

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No.1516/2023
In**

**CP(IB) No.193/Chd/Hry/2020
(Admitted)**

**Under Section 30 (6) and 31 of the Insolvency and
Bankruptcy Code, 2016 read with Regulation 39 of
IBBI Regulations, 2016**

IN THE MATTER OF:

Caspian Impact Investments Private Limited ...Operational Creditor

Vs.

Vivo Healthcare Private Limited ...Corporate Debtor

And in the matter of IA No.1516/2023:-

Ms. Sunita
Resolution Professional for
Vivo Healthcare Private Limited

... Applicant

Vs.

Shakti Singh & Ors.

...Respondents

Order delivered on : 22.12.2023

**Coram: HON'BLE SHRI HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SHRI SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

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Present :-

For the Applicant: : Mr. Abhishek Anand, Advocate

For the Respondent : None

Per: Harnam Singh Thakur, Member (Judicial)
Subrata Kumar Dash, Member (Technical)

ORDER

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The present application has been filed by Ms. Sunita, Resolution Professional for Vivo Healthcare Private Limited, under Section 30(6) and Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**), read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking approval of the resolution plan in respect of the Vivo Healthcare Private Limited (**"the corporate debtor"**). The applicant-Resolution Professional filed the present application on 30.05.2023 for approval of the Resolution Plan, which was approved with a 100% voting share of the Committee of Creditors (**COC**) in its 10th meeting, which was held on 11.05.2023.

2. The Company Petition CP(IB) No.193/Chd/Hry/2020 was filed by the Financial creditor- Caspian Impact Investments Private Limited, against the corporate debtor, which was admitted into the Corporate Insolvency Resolution Process (**'CIRP'**) vide order dated 23.11.2022.

3. Ms. Sunita was appointed as an Insolvency Resolution Professional (**'IRP'**), and the Committee of Creditors (CoC), in its second meeting held on 30.12.2022, confirmed

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the appointment of Ms. Sunita (Reg. No. IBBI/IPA-002/IP-NO1208/2021-2022/14031) as the Resolution Professional with 100% voting.

4. The Applicant submits that the public announcement as per Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, read with Section 15 of IBC, 2016 in Form A as prescribed under the schedule was made on 25.11.2022 in two newspapers, i.e., 'Amar Ujala' and 'Financial Express', inviting claims from the creditors of the corporate debtor as envisaged under the Code.

5. The Interim Resolution Professional constituted the Committee of Creditors in accordance with Section 21(2) of the Code, as amended, which comprised the financial creditor, i.e Caspian Impact Investments Private Limited, with 100% voting share.

6. The assets of the corporate debtor and the fair value and the liquidation value of the corporate debtor as under:

S. NO.	NAME OF VALUER	FAIR VALUE	LIQUIDATION VALUE	AVERAGE	
				FAIR VALUE	LIQUIDATION VALUE
A.	Plant & Machinery				
1.	Nilesh Barad	28,500	21,550	29,196	21,984
2.	Pramod Shakargaye	29,892	22,419		

B.		Securities and Financial Asset			
3.	Dharmendra Kumar Bhasin	30,91,316	20,33,176	30,91,750	19,98,339
4.	Den Valuation (OPC) Limited	30,92,185	19,63,502		
Total Value				31,20,946	20,20,323

7. The Applicant Submits that a total of 10 CoC meetings have been held during the CIRP period. The details are as follows:

Particulars	Date of CoC Meeting	Main Agenda of discussion	Important decisions ratified
1st CoC Meeting	22.12.2022	<p>Discussion regarding declaration to be made by the CoC members of their relationship with the Corporate Debtor.</p> <p>Discussions and determination of voting rights of the CoC members in proportion to their respective debt due</p> <p>IRP updated about the status of Control & Custody of all the assets of the Corporate Debtor.</p>	<p>Appointment of an IPE, Ducturus Resolution Professionals Pvt. Ltd. was approved.</p> <p>The following resolutions/agendas were dissented by the CoC members:</p> <p>The expenses incurred by the IRP & her team for the period from 23.11.2022 to 15.12.2022.</p> <p>Appointment of Ms. Sunita as RP & her remuneration thereof.</p> <p>Approval for shorter notice of the meeting for future CoC meetings.</p>

		<p>IRP updated about the actions taken by the IRP till the date of issue of notice</p> <p>Discussions on the appeal filed by the directors (power suspended) against the CIRP order.</p> <p>Discussion on the requirement of the Valuation of assets</p> <p>Discussion on requirement & approving the appointment of a Transaction Auditor.</p>	
<p>2ndCoC Meeting</p>	<p>30.12.2022</p>	<p>IRP gave brief introduction about the Corporate Insolvency Resolution Process for the better understanding of the CoC members</p> <p>Discussions on the status of additional claims received by the IRP</p> <p>Discussions on the valuation & the quotations received from the valuers (Plant & Machinery & SFA).</p>	<p>The following resolutions/agendas were approved by the CoC members:</p> <p>Approval for shorter notice from 5 days to 3 days for future CoC meetings.</p> <p>Approval of the appointment of Transaction auditor</p> <p>Ratified the expenses incurred by the IRP & her team for the period from 23.11.2022 to 15.12.2022.</p> <p>Appointment of Ms. Sunita as RP</p> <p>Approve of the monthly fee of RP.</p>

