolution Applicants (PRAs). It is added that as per the latest Form-G dated 31.01.2023, the last date for submission of EOI was 15.02.2023. According to the Applicant, he had received Eois from 04 PRAs:

Prospective Resolution Applicant(s) (PRAs)

Sr. No.	Names
1.	Sunrise Industries Private Limited
2.	RKG Fund Scheme-I
3.	Rustagi Impex Private Limited
4.	One City Infrastructure Private Limited

8. In the 12th CoC meeting held on 12.09.2023, the Resolution Plans received from the Prospective Resolution Applicants were considered and put to vote before the CoC by the Applicant. Further, the CoC approved the Resolution Plan submitted by Sunrise Industries Private Limited with 86.30% voting share.

9. The CIRP period was extended beyond the stipulated period of 180 days vide an Order dated 29.03.2023, 28.07.2023, 22.08.2023, 15.05.2024 and finally by our Order dated 28.05.2024 for a period of 30 days beyond 435 days which is 24.12.2023 passed by the Adjudicating Authority. The Resolution Plan was approved by the CoC on 16.12.2023 i.e., within the period extended by this Bench.



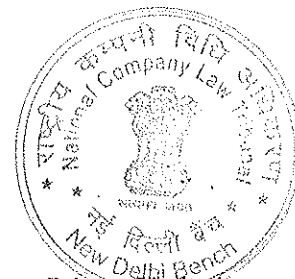


10. The “Summary of the Resolution Plan” submitted by the Applicant reads thus:

“That the approved Resolution Plan provides for the following payments to the creditors of the Corporate Debtor:

Particulars	Amount
Resolution Plan Value:	10,00,00,000
CIRP Cost (company is a Going Concern and CIRP cost being met from Operational Income)	0
Payment to Secured financial Creditors:	9,04,00,000
Workmen's & Employees priority dues:	108,753
Unsecured financial creditors	400,000
Operational Creditors	10,000
Operational Creditors (Statutory Dues)	19,43,000
EPFO Ducs	21,38,247
Working Capital & Contingencies	50,00,000

13. That in addition to the aforesaid, the Resolution Applicant has also proposed to infuse an amount of INR 50,00,000 in the form of Working Capital, as and when the need arises. Furthermore, the Regulatory Fee under Regulation 31A of the CIRP Regulations has also been proposed to be borne by the Resolution Applicant over and above the amounts proposed under the Resolution Plan.”



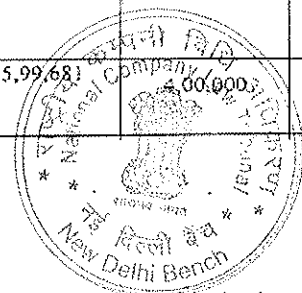


11. The amounts provided to various stakeholders under the Resolution Plan is as under:

(Amount in INR)

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)	(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	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
			20,51,33,955	20,51,33,955	9,04,00,000	44.06%

		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	20,51,33,955	20,51,33,955	9,04,00,000	44.06%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	
		(b) Other than (a) above:				
		(i) who vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who NOT voted in favour of the resolution plan	3,25,99,681	3,25,99,681	4,00,000	1.22%
		Total[(a) + (b)]	3,25,99,681	3,25,99,681	4,00,000	1.22%

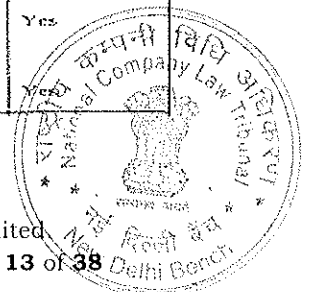




3	Operational Creditors	(a) Related Party of Corporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i) Government	1,11,94,920	1,11,94,920	40,81,247	36.45%
		(ii) Workmen	20,20,584	19,54,110	1,08,753	5.38%
		(iii) Employees				
		(iv) Other than (Employees and Workmen, and Government dues)	6,02,58,296	3,63,68,591	10,000	0.01%
		Total[(a) - (b)]	7,34,73,800	4,95,17,621	42,00,000	5.71%
4	Other debts and dues	NA	NA	NA	NA	NA
Grand Total			31,12,07,436	28,72,51,257	9,50,00,000	30.52%

12. The details of compliances under Section 30(1), Section 30(2), Regulation 37(1), Regulation 38(1), Regulation 38(2), Regulation 38(3) of IBC, 2016, and IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are extracted below:

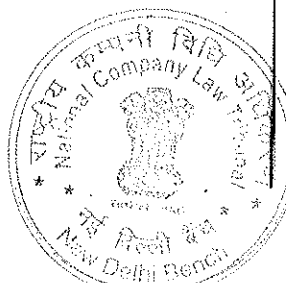
Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(b)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Chapter No. IV	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 No. XIX	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Undertaking as per Regulation 39(1)	Yes
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Chapter VI (A.i)	Yes
	(b) provides for the payment to the operational creditors?	Chapter VI (Part A. ii)	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Chapter VI (A.iii) Chapter X	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Chapter X	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Chapter XVII	Yes
	(f) contravenes any of the provisions of the law for the time being in force?		Yes





Regulation 37(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Compliance under Resolution Plan
<i>(a) transfer of all or part of the assets of the corporate debt to one or more persons;</i>	The RA declares that the present provision is not applicable to this Resolution Plan.
<i>(b) sale of all or part of the assets whether subject to any security interest or not;</i>	The Ra declares that the present provision is not applicable to this Resolution Plan.
<i>(ba) Restructuring of the Corporate Debtor, by the way of merger, amalgamation and demerger.</i>	The RA declares that the present provision is not applicable to this Resolution Plan.