<p>3rd CoC Meeting</p>	<p>02.01.2023</p>	<p>Discussions on the status of additional claims received by the IRP.</p> <p>Actions taken by RP: Team member of RP visited the banks where the CD have current accounts so as to defreeze the same for the directors (powers suspended) of CD, Letters sent to the skill centers/coordinators of the franchises for gathering information about their working, meeting with Mr. Shakti Singh, director (powers suspended) of CD.</p> <p>Discussion on the eligibility criteria for PRAs.</p>	<p>The following resolutions/agendas were approved by the CoC members:</p> <p>Approval of the appointment of valuers (Plant & Machinery & SFA).</p> <p>Approval regarding the publication of Form-G/Eol in the newspapers to invite resolution applicants.</p> <p>Approval of the Eligibility Criteria for the PRAs.</p> <p>Ratification of the expenses incurred by the RP & her team for the period from 15.12.2022 to 16.01.2023.</p>
<p>4thCoC Meeting</p>	<p>15.02.2023</p>	<p>Discussions on the status of additional claims received by RP.</p> <p>Actions taken by RP: Filed an application u/s 60(5) of IBC, 2016, for breach of moratorium against the directors (powers suspended) of CD, meeting with Mr. Amrish Gupta, director (powers suspended) of CD, Visit at the office of RTO, Gurugram, to stop the transfer of vehicle in favor of the directors (powers suspended) of the CD, Visit at Pumpkin house school,</p>	<p>The following resolutions/agendas were being approved by the CoC members:</p> <p>CoC members ratified the appointment of Transaction/Forensic auditor & the fee.</p> <p>CoC members approved to extend the date of submission of Eol by 15 days through publication of Corrigendum.</p> <p>CoC members approved the appointment of CA KV Jain as legal counsel for the application filed u/s 60(5) for breach of the moratorium.</p>

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		Gurugram, for detecting any suspicious activity going on there by the directors (powers suspended) & staff of the CD, Visit at one of the skill centers located in Gurugram, follow-up with the directors of CD for control & custody of all the assets of CD, Joint meeting held between the coordinators of the skill centers of the CD & employees of CD, status of valuation.	<p>The following resolutions/agendas were dissented by the CoC members:</p> <p>CoC members took more time to approve the Evaluation matrix & RFRP placed by the RP.</p> <p>Ratification of the expenses incurred by the RP & her team for the period from 16.01.2023 to 11.02.2023.</p>
5thCoC Meeting	01.03.2023	<p>Actions taken by RP: Corrigendum timelines shared with the potential investors, meeting with the directors (power suspended) of CD</p> <p>Discussion on the Corrigendum to Form-G dated 21.01.2023</p> <p>Discussion on the application filed u/s 60(5) of IBC, 2016, for breach of moratorium against the directors (powers suspended) of CD.</p>	<p>The following resolutions/agendas were dissented by the CoC members:</p> <p>CoC members took more time to approve the Evaluation matrix & RFRP placed by the RP.</p> <p>Ratification of the expenses incurred by the RP & her team for the period from 16.01.2023 to 11.02.2023.</p>
6thCoC Meeting	13.03.2023	Discussions on the status of additional claims received by the IRP	<p>The following resolutions/agendas were approved by the CoC members:</p>

		Discussion on the receipt of Eols from the Prospective Resolution Applicants.	CoC members approved the evaluation matrix & RFRP placed before them in the CoC meeting.
7th CoC Meeting	12.04.2023	<p>Discussions on the status of additional claims received by RP.</p> <p>Apprised the status of admitted claims of Operational creditors having more than 10% of total debt of CD.</p> <p>Actions taken by RP: filed compliance affidavit of service in respect of the order of AA, meeting with suspended board of director.</p> <p>Discussion on the status of eligible PRAs.</p>	<p>The following resolutions/agendas were approved by the CoC members:</p> <p>CoC members approved the evaluation matrix & RFRP placed before them in the CoC meeting.</p> <p>Ratified the expenses incurred by the RP & her team for the period from 16.01.2023 to 30.03.2023.</p> <p>The following resolutions/agendas were dissented by the CoC members:</p> <p>The CoC members rejected the agenda for revision of the professional fee of RP from Rs. 75,000/- to Rs. 1,00,000/- in accordance with the Regulation 34B read with Clause 1 & Clause 2 of Schedule-II of IBBI Regulations, 2016.</p>
8th CoC Meeting	21.04.2023	<p>RP apprised that she has shared the fair & liquidation value of the CD through email.</p> <p>RP opened the sealed envelopes of the Resolution Plans & sought brief introduction from each of the Prospective Resolution Applicants. Further, each of the PRA briefed their financial proposal.</p>	

<p>9th CoC Meeting</p>	<p>03.05.2023</p>	<p>Negotiation took place in this meeting wherein there were three rounds of bidding.</p>	<p>The following resolutions/agendas were approved by the CoC members:</p> <p>Ratification of the expenses incurred by the RP & her team for the period from 01.04.2023 to 28.04.2023.</p>
<p>10th CoC Meeting</p>	<p>11.05.2023</p>	<p>Discussions regarding the Resolution plans as received from the PRAs.</p>	<p>The following resolutions/agendas were approved by the CoC members:</p> <p>Approval of the resolution plan submitted by Mr. Shakti Singh and authorized the Resolution Professional to file an application under section 31 of IBC, 2016 before the Hon'ble Adjudicating Authority for approval of resolution plan.</p> <p>Approval of the fee and appointment of independent professionals for verification of compliances u/s 29A of IBC, 2016 of the PRAs.</p> <p>Approval of the committee members regarding performance-linked incentive for timely resolution payable to the RP under regulation 34 (B)(3) of IBBI (CIRP) Regulations, 2016 .</p> <p>Approval of the committee members regarding performance-linked incentive for value maximization payable to the RP under regulation 34 (B)(4) of IBBI (CIRP) regulations, 2016.</p>

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			<p>Approval of the actual/estimated CIRP cost incurred/to be incurred during the CIRP process.</p> <p>The following resolutions/agendas were dissented by the CoC members:</p> <p>All the agendas related to the Liquidation process were rejected by the CoC members.</p>
11th CoC Meeting	30.08.2023	<p>Apprised CoC about the actions taken by RP</p> <p>Apprised CoC regarding the status of the applications pending before the Hon'ble NCLT, Chandigarh Bench</p>	

8. It is submitted that the CoC, in its 3rd meeting held on 02.01.2023 discussed and approved the publication of Form G inviting Expression of Interest along with the Eligibility Criteria for the Prospective Resolution Applicants. It was informed by the IRP that invitation of Expression of Interest in Form G under Regulation 36A of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, needs to be published on or before the 75th day from the CIRP initiation date, i.e. 11.08.2022 and accordingly, 30 days time is proposed to give to the eligible prospective resolution applicant. Further, as per Section 25(2)(h), the IRP will invite Prospective Resolution Applicants who fulfill such criteria as may be approved by the CoC to submit a resolution plan.

9. It is stated that the CoC in its 4th meeting held on 15.02.2023, 2023, with a voting share of 100%, resolved to extend the date of submission of EOI by 15 days through publication of FORM-G dated 21.01.2023

10. The applicant submits that the second Form-G dated 16.02.2023, the last date of receipt of the Resolution Plan was 03.03.2023 and the Applicant received nine Resolution Plans in total.

11. It is submitted that the applicant made changes in the RFRP dated 13.03.2023 and Evaluation Matrix and shared the revised RFRP and Evaluation Matrix, which were approved by the CoC in its 6th meeting held on 13.03.2023.

12. It is further submitted that the applicant convened the 7th COC meeting on 12.04.2023 and issued the final list of eligible Prospective Resolution Applicants and submitted that no objections have been received in terms of Regulation 36A (11) of the CIRP Regulations, 2016. He further apprised that the Information Memorandum and RFRP documents were shared with the PRA's on 18.03.2023 and the due date of submission of the Resolution Plan was 17.04.2023, pursuant to which 3 Resolution Plans were received.

13. It is submitted in the 10th meeting convened on 11.05.2023, Caspian Impact Investments Pvt. Ltd., the sole financial creditor having 100% voting share approved the Resolution Plan of Mr. Shakti Singh and the Applicant was authorized to file an application under Section 30(6) of the Code before this Adjudicating Authority.

14. The COC considered the Resolution Plans, conducted the financial due diligence and checked the viability of the Resolution Plan and thereafter, approved the Resolution Plan of Mr. Shakti Singh and passed it with 100% voting rights in the 10th CoC meeting held on 11.05.2023.

15. The Successful Resolution Applicants had made a deposit of Rs. 13,60,000/- as Performance Security in the account of Caspian Impact Investments Pvt. Ltd. in terms of approved RFRP (Annexure A21).

16. The resolution applicant by an affidavit and undertaking dated 03.03.2023, had averred that the applicant is eligible under Section 29A of IBC, 2016. (Annexure A-17).

17. The resolution applicant by an affidavit and undertaking dated 11.08.2023 had submitted that the Corporate Debtor is a MSME and the MSME registration number of the Corporate Debtor is HR05E0015263. The Successful Resolution Applicant, who is the promoter and director (power suspended) of the Corporate Debtor, being an MSME, is not barred under Section 29A, clause (c) and/or (h) from submitting his Resolution Plan for the Corporate Debtor.

18. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations, which a Resolution Plan is required to adhere to, as follows:

I. Requirements of Section 30 (1) and (2) of the Code are as under: -

Provisions under Section 30(1) and (2) of the Code	Compliance with Resolution Plan
<p>Section 30(1)</p> <p>A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum.</p>	<p>Yes, as per affidavit on Page no. 411-413 of the Main application</p>
<p>Section 30(2)</p> <p>(a) 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;</p>	<p>a) Yes, at Page No 45 of the Resolution Plan which is attached as Annexure No. A-15 (Relevant page no. 293 of the main application.), Resolution Applicant has stated as follows</p> <p>“The Resolution Applicant proposes the payment of the unpaid CIRP cost amounting to <u>Rs. 0.25 Crores</u> in priority to all other debts of the Corporate debtor proposed under this resolution plan.</p> <p>It is further clarified that any increase /decrease in the actual CIRP cost shall be adjusted from the payment proposed to secured financial creditors under the resolution plan.”</p>
<p>(b) provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than:</p>	<p>At Page No. 48 – 51 of the Resolution Plan which is attached as Annexure No. A-15 (Relevant page no. 296-298) of the main application.</p>