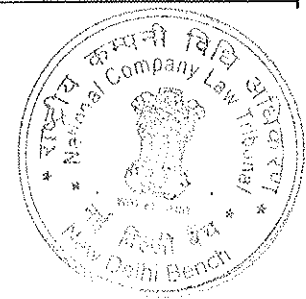
<i>(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;</i>	This has been provided in this Resolution Plan at Chapter VII (Plan page 38) at page 398 of Application Vol3
<i>(ca) cancellation or delisting of any shares of the corporate debtor, if Applicable</i>	This has been provided in this Resolution Plan at Chapter VII.
<i>(d) satisfaction or modification of any security interest;</i>	Any and all security interest on any of the assets of the CD shall stand satisfies upon the payment of the Resolution Amount to the Secured Financial Creditor as per the amount proposed in the plan. Page 411 of Application Vol3
<i>(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;</i>	The RA proposes that all such breach of terms of any debt of the CD shall stand cured on and all penalties, fines, breaches, etc., shall Stand waived upon successful implementation of this Resolution Plan.





	Page 411 of Application Vol3
<i>(f) reduction in the amount payable to the creditors;</i>	The RA has proposed for reduction in the amount payable to the creditors of the CD in the Financial Proposal of this Resolution Plan. Page 411 of Application Vol3
<i>(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;</i>	The RA declares that the present provision is not applicable to this Resolution Plan.

<i>(h) amendment of the constitutional documents of the corporate debtor</i>	<p>In order to give effect to this Resolution Plan, the RA shall be at liberty to amend or change any constitutional document of the Corporate Debtor, including the MoA, AoA etc. for any purpose including but not limited to changing the name of the Corporate Debtor, changing the amount of authorized share capital of the Corporate Debtor etc.</p> <p>This has been provided in Chapter VII. Page 411-412 of Application Vol3</p>
<i>(i) issuance of securities of the corporate debtor, for cash, property, securities, or exchange for claims or interests or other appropriate purpose</i>	The RA declares that the present provision is not applicable to this Resolution Plan.
<i>(j) change in portfolio of goods or services produced or rendered by the corporate debtor</i>	The RA declares that the present provision is not applicable to this Resolution Plan till the implementation of the plan.

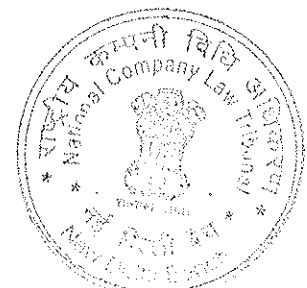




<i>(k) change in technology used by the corporate debtor and</i>	The RA declares that the present provision is not applicable to this Resolution Plan.
<i>(l) obtaining necessary approvals from the Central and State Governments and other authorities;</i>	This has been provided in Chapter VIII. Page 412 of Application Vol3

Regulation 38(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process	This has been provided in Chapter VI(Part A) of the Resolution Plan at page 385 of Application Vol3
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for Corporate Persons] Regulations, 2016 Regulation 38(1)(a)- <i>The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors</i>	
Regulation 38(1)(b)- <i>The amount payable under a resolution plan to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.</i>	This has been provided in Chapter VI(Part A) of the Resolution Plan at page 385 of Application Vol3
Regulation 38(1A)- <i>A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor</i>	<p>The RA declares that it has endeavoured to take into account all claims, including the claims of statutory authorities while proposing the present Resolution Plan and has dealt with the interests of all stakeholders, including Financial Creditors, and Operational Creditors and Other Creditors of the CD.</p> <p>This has been provided in Chapter XI of the Resolution Plan at page 407 of Application Vol3</p>





<p>Regulation 38(1B)- <i>A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has 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</i></p>	<p>The RA declares that neither the RA nor any of its related parties have 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 has been provided in Chapter XII of the Resolution Plan at page 408-409 of Application Vol3</p>
<p>Regulation 38(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Compliance under Resolution Plan</p>	
<p><i>a) The term of the plan and its implementation schedule;</i></p>	<p>This has been provided in this Resolution Plan at Chapter X of the Resolution Plan at page 405-407 of Application Vol3</p>
<p><i>(b) The management and control of the business of the corporate debtor during its term;</i></p>	<p>This has been provided in this Resolution Plan at Chapter X of the Resolution Plan at page 405-407 of Application Vol3</p>
<p><i>(c) Adequate means for supervising its implementation;</i></p>	<p>This has been provided in this Resolution Plan at Chapter X of the Resolution Plan at page 405-407 of Application Vol3 It provides for the constitution of the Monitoring Committee</p>
<p><i>d) Provides for the manner in which proceedings in respect of avoidance litigation transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, shall will be pursued after the approval of Final resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed: Provided that this clause shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of taken commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022</i></p>	<p>This has been provided in this Resolution Plan at Chapter VI (Part A) of the Resolution Plan at page 383 of Application Vol3</p>
<p>Regulation 38(3) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 Compliance under Resolution Plan</p>	





<i>(a) It addresses the cause of default</i>	This has been provided in this Resolution Plan at Chapter VIII of the Resolution Plan at page 402-404 of Application Vol3
<i>(b) It is feasible and viable</i>	The RA confirms that the present Plan is feasible and viable, considering the payments being made to each category of creditors of the CD. This has been provided in this Resolution Plan at Chapter VIII of the Resolution Plan at page 402-404 of Application Vol3
<i>(c) It has provisions for its effective implementation</i>	This has been provided in this Resolution Plan at Chapter VIII of the Resolution Plan at page 402-404 of Application Vol3
<i>(d) It has provisions for approvals required and the timeline for the same</i>	This has been provided in this Resolution Plan at Chapter VIII of the Resolution Plan at page 402-404 of Application Vol3
<i>(e) The resolution applicant has the capability to implement the resolution plan</i>	This has been provided in this Resolution Plan at Chapter VIII of the Resolution Plan at page 402-404 of Application Vol3

13. The Resolution Professional has placed on record an Affidavit dated 23.11.2022 required in terms of the provisions of Section 29A of IBC, 2016. The Affidavits reads thus:.