<p>(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or</p> <p>(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53; Whichever is higher, and provides for the payment of the debts of financial creditors, who do not vote in favour of the resolution plan, in such a manner as may be specified by the board, which shall not be less than the amount to be paid to such creditors in accordance with the sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.</p>	
<p>(c) provides for the payment of the financial creditors who did not vote in favor of the resolution plan?</p>	<p>(c) At Page No 46, 68 of the Resolution Plan which is attached as Annexure No. A-15 (Relevant page no. 294) 315 of the main application, the Resolution Applicant has stated as follows:</p> <p>“According to the provisions of the Insolvency & Bankruptcy Code, 2016, in case the financial creditors representing a minority stake do not consent to the repayments as proposed under this resolution plan, then such dissenting creditors would be eligible for payment of such amount as they would get, in the event of liquidation of the Corporate Debtor and further such amount shall be paid</p>

	<p>to the dissenting creditors in priority to any payment being made to consenting creditors.</p> <p>In the present case, there is only one secured financial creditor; hence the provision is not applicable.</p>
<p>(d) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;</p>	<p>At Page No 69-70 of the Resolution Plan which is attached as Annexure No. A-15 (Relevant page no. 316-317) of the main application, the Resolution Applicant provides for management of the affairs of the Corporate Debtor.</p>
<p>(e) provides for the implementation and supervision of the resolution plan;</p>	<p>Yes at Page No 70-71 of the Resolution Plan which is attached as Annexure No. A-15 (Relevant page no. 317-318) of the main application, the Resolution Applicants states as follow:</p> <p>“Supervision after the Effective Date and until expiry of the Term</p> <p>Within 10 business days of the Effective Date, a three Member Committee ("Monitoring Committee") shall be constituted comprising of:-</p> <p>One representative of the RA;</p> <p>One representative of the CoC; and</p> <p>The Resolution Professional</p> <p>The committee shall monitor the implementation of the Plan after the Effective date and until the term of implementation of plan.</p>

	<p>The present resolution professional shall become monitoring professional from the effective date and shall be paid same fee as is being paid during CIRP. The said fee shall be borne by the RA”</p>
<p>(f) Contravene any of the provisions of the law for the time being in force?</p>	<p>Declaration has been made by the Applicant to that effect in the Resolution Plan at Page 75of the Resolution Plan which is attached as Annexure No. A-15 (Relevant page no. 322) of the main application.</p> <p>It says that: <i>The Resolution Applicant represent and warrant that the resolution plan complies with all applicable laws and does not contravene any of the provision of law for the time being in force.”</i></p>

II. Requirements of Regulation 37(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is as under:

<p>Regulation 37(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</p>	<p>Compliance under Resolution Plan</p>
<p>(a) transfer of all or part of the assets of the corporate debt to one or more persons;</p>	<p>RA is not proposing to transfer any asset of the CD to one or more persons under the proposed resolution plan.</p>
<p>(b) sale of all or part of the assets whether subject to any security interest or not;</p>	<p>RA is not proposing to sell any asset of the CD under the proposed resolution plan.</p>

(ba) Restructuring of the Corporate Debtor, by the way of merger, amalgamation and demerger.	RA is proposing the restructuring of corporate debtor without any merger, amalgamation or demerger
(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	The relevant clause is explained in clause 6 of Chapter-IV of the resolution plan.
(ca) cancellation or delisting of any shares of the corporate debtor, if Applicable	CD is an unlisted entity, Hence Not applicable.
(d) satisfaction or modification of any security interest;	The Security Interest (mortgage/ hypothecation/ pledge/ lien/ encumbrance) of any creditor on the assets of the Corporate Debtor including the corporate guarantee of CD shall be extinguished upon the approval of plan from NCLT.
(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	NA
(f) reduction in the amount payable to the creditors;	All the liabilities of CD shall be reduced to the amount proposed under the resolution plan.
(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	All the liabilities of the corporate debtor shall be paid only in accordance with this resolution plan.

(h) amendment of the constitutional documents of the corporate debtor	RA is not proposing any amendment in the constitutional documents of the corporate debtor
(i) issuance of securities of the corporate debtor, for cash, property, securities, or exchange for claims or interests or other appropriate purpose	NA
(j) change in portfolio of goods or services produced or rendered by the corporate debtor	NA
(k) change in technology used by the corporate debtor and	NA
(l) obtaining necessary approvals from the Central and State Governments and other authorities;	The Resolution Applicant shall seek necessary approval within 12 months from the effective date.

III. Requirements of Regulations 38 (1), (2) (3) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is as under: -

Regulation 38(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Regulation 38(1)(a)- The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	At Page No 49 and 68 of the Resolution Plan which is attached as Annexure No. A-15 (Relevant page no. 296, 315) of the main application.
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<p>Regulation 38(1)(b)-</p> <p>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.</p>	<p>At Page No 68 of the Resolution Plan which is attached as Annexure No. A-15 (Relevant page no. 294) of the main application.</p>
<p>Regulation 38(1A)-</p> <p>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.</p>	<p>Addendum dated 11-05-2023 which is attached as Annexure No. A-15 (Relevant page no. 337-338) of the main application, the Resolution Applicant has mentioned the financial proposal indicating the amount to be paid to each creditor.</p>
<p>Regulation 38(1B)-</p> <p>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.</p>	<p>At Page 69 of the Resolution plan which is attached as Annexure No. A-15 (Relevant page no. 316) of the main application, the Resolution Applicant has declared that neither the Resolution Applicant nor any of its related parties have ever failed to implement or contributed to the failure of implementation of any other resolution plan approved by the NCLT at any time in the past.</p>
<p>Regulation 38(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.</p>	

Compliance under Resolution Plan	
(a) The term of the plan and its implementation schedule;	<p>The Resolution Applicant proposes to implement the entire Resolution Plan within a period of 90 days from effective date as mentioned at Page 69 of the Resolution Plan which is attached as Annexure No. A-15 (Relevant page no. 316) of the main application.</p> <p>Effective date is defined as date of approval of resolution Plan by Adjudicating Authority</p>
(b) The management and control of the business of the corporate debtor during its term;	<p>Page No 69 – 70 of the Resolution Plan provides for management of the Corporate Debtor which is attached as Annexure No. A-15 (Relevant page no. 316-317) of the main application.</p>
(c) Adequate means for supervising its implementation;	<p>At Page No 70-71 of the Resolution Plan which is attached as Annexure No. A-15 (Relevant page no. 318) of the main application, Resolution Applicant provides for supervision of the implementation of resolution plan.</p>
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:	<p>At Page No 71-72 of the Resolution Plan which is attached as Annexure No. A-15(Relevant page no. 319) of the main application.</p> <p>“After approval of Resolution Plan, all the proceedings in respect of avoidance transactions under Chapter III, will be pursued by the Monitoring Professional and once Monitoring Professional is</p>

<p>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</p>	<p>discharged, the same be pursued by financial creditors/ as decided by financial creditors and all the expenses relating to above cases, shall also be borne by financial creditors. Any recovery from any such litigation shall be on account of the corporate debtor”</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>	
<p>a. Addresses the cause of default</p>	<p>At Page No 72 of the Resolution Plan which is attached as Annexure no. A-15 (relevant page no. 319) of the main application.</p>
<p>b. It is feasible and viable</p>	<p>At Page No 73 of the Resolution Plan which is attached as Annexure No. A-15 (Relevant Page no. 320 of the main application.)</p>
<p>c. It has provisions for its effective implementation</p>	<p>At Page No 73 of the Resolution Plan which is attached as Annexure No. A-15 (Relevant page no. 320 of the main application).</p> <p>The Resolution Applicant has proposed to pay the entire resolution debt amount in 90 days from the effective date. The sources of funds shall be owned funds/through a financial partner. Further monetary agency shall be appointed immediately after the effective date to supervise the implementation of resolution plan.</p>

	<p>Since the term of plan is too short and to be paid out of own funds, it can be implemented effectively without any hassle.</p>
<p>(d) It has provisions for approvals required and the timeline for the same</p>	<p>At Page No 73 of the Resolution Plan which is attached as Annexure No. A-15 (Relevant Page No. 320 of the main application.</p> <p>The Resolution Applicant shall, pursuant to the approval of Resolution Plan, obtain the necessary approvals required (if any) 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 or within such period as provided for in such law, whichever is later.</p>
<p>(e) The resolution applicant has the capability to implement the resolution plan.</p>	<p>At Page No 73- 74 of the Resolution Plan which is attached as Annexure No. A-15 (Relevant Page No. 320-321 of the main application.</p> <p>Resolution Applicants together with financial partners have vast & rich expertise in the healthcare industry as of CD. Further they have sufficient combined net worth to pay the resolution debt amount in a short period of 90 days. This makes resolution applicant capable to implement the resolution plan</p>
<p>Regulation 39 (1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person Regulations, 2016</p>	<p>Compliance under Resolution Plan</p>

<p>Regulation 39(1)- A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with:</p> <p>a.an affidavit stating that it is eligible under section 29A to submit resolution plan; b.deleted by amendment c.an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.</p> <p>Regulation 39(1A) A resolution plan which does not comply with the provision of sub-regulation (1) shall be rejected</p>	<p>Duly complied with. Affidavits dated 03.03.2023 and 15.04.2023 were submitted by the SRA along with the EOI and the Resolution Plan respectively stating that he is eligible under Section 29A to submit the resolution plan. The SRA has submitted an undertaking that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.</p>
<p>Regulation 39(2) The resolution professional shall submit to the committee all resolution plans which requirements comply of the with the Code and regulations made there under along with the details of following transactions, if any, observed, found or determined by him: -</p>	<p>Yes, RP has filed Application in respect of preferential transactions (Section 43) vide dairy no 0404116017182023 dated 20-05-2023, undervalued transaction (Section 45) vide dairy no 0404116017162023 dated 20-05-2023, and fraudulent transaction (Section 66) vide dairy no 0404116017172023 dated 20-05-2023.</p>