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ANNEXURE C

SECTION 29A of IBC

I PAWAN KUMAR GUPTA S/O Shri Ravi Karan Gupta, aged about 39 years, currently residing at J-23, RRT Enclave Paschim Vihar, New Delhi-110066 and having Aadhaar No. 993078626660 on behalf of SUNRISE INDUSTRIES having registered office at J-23, RRT Enclave Paschim Vihar, New Delhi-110066 pursuant to authorization of the Partners of the Sunrise Industries dated 19-07-2019 (as Power of Attorney Enclosed Herewith) do solemnly affirm and state to committee of creditors ("CoC") of Altech Infrastructure Private Limited ("Corporate Debtor") and the resolution professional of the Corporate Debtor ("RP") as follows:

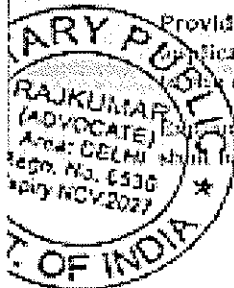
1. That I Pawan Kumar Gupta duly authorized and competent to make and affirm the instant affidavit for and on behalf of the Sunrise Industries in terms of power of attorney dated 19-07-2019. The said document is true, valid and genuine to the best of my knowledge, information and belief.
2. That the Applicant or any person acting jointly with the Applicant or in concert with Applicant or any person who is a 'connected person' (as defined under the Insolvency and Bankruptcy Code, 2016 ("Code")), listed herein as 'Annexure F':

A Prospective Resolution Applicant will not be eligible to submit the first resolution plan if any person acting jointly or in concert with him/her/it:

1. Is an undischarged insolvent;
2. Is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949
3. at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor.

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan.

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor.



Explanation 1- For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator.

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equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II.— For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a pre-insolvency plan approved under the Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under the Code;

4. has been convicted for any offence punishable with imprisonment –

I. for two years or more under any Act specified under the Twelfth Schedule of the Code; or

II. for seven years or more under any law for the time being in force

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment

Provided further that this clause shall not apply in relation to a connected person referred to in clause (III) of Explanation I.

5. is disqualified to act as a director under Companies Act, 2013.

Provided that this clause shall not apply in relation to a connected person referred to in clause (III) of Explanation I.

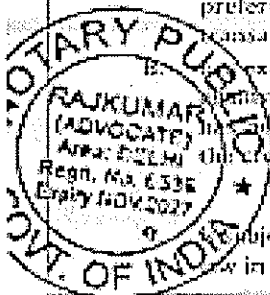
6. is prohibited by the Securities Exchange Board of India from trading in securities or accessing the securities market

7. has been a promoter or in the management or control of the Company in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under the Code

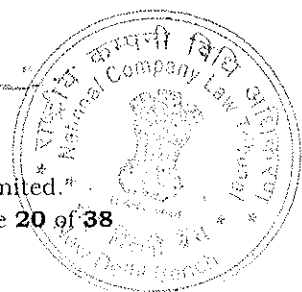
Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under the Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

8. has executed a guarantee in favor of a creditor in respect of a corporate debtor in which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part

Provided that this clause shall not apply to a person who is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or



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A



10. has a connected person not eligible under clauses (a) to (i).

Explanation I — For the purposes of this clause, the expression "connected person" means—

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii).

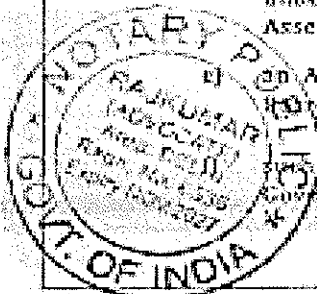
Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor;

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;

Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely: —

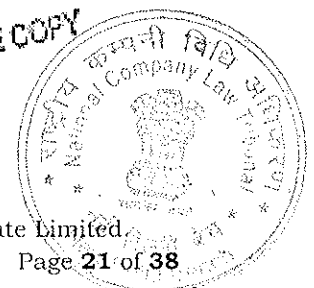
- a) a scheduled bank;
- b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);
- d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- e) an Alternate Investment Fund registered with Securities and Exchange Board of India;

and such other categories of persons as may be notified by the Central Government.



[Signature]

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Sec 29A Undertaking has to be in the form of an affidavit on a stamp paper of appropriate amount as per the stamp act applicable to the state of execution

SOLEMNLY AFFIRMED AT New Delhi

ON THIS THE New Delhi, on this the 23th November 2022

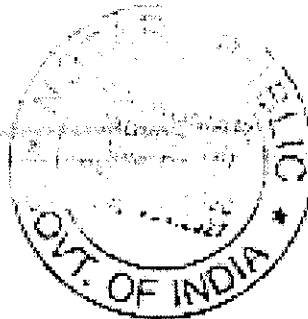

DEPONENT

VERIFICATION:

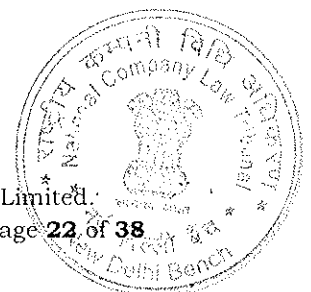
I, Pawan Kumar Gupta authorized Person of Sunrise Industries Applicant, authorized by the General Power of Attorney for giving such affidavit, the deponent above named, on behalf of Sunrise Industries, having registered office at J-23, 83F Enclave, Paschim Vihar New Delhi 110063 do hereby verify and state that the contents of the above affidavit are true to the best of my knowledge and nothing material has been concealed therein.

Verified at New Delhi, on this the 23th November 2022


DEPONENT




NOTARY PUBLIC
GOVT OF INDIA
23 NOV 2022





14. It can be seen from the above as regards the compliance of Section 30(2) of the Code, as reflected in the Form H, the liquidation value payable to the Operational Creditors (other than workmen and employees) is NIL as the amount of the admitted claim of the Secured Creditors is more than the value of the Corporate Debtor and are paid in priority to the Financial Creditors.

15. Vide Affidavit dated 10.06.2024, it is clarified that the total amount of EPFO dues of Rs. 21,38,247/- has been paid in full.

16. In the Affidavit dated 10.06.2024, it has been clarified that the Statutory Dues of Rs. 43,52,240/- has been treated as secured and paid in the same proportion as that to the Secured Financial Creditor. However, as reflected in Form H, a total of Rs. 42,00,000/- has been paid to the Operational Creditors.

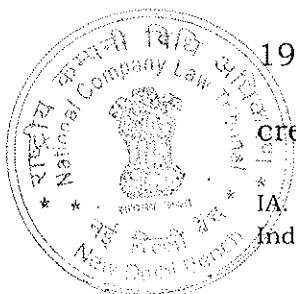
17. It is also clarified in the Affidavit dated 10.06.2024 filed by the Resolution Professional that the Resolution Plan does not provide for any CIRP Costs as the same has been met from the income of the CD during CIRP i.e., monthly rental of Rs. 5,00,000/- from the factory sheds and available machinery leased to third party.

18. It is also clarified in the same Affidavit that no application for Avoidance Transactions has been filed by the Resolution Professional.

19. The Resolution Plan envisages 150 days for payment to all the creditors from the date of approval of order by this Adjudicating Authority.

IA No. 09/2024 in (IB)-686(ND)/2019

India Factoring & Finance Solutions Pvt Ltd. Vs. Altech Infrastructure Private Limited.





20. The details of the implementation schedule of the plan reads as under:

Step	Action	Timeline (in days)
Step 1	Approval of the Resolution Plan by the Adjudicating Authority or the receipt of the Approval Order, whichever is later.	T
Step 2	Intimation to all the Creditors, existing shareholders and Other Stakeholder of the CD	Within T+3
Step 3	Appointment of the monitoring committee	Within T+3
Step 4	Change in Management of the Corporate Debtor, by appointment of Directors nominated by RA on the Board of the Corporate Debtor.	Within T+ 5
Step 5	Infusion of funds by way of equity and debt for making the payment as proposed in this Resolution Plan in compliance to sec 30(2) for payment of the Operational Creditors.	Within T+ 60
Step 6	Restructuring of share capital as proposed under the Resolution Plan and infusion of the fund in the form of Debt & equity.	Within T+ 60
Step 7	Infusion of funds for payment of the financial creditors.	Within T+60 Within T+150
Step 8	Transfer of all the Assets to the CD and Receipt of NOC other documents from the Financial Creditors for satisfaction/modification of charges.	Within T+150





21. The Resolution Applicant has proposed the following for monitoring of the Resolution Plan:

a. Constitution of Committee for monitoring and supervision of resolution plan:

This is envisaged in the Resolution Plan to constitute a monitoring committee comprises of a representative of the CoC, Resolution Applicant along with the resolution professional **Mr. Anand Sonbhadra** for supervision and monitoring of implementation of the Resolution Plan for the term of the Resolution Plan. The monitoring committee/entity, constituted, shall have inter alia the following responsibilities:

- i. To supervise the implementation of the Resolution Plan and ensure that the Resolution Plan is implemented as approved without any deviations;
- ii. To ensure timely disbursement of funds to the financial and other creditors, as per the payment terms set out above;
- iii. To ensure that approvals, to the extent required for implementation of the Resolution Plan, are applied for and obtained in a timely manner.
- iv. To bring to the notice of NCLT, any deviations/violations, of the Resolution Plan, by any person;
- v. To provide regular updates to the NCLT, as and when required

b. Remuneration to the members of the monitoring committee

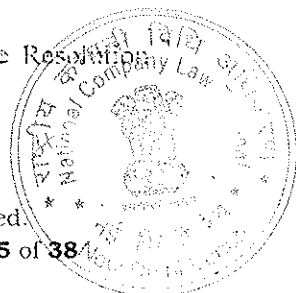
The resolution plan envisages for payment of fee to the chairperson be Rs. 100,000/- per month + applicable taxes (if any). All incidental/out of pocket expenses shall be paid and will be reimbursed as per actual's.

No other fee shall be borne by Resolution applicant.

c. Management and Control of the CD after approval of the Resolution plan

The resolution applicant shall take over the management of Company on approval of the Resolution Plan by the Adjudicating Authority and Resolution Professional shall be discharged from his duties. The Resolution Applicant proposes to appoint the following directors of the Corporate Debtor after the approval of the Resolution Plan:

1. Mr. Pawan Kumar Gupta or any person as may be nominated by the Resolution Applicant.
2. Mr. Parveen Kumar Gupta or any person as may be nominated by the Resolution Applicant.