<p>(a) preferential transactions under section 43;</p> <p>(b) undervalued transactions under section 45;</p> <p>(c) extortionate credit transactions under section 50; and</p> <p>(d) fraudulent transactions under section 66, and the orders, if any, of the adjudicating authority in respect of such transactions</p>	<p>The matter is pending before the Hon'ble Adjudicating Authority and the next date of hearing is on 09-11-2023.</p>
<p>Regulation 39(3)</p> <p>The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit.</p> <p>Provided that the committee shall record the reasons for approving or rejecting a resolution plan.</p>	<p>The sole member of the Coc had sent a detailed view on the feasibility and viability of all the Resolution Plans received from the PRAs on the basis of the evaluation Matrix and identified the Resolution Plan of the Successful Resolution Applicants the best Resolution Plan and approved the same with 100% voting share.</p>

19. Details of Resolution Plan/Payment Schedule:

The relevant information with regard to the amount claimed, amount admitted, and the amount proposed to be paid by the Resolution Applicant under the said resolution plan is tabulated as under:

Particulars	Amount of Claim Filed (Rs.in Cr.)	Amount of Claim admitted (Rs.in Cr.)	Amount provided under the Plan (Rs. in Cr.)	Amount provided to the amount claimed %	Amount reflected in the last Balance Sheet before CIRP. (only on 3 *starred item below)	Amount available in liquidation
Secured Financial Creditors	3.40	3.40	0.75	21.76 %	1.54	0.20
Unsecured Financial Creditors (except related party)	18.24	0.60	0.00	--	27.48	0
*Staff & Workmen						
*Workmen Dues (24 months) ¹	0.00	0.00	0.00		0	0
Employees dues	5.09	4.31	0.00	--	5.35	0
Operational Creditor (supplier of goods, service)	1.59	0.67	0.00	--	8.31	0

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*Statutory Liabilities					1.30	0
Employees' State Insurance Corporation	0.03	0.03	-	-	0.03	0
TDS	0.00	0.00	0.00	0.00	0.98	0
GST	0.55	0.55	-	-	Nil	0
VAT ²	0.05	0.05	0.01	20%	Nil	0
EFFO ³		-	0.35	-	0.29	0
Total of Govt dues	0.63	0.63	0.36	4.92%		0
Other Creditors	0.00	0.00	0.00		1.85	0
Total	28.95	9.61	1.11		45.84	0.20

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

The amount of Rs.1.11Cr is exclusive of regulatory fee payable to IBBI in compliance with Regulation 31(A)(1) of CIRP Regulations (0.25% of the

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realizable value to creditors) i.e. Rs. 0.002775Cr and amount allocated towards the payment of CIRP cost which is Rs. 0.25 Cr Therefore, the total payment proposed under the resolution plan is Rs. 1.36Cr.

- 1- *In view of the judgment passed by Hon'ble NCLAT in the matter of Jet Airways, upheld by the Hon'ble Supreme Court in **Civil Appeal No. 407 of 2023 with Civil Appeal Nos 465-469 OF 2023**, the deponent/ SRA undertakes that the dues of the workmen and employees including provident fund and gratuity are being paid in full since they are not part of the liquidation estate under Section 36(1)(b)(iii). This amount is being paid over and above the Resolution Plan amount without disturbing the payment being made to the creditors and therefore have not been included in the above-mentioned chart. It is pertinent to mention that there is no book liability of gratuity of the employees and the same is being paid in full against the claims received from ex-employees of the Corporate Debtor. However, the SRA undertakes to pay only the amount of gratuity due to the employees who have already left the Corporate Debtor (**Rs 14,32,694**) as no gratuity dues have arisen towards the employees who are still under employment in the Corporate Debtor and the same shall be paid to them as and when the employees leave the Corporate Debtor..*
- 2- *Pursuant to Supreme Court judgement in the matter of Rainbow Papers. VAT dues are secured & rank pari passu with secured financial creditors. In accordance to the same, VAT dues have been proposed to be paid in the same proportion, as of secured financial creditor. Further, since the liquidation value of the corporate debtor as assessed by the Resolution Applicant is not sufficient to settle the dues of secured financial creditors, hence RA is not proposing any amount against the above-mentioned claims admitted of statutory authorities (Other than VAT).*
- 3- *The PF dues are under assessment of 7A of PF Act. The book liability is around Rs. 0.20 Crores and the estimated dues shall be approx. Rs.0.35 Crores, after interest and damages. No claim has been filed by the PF department as on the date of submission of the resolution plan. Presently, as per the jurisprudence, PF dues have to be paid in priority to other dues. Hence, RA is proposing an amount of Rs.0.35 Crores amount towards PF dues as full & final settlement.*

Since no claim has been filed by PF department & dues as per book balance is less than the proposed amount, hence after approval of the resolution plan by Adjudicating Authority, RA/CD shall not be liable to pay any further amount towards PF dues in view of order dated 19.04.2023 passed in the matter of

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Regional PF Commissioner Vs. Vivek Raheja &Ors [Company Appeal (AT) (Insolvency) No. 429 of 2023] passed by Hon'ble NCLAT, New Delhi.