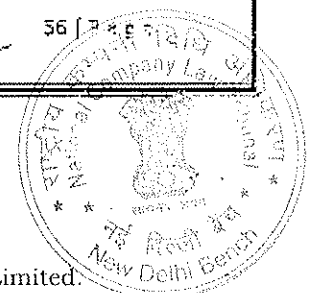




22. The Applicant has sought various reliefs and concessions stipulated under the Resolution Plan, which reads thus:-

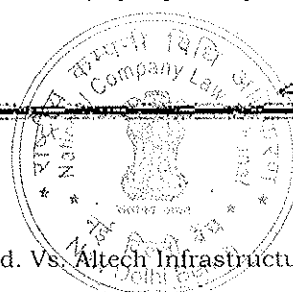
1. Any and all liabilities, apart from specifically proposed under this plan, shall stand permanently extinguished and annulled.
2. The share capital of the Corporate Debtor shall be issued/stand transfer to the Resolution applicant or any of its nominee as decided by them and who are Sec 29A compliant. The Resolution Applicant shall be exempt from any procedural requirement under any law for the time being in force by virtue of the order passed by the Hon'ble NCLT.
3. Any and all financial liabilities/ claims:
 - (i) arising out of the legal proceedings initiated before any forum by or on behalf of the Creditors, to enforce any rights or claims against the Company or enforce or invoke any security interest over the assets of the Company (or any guarantees/ undertaking/ surety by the Company);
 - (ii) on account of any violation or breach of any agreement of the Company, prior to the approval Date;
 - (iii) on account of all the outstanding negotiable instruments issued by the Company (including demand promissory notes, post-dated cheques and letters of credit, etc.);
 - (iv) on account of any corporate guarantees (whether contingent or crystallized), indemnities and all other forms of credit support provided by the Company prior to the Approval Date;
 - (v) on account of any form of security provided by any person (including the Existing Promoter Group) for and on behalf of, and/ or in order to secure any obligations of the Company (whether by way of hypothecation, pledge, mortgage, guarantee or otherwise);
 - (vi) arising out of termination of all agreements executed with any person/ entity or any and all Persons associated with the Existing Promoter Group in any manner whatsoever or relatives of the Existing Promoter Group who are employees of the Company or holds any managerial/ supervisory/ any other position in the Company by the Monitoring Agency; and

Are hereby fully and finally settled and discharged against payment of NIL consideration. Any and all financial liabilities/ claims with respect to such claims shall stand extinguished and annulled.





4. The CDDT shall exempt income / gain / profits, if any, arising as a result of giving effect to this Plan from being subjected to tax under the provisions of the Income-tax Act, 1961.
5. All contractual arrangements of the Corporate Debtor shall continue to be applicable, for the benefit of the Corporate Debtor, although the Resolution Applicant reserved the right to modify/terminate such contractual arrangements.
6. All government schemes, subsidies, benefits, policies as applicable to the Corporate Debtor shall continue to be applicable to the Corporate Debtor, unless otherwise provided in this Plan.
7. All lease, licenses, Intellectual property rights (in the form of Trademarks, wordmarks, Copyright or in any other form) and any approvals of the government & Industrial Development Authority held by the company, which if had expired prior to the effective date or which will expire within a period of one-year (12 months) thereafter, shall be renewed/extended by the relevant Governmental Authorities without penalties and interest by virtue of the Resolution Plan order passed by the Hon'ble Adjudicating Authority and the company shall be permitted to continue to operate its business and assets in the manner that all the approvals and licenses are valid, until renewal/extension of such licenses and approvals. Further, the relevant Governmental Authorities will provide a minimum period of one Year of time after the effective date in order for the Applicant to assess the status of the licenses and governmental Approvals required by the company and to procure or renew the same.
8. Industrial Development Authority / Department/ Authorities/ bodies, etc, will allow the change in management and shareholding of the AIFL/Corporate Debtor without any fee/charges/cost/penalty and after making necessary changes in their records will issue NOC and other required permissions for the same on the basis of resolution Plan approved by Hon'ble Adjudicating Authority.
9. That any claim or demands of any Industrial Development Authority/Company/ Department against the Resolution Applicant towards any dues and demands (like Lease, Premium, interest, compensation and any other charges) pending for the period prior to the insolvency commencement date shall hereby fully and finally settled and discharged against payment of NIL consideration.
10. The Development Authority/Corporation/Department/other authorities /bodies will allow modifications/alteration/additions in the project plan as per the current applicable policies

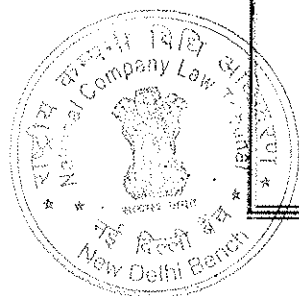




without any additional cost/fee/charges.