20. The summary of the Financial proposal/payment under the Resolution Plan is as follows:

Sr. No.	Particulars	Amount (Rs. in Lakhs) verified by RP	Upfront Cash	Deferred Cash at the end of 1st Year	Rest of Deferred Cash
1.	CIRP Cost	0.25	0.25	--	--
2.	Secured Financial Creditor	0.75	0.45	0.15	0.15
3.	Operational Creditor Statutory Authorities-VAT	0.01	0.01	--	--
4.	Operational Creditor Statutory Authorities-EPF	0.35	0.35	--	--

21. PUF E Transactions filed by RP under Regulation 35A:-

Sections	Nature of allegation	Amounts involved	Documents relied upon	Remarks
43 & 44	PREFERENTIAL TRANSACTION (IA 1476 of 2023)	Rs. 1,66,14,508/-	Books of accounts of CD& the final Transaction/forensic	Since the Transaction & Forensic Audit report was not received in a timely

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			audit report of the auditor.	manner due to the late reply received from the Suspended Board of Directors to the questionnaire sent by the RP with respect to various questionable transactions, the said Applications could not be filed in a timely manner.
45 & 49	UNDERVALUED TRANSACTIONS (IA 1470 of 2023)	Rs. 14,22,532/-	Books of accounts of CD & the final Transaction/forensic audit report of the auditor.	
66	FRAUDULENT TRANSACTIONS (IA 1517 of 2023)	Rs. 20,65,29,958/-	Books of accounts of CD & the final Transaction/forensic audit report of the auditor.	

22. The scheme at para 36 mentions that the Monitoring Professional will pursue the avoidance transaction application and once the Monitoring professional is discharged, the same will be pursued by financial creditors/as decided by financial creditors. It is further mentioned that the financial creditors will also meet the expenses incurred therein.

23. The Successful Resolution Applicants have filed an affidavit by diary No.02001/1 dated 03.08.2023 with regard to the payment of gratuity dues and dues to the workmen and employees stating as under:

“That Corporate Debtor does not have any workmen. Therefore, no payment of Provident fund and Gratuity dues would be pending up to the date of order of the NCLT approving the Resolution Plan”.

24. The term of the Resolution Plan shall be 3 Months (90 days) from the effective date i.e. date of approval of the resolution plan by this Hon’ble Adjudicating Authority. The Resolution Applicant in terms of Regulation 38 (2) (a) of CIRP Regulations, 2016 has proposed the following Implementation Schedule which is tabulated as below:

ACTION	TIMELINE
Approval of the Resolution Plan by the NCLT	X
Appointment of new director in the board of Corporate Debtor	X + 60 days
Extinguishment of all existing Shares and issue of fresh shares in new members on board of directors	X + 60 days
Payment of pending CIRP costs	X + 30 days
Upfront payment to Secured Financial Creditors	X + 60 days
Payment to Statutory Authority – VAT	X + 30 days
Payment to EPFO	X + 60 days
Payment to Secured financial creditors	X + 90 days

25. The Applicant RP vide affidavit, has stated that the following are the contingent liabilities of the corporate debtor:

Statutory Department	Registration Details	Remarks
Income Tax	Income tax returns filed till the F.Y. 2021-22	As per the portal of the income tax, outstanding demand is to the tune of Rs. 85,07,566/- (A.Y. 2015-16). The department has not filed any claim.
TAN	RTKV02923E	Department has assessed a

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		demand of Rs. 1,44,02,365/-. An appeal has already been filed in this regard by the corporate debtor. No claim has been filed yet by the department.
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26. It is further mentioned that upon approval of this plan and on payment to all the stakeholders of the amounts as proposed in the Resolution Plan, all the secured financial creditor shall relinquish their charges from the corporate debtor's remaining properties existing as on the insolvency commencement date in terms of the decision of the Hon'ble Supreme Court in the case of ***Ghanshyam Mishra and Sons Private Limited through Authorised Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors. 2021 SCC Online SC 313*** and the principle of clean slate under Insolvency and Bankruptcy Code, 2016.

27. Certain Waivers, Reliefs, and Exemptions have been sought in the Resolution Plan. The applicant has submitted the following facts with regard to the Waivers, Reliefs and Exemptions sought in the Resolution plan:

Sr. No.	Relief and/or Concessions and Approvals Sought	Competent Authority/ Courts/ Government/Semi-Government Authority for relief sought	Justification for seeking the relief/concession	The observations as regards reliefs/concessions sought as below are:
A.	Relief sought from Financial Creditors			

1.	On receipt of the payment of their entire dues as per this plan, the banks shall release their charge over all the assets of corporate debtor as forming part of Plan, which have been provided as security against the facilities availed from the financial lenders and no amount of any nature shall be payable either by the Resolution Applicants or by the corporate debtor, having new management / directors, except as provided for in the resolution plan.	Relief sought from Hon'ble NCLT, with respect to the collateral/security being given in the name of CD while seeking the facilities availed from the financial lenders.	Relief can be granted in terms of Section 31 (1) of the Code, 2016 and in view of the judgment passed by Hon'ble Apex Court in the matter of "Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (Civil Appeal No. 8129 of 2019)" DOJ – 13.04.2021	Relief granted in terms of decision of the Hon'ble Apex Court in the case of Ghanshyam Mishra and Sons
2.	The Financial Creditors shall withdraw any suits/ applications related to recovery or any other nature filed against corporate debtor whatsoever pending in any court of law and any effect of suits/applications decided thereafter and related to past events (pre CIRP date) will stand infructuous after the approval of the plan.	Relief sought from Hon'ble NCLT, with respect to the suits/ applications related to recovery or any other nature filed against CD whatsoever pending in any court of law.		Relief granted in view of the 'Clean Slate' Principle of the IBC
3.	The Resolution Applicant will have the option to pre pay the dues of the Financial Creditors, without any additional levies;	Relief sought from Hon'ble NCLT, with respect to the pre-payment of dues of FCs.		Relief allowed as this should not adversely affect the interest of any party.
4.	After the approval of the Resolution Plan, all fixed assets and current assets as specifically provided for in the plan or any other asset having ownership of the corporate debtor will solely remain under the ownership and right of corporate debtor and no other person will have right on these assets in future.	Relief sought from Hon'ble NCLT, with respect to the ownership of all the fixed assets and current assets as specifically provided for in the plan.		Relief allowed in terms of the 'Clean Slate' Principle of IBC