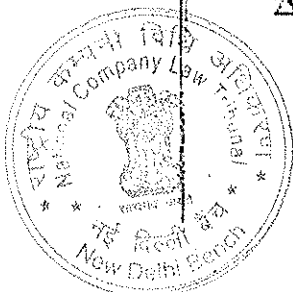
11. All MAT credit of the Company will continue with the Company (on a going concern basis) and will be available for the benefit of the Resolution Applicant.
12. The Corporate Debtor or the Resolution Applicant shall not, at any point of time, be held financially liable under provisions in relation to the liability of the Corporate Debtor as per provisions of Section 170 of the Income-tax Act, 1961 in respect of any transactions carried out before the Effective Date or contemplated under this Resolution Plan or an account of any action taken pursuant to this Resolution Plan including acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan.
13. The Resolution Applicant, or the Corporate Debtor shall not be liable to pay any Taxes (direct or indirect) whatsoever arising (directly or indirectly on such entity) as a result of the actions taken by the Corporate Debtor prior to the Effective Date. It may also be clarified that any Tax Liabilities pertaining to any period or action prior to the Effective Date, whether assessed or unassessed, by the relevant Tax Authorities shall be deemed to have been extinguished and written-off on the Effective Date.
14. All notices, assessments, appellate or other proceedings pending or threatened in relation to the Company, in relation to any period prior to the effective Date shall stand terminated and withdrawn and all consequential liabilities, if any, shall stand extinguished and be considered as not payable by the Company by virtue of the order of the Adjudicating Authority approving this Resolution Plan and any re-assessment, revision or other proceedings under the provisions of an Income Tax and Indirect tax laws would be deemed to be barred in relation to any period prior to the effective Date, by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company, the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
15. Any Requirement to obtain waiver from any Tax Authorities including in terms of Sec 79 of the IT Act is considered to have granted upon approval of this Resolution Plan on the Effective date.
16. All financial liabilities (including any contingent liabilities) relating to any investigations, inquiries, show-cause notices, causes of action, suits, claims, disputes, litigations, arbitrations or other judicial or regulatory or administrative proceedings shall be deemed to be extinguished or written-off.

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17. The Corporate Debtor or the Resolution Applicant shall not, at any point of time, be held liable for any financial/Civil/Criminal liabilities for any of the corporate guarantees, if given, by the Corporate Debtor prior to the Effective Date.
18. The change in shareholding of the Corporate Debtor pursuant to this Resolution Plan shall not lead to lapse of any brought forward losses of the Corporate Debtor and provisions of Section 79 of the Income-tax Act, 1961 are not applicable.
19. The Corporate Debtor shall be entitled to carry forward and set-off all the brought forward book losses and unabsorbed depreciation as shown in the books of account and considered in the returns of income filed under the Income-tax Act, 1961.
20. The Resolution Applicant or the Corporate Debtor shall not be liable to pay any tax whatsoever as a result of any related party transactions entered by Corporate Debtor prior to the Effective Date under.
21. The CBDT/CBEC to provide relief to the CD from all direct Tax/indirect litigations pending at different levels and provide waiver from all Tax dues including interest and penalty on such litigations.
22. All the unsecured loans given by the Corporate Debtor to any third party will continue with the Corporate Debtor and will be available for benefit of the Resolution Applicant. The Resolution Applicant, after the Effective Date, shall be entitled to recover all the amounts that are payable by the Corporate Debtor (including the unsecured loans) to any third party.
23. All accounts of the CD shall stand regularised and their asset classification shall be "standard" for the purposes of all Applicable Laws from the plan effective dates and the credit of the CD partners and directors will be standard without effective any civil record.
24. All Governmental Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the Resolution Plan in accordance with its terms and conditions.
25. All required Approval(s)/ Permission(s)/ Licence(s)/ Certificate(s)/ No Objection Certificate(s) or any other similar document either expired or unexpired, issued by any Government Authority or Statutory Body shall deemed to be effective and continue for a

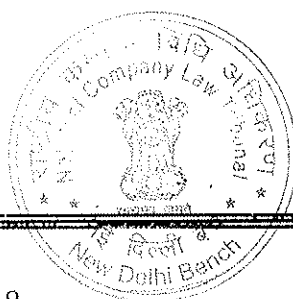


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term of minimum of one Year from the date of approval of the Resolution Plan by the Adjudicating Authority.

26. The relevant government authorities shall not initiate any investigation, actions or proceedings against the RA, or the new management (upon acquisition of CD) including the board of directors in relation to any non-compliance with applicable laws by the CD pertaining to any period up to approval date.
27. All Governmental Authorities to waive the Non-Compliances of the CD prior to the Plan Effective Date, including but not limited to Companies Act 2013, the Industrial Disputes Act, 1947, the relevant shops and establishment acts and rules, circulars and regulations of each of the above legislations along with any other Act applicable on the Corporate Debtor.
28. All Governmental Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the Resolution Plan in accordance with its terms and conditions.
29. The relevant government authorities shall not initiate any investigation, actions or proceedings against the RA, or the new management (upon acquisition of CD) including the board of directors in relation to any non-compliance with applicable laws by the CD pertaining to any period up to approval date.
30. The Resolution Applicant will be entitled for all immunities as provided under the provisions of I & B Code, 2016 and related regulations but not limited to immunities given vide section 32A of the I & B code, 2016.
31. In case any amount is due to be received against any acquisition of any part/partial of the land/unit/asset of the corporate debtor by any Government/ Statutory Authorities/ any other person prior to the Effective Date then such recoveries/compensation will be routed to the account of Corporate Debtor for its use as decided by the Resolution Applicant.
32. A peaceful, hassle free, undisputed and clear (i.e. free from any illegal possession of any kind) physical possession of all the assets (including the land parcels in Bhiwadi as mentioned in the LM), movable (including vehicles) or immovable (including properties), of the Corporate Debtor appearing in the books of account or not mentioned in the LM or Not shall be given to the Resolution Applicant immediately on approval of the Resolution Plan.



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33. The RA shall reserve the right to take the appropriate legal action against the lease holder with whom it has a MOU/Agreement signed for getting the lease rent, royalty charges, etc.
34. As per IM there are no employees and workmen in the company on the date of submission of resolution plan. The Resolution Applicant therefore shall be free to appoint its own resources including manpower, labour and workforce and shall not be bound by any Government authority to appoint any of the old employee/workmen.
35. After the approval of resolution plan, the resolution applicant will appoint Statutory and other auditors from list of eligible audit firms.
36. It is clarified that the existing/past shareholders, managers, directors, officers employees, workmen or other personnel of the Company shall continue to be liable for all the claims, demand, obligations, penalties etc.
- (i) arising out of any proceedings, inquiries, investigations, orders, show causes, notice, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to Sections 43, 43, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the IBC), whether civil or criminal, pending before any authority, court, tribunal or any other forum prior to the plan effective date; or
- (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc (including any orders that may be passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the IBC), whether civil or criminal, that may be initiated or instituted post the approval of the Resolution Plan by the NCLT on account of any transactions entered into, or decisions or actions taken by, the existing shareholders, managers, directors, officers, employees, workmen or other personnel of the Company. The Company or the resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
37. Further, any recoveries by the Corporate Debtor / Resolution applicant from the erstwhile promoters / directors or other entities against avoidance transactions (PUTE transactions under IBC, 2016) shall be vested with the Committee of Creditors and the expenses for pursuing/follow-up the pending Applications after the Approval date shall be borne by the Committee of Creditors themselves.
38. Where the Resolution Applicant become the Successful resolution applicant on approval of its given Resolution Plan by the COC, the process participation deposit and the EMD



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(Paid along with the submission of the Resolution Plan) provided shall be adjusted towards payment as per clause II (a) of the RFRP. .

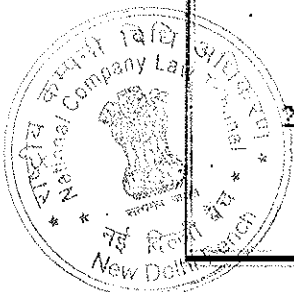
39. RA have a right to make a prepayment as proposed in the Resolution plan with the discount rate is 8%.

OTHER RELIEFS SOUGHT

1. From Ministry of Corporate Affairs/ ROC/ NCLT

- (i) NCLT shall pass appropriate order to ensure that the timeline for making payment to any of the Creditors starts on the date of approval of this Plan by NCLT.
- (ii) The MCA and/ or the NCLT shall waive any non-compliance by the Company with respect to the provisions of the Companies Act, 2013 (including provisions mentioned in Chapter VII, IX & X) and the rules, regulations and circulars issued thereunder, relating to the period prior to the effective date.
- (iii) The Ministry of Corporate Affairs and, or, NCLT shall exempt compliance with the provisions of Chapter XV of the Companies Act, 2013 (and the corresponding rules issued under the Companies Act, 2013), in respect of schemes of arrangement contemplated under this Plan.
- (iv) The Department of Registration and Stamps of the relevant states and the Ministry of Corporate Affairs shall exempt the Resolution Applicant and the Company from the levy of stamp duty applicable and payable in relation to this Plan and its implementation.
- (v) NCLT shall direct that the Company shall not be liable for any non-compliances, breach, etc. during the period prior to the effective date and for failure to take or obtain any approvals, consents, permits from any of the governmental authorities.
- (vi) Any veto rights or any other preferential rights associated with existing shareholders shall stand extinguished/ cancelled and the approval of the shareholders shall be deemed to have been given for effecting such revision of agreements, constitutional documents such as memorandum of association, articles of association, on approval of this Plan by the NCLT.

2. SEVERABILITY AND RIGHT TO MODIFY



[Signature] 82/8220



- (i) In the event it is determined that any provisions of the Resolution Plan is unenforceable either on its face or as applied to any Claims or transaction and/or in the event any provision of the Resolution Plan becomes invalid for reasons other than by breach of any party, Resolution Applicant may apply to the Adjudicating Authority for appropriate modification of such provisions of the Resolution Plan, to satisfaction of the Adjudicating Authority, and such invalidity and/or unenforceability of the provision of the Resolution Plan shall not render the whole Resolution Plan ineffective unless otherwise directed by the Adjudicating Authority by order.
- (ii) The Resolution Applicant has made every possible effort to prepare and submit the Resolution Plan strictly in accordance with the various provisions of the Code and as per the terms mentioned by the Resolution Professional. However, if there are any inadvertent inadequacy/ shortcomings/ defects in the Resolution Plan, the Resolution Applicant shall be given an opportunity for rectifying and removal of such inadequacy/ shortcomings/ defects so observed.

23. As can be seen from the above, some of the reliefs and concessions sought by the Successful Resolution Applicant fall within the jurisdiction of different Government Authorities, and/or are subjected to the provisions of different laws for the time being in force. In this connection, it is made clear that the amount payable by the SRA in terms of the plan to different creditors, stakeholders, and to keep the Corporate Debtor as a going concern is not a subject matter of any condition, assumptions, relief/concessions and/or qualification. It also needs to be underlined that the provisions of Section 31(4) of IBC, 2016 mandates the Resolution

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Applicant to obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 of the IBC, 2016. In terms of the provisions of Section 14 of the Code even during the period of CIRP, no default in payment of current dues is a precondition for continuation of the License, Permit, Registration and similar rights. Thus, even during the moratorium period, the facilities mentioned above are made available to the CD only when there is no default in payment of the current dues. On the approval of the resolution plan, the SRA/CD cannot be put on a better footing by exempting it from paying its legitimate dues under the law. For the sake of instant reference, the explanation below Section 14 of the code is extracted below:

“14. Moratorium. –

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

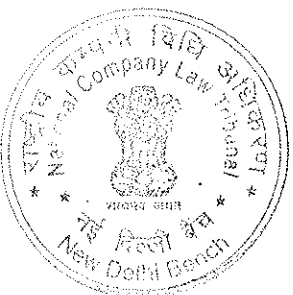
(a)

(b)

(c)

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.- For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license,



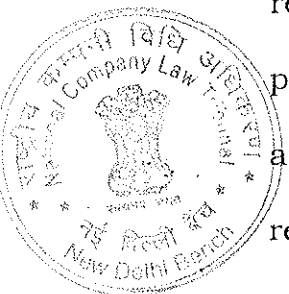


permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;"

(Emphasis Supplied)

24. Furthermore, the Code provides for consideration of the claims, by the IRP/RP in terms of the provisions of Section 18(b) and Section 25(b) read with the relevant regulations.

25. The Code, further, provides for preparation of an Information Memorandum in terms of the provisions of Regulation 36(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which contains, inter alia, a list of creditors along with the amounts claimed by them. Regulation 36(1) of the regulations (ibid), provides for submission of the said Information Memorandum to each member of the COC. Regulation 36A provides for invitation for expression of interest and Regulation 36B provides for a request for a Resolution Plan. It is with reference to the Information Memorandum and Evaluation Matrix that the RP issues a Request for Resolution Plan. The Request for Resolution Plan details each step in the process and the manner and purposes of interaction between the Resolution Professional and the Prospective Resolution Applicant. The Resolution Plan submitted after consideration of the IM, EM and the RFRP is then examined by the Committee of Creditors. Even then, it needs to satisfy the requirements of Regulations 37 and 38 of the extant regulations and only then it can be approved by the COC in terms of the provisions of Regulation 39 of the aforementioned regulations. After such approval, the Plan effectively becomes a contract entered into between CD represented through RP, SRA, the creditors of the CD, and other





stakeholders and is binding on all of them. Section 31(1) of IBC, 2016, thus, takes care of most of the reliefs/concessions/waivers which are required by the Resolution Applicant. Furthermore, Section 32A of the Code provides for cessation of the liability for offences committed by the CD prior to initiation of the CIRP subject to the conditions laid down in the said section.

26. In this context a reference is made to the decision of Hon'ble NCLAT in **Worldfa Exports Pvt. Ltd Vs. Vivek Raheja and Anr. [Company Appeal (AT) (Insolvency) No. 827 of 2024 & I.A. No. 2994 of 2024]** dated 30.04.2024 wherein a challenge was laid against the following observation of the NCLT:

"16. However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra)."

The Hon'ble NCLAT, however, dismissed the Appeal with the following observation:

"Adjudicating Authority has already referred to the Judgment of the Hon'ble Supreme Court in the matter of 'Ghanshyam Mishra & Sons Private Limited' Vs. 'Edelweiss Asset Reconstruction Company Limited', in Civil Appeal No. 8129 of 2019, which clearly laid down that all claims which have not been dealt in the Resolution Plan does not survive after the approval of Resolution Plan.

6. Insofar as statutory waivers and concessions, Adjudicating Authority has rightly observed that SRA to file appropriate necessary application before the necessary Forum/ Authority in order to avail the relief and the concession.

7. The Resolution Plan having been approved it is always open for the Applicant to make an appropriate application before the Statutory Authority for grant of such relief as permissible after approval of the Resolution Plan.





8. *It goes without saying that all past liabilities which are not dealt with in the Resolution Plan stand extinguished by view of the Judgment of the Hon'ble Supreme Court in 'Ghanshyam Mishra & Sons Private Limited' (Supra) which is a well settled law."*

27. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver from this Adjudicating Authority except those available to it, as per the provisions of Section 31(1) and 32A of IBC, 2016. The SRA is, however, at liberty to approach the relevant authorities, who would consider these claims as per the provisions of the relevant law, in an expeditious manner.

28. In the sequel to the above, we are inclined to approve the Resolution Plan as approved/recommended by the CoC as placed by the Applicant before this Adjudicating Authority. We, therefore, allow the present Application and approve the COC-approved Resolution Plan as placed before us by the Applicant/RP with the following directions: -

- (i) The approved Resolution Plan shall become effective from the date of passing of this Order and shall be implemented strictly as per the term of the plan and implementation schedule given in the Plan;
- (ii) The Performance Guarantee/FD shall be renewed, if required, in the name of and kept alive by the "Monitoring Committee of the Corporate Debtor" till the Resolution Plan is fully implemented.
- (iii) The SRA/CD would be entitled to no other reliefs/concessions/waivers except those are available/permissible to it as per the provisions of Section 31(1) and 32A of IBC, 2016. The SRA is at liberty to approach the relevant authorities who would consider these claims as per the provisions of the relevant law in an expeditious manner.





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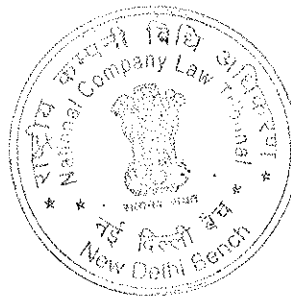
- (iv) The Monitoring Committee as provided in the Resolution Plan shall be set up by the Applicant/RP within 07 days of passing of this Order, which in turn, shall take all necessary steps for time bound implementation of the Resolution Plan as per approval.
- (v) The order of the moratorium in respect to the corporate debtor passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order; and
- (vi) The Resolution Professional shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to the IBBI for its record and database.

29. The Court Officer and Resolution Professional (RP) shall forthwith make available/send a copy of this Order to the CoC and the Successful Resolution Applicant (SRA) for immediate necessary compliance.

30. A copy of this order shall also be sent by the Court Officer and Applicant to the IBBI for their record.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)



Subrata
19/06/2024

Kamal

कमल सुल्तानपुरी / KAMAL SULTANPURI
संयुक्त रजिस्ट्रार / Joint Registrar
राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
भारत सरकार / Govt. of India