5.	Financial Creditors will issue No Objection Certificate to the Resolution Applicants at their request, to the effect that Resolution Applicants may sell the assets acquired (if required) by the resolution Applicants after the term of the proposed resolution plan, having met with all the payment obligations under this resolution plan;			Relief allowed to ensure complete liberty to the SRA to take commercial decisions after meeting its payment obligations under the Resolution Plan
B.	Relief sought from Central Board of Direct Taxes			
1.	All pending litigation, notices, past and ongoing assessments, past and ongoing investigations, tax demands under all indirect tax statues towards the company would be treated as closed and no further action would be taken for any action/ transaction carried out before the effective date	Relief sought from NCLT with respect to the Central Board of Direct Taxes (CBDT)	Relief can be granted in terms of Section 31 (1) of the Code, 2016 and in view of the judgment passed by Hon'ble Apex Court in the matter of "Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (Civil Appeal No. 8129 of 2019)" DOJ – 13.04.2021	These prayers from 1-4 are subject to the Rules and Regulations of the concerned authorities. The same cannot be granted by this Tribunal. The SRA is to approach the appropriate authority, who may consider the same expeditiously keeping in mind the objective of the Code.
2.	To not levy any Tax (including minimum alternate tax) arising as a result of giving effect to, or otherwise in relation to, the Plan, in the hands of CD or the RA. The Central Board of Excise and Customs to not void or take any other actions with respect to the transactions contemplated under this Plan (including the sale of Collateral or any other act) and not to impose any successor liability on the Resolution Applicant and the CDCompany shall be entitled to carry forward			Relief can be granted in terms of Section 31 (1) of the Code, 2016 and in view of the judgment passed by Hon'ble Apex Court in the matter of "Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (Civil Appeal No. 8129 of 2019)" DOJ – 13.04.2021

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	the accumulated input tax credit balances under the Indirect Tax Laws and to utilized such amounts to set off against tax liability arising in future in accordance with the applicable laws			
3.	Company shall be entitled to carry forward the accumulated input tax credit balances under the Indirect Tax Laws and to utilized such amounts to set off against tax liability arising in future in accordance with the applicable laws		Relief can be granted in terms of Section 31 (1) of the Code, 2016 and in view of the judgment passed by Hon'ble Apex Court in the matter of "Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (Civil Appeal No. 8129 of 2019)" DOJ – 13.04.2021 Also as per Section 79 of Income tax Act	As above
4.	All benefits, exemptions, deductions, rebates, reliefs, credits etc. under any tax laws in India available to the Company shall not lapse pursuant to the Resolution Plan and shall be available post implementation date		Relief can be granted in terms of Section 31 (1) of the Code, 2016 and in view of the judgment passed by Hon'ble Apex Court in the matter of "Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (Civil Appeal No. 8129 of 2019)" DOJ – 13.04.2021	As above
C.	Relief sought under the Companies Act 2013			
1.	Existing Equity Share Capital shall be written off without any implication under Income tax Act,1961 and companies Act, 2013	Relief sought from Registrar of Companies.	Relief can be granted in terms of Section 32A of IB Code 2016	The SRA to approach the relevant authorities, who may consider the same keeping in

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				mind the objective of the Code.
2.	The Registrar of Companies to take on record upon approval of Resolution Plan from Hon'ble NCLT, without further compliances	Relief sought from Registrar of Companies.	Relief can be granted in terms of Section 32A of IB Code 2016	As above
3.	Waiver/Approval for any past liabilities, penalties and any form of payment by way of Late Fees, damages, prosecution etc. which occurred or become due because of any non-compliance related to Companies Act and Rules till effective date. Waiver to maintain/reconstruct past records of the Corporate Debtor, if any, till the approval of plan by NCLT.	Relief sought from Registrar of Companies and Ministry of Corporate Affairs	Section 31(1) read with Section 53 of IB Code 2016 and in view of the judgment passed by Hon'ble Apex Court in the matter of "Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (Civil Appeal No. 8129 of 2019)" DOJ – 13.04.2021	As their no change in management, the SRA is to approach the concerned authorities, who will consider the same keeping in view the spirit of IBC.
D.	Reliefs from the State Government			
1.	Liberty to change the name of the company and the approval of the State /Centre Government without any tax implications	Relief with respect to State/Central Government	Resolution Applicant shall approach appropriate department in terms of Section 31(4) of the Code.	Resolution Applicant shall approach the appropriate department in terms of Section 31(4) of the Code.
2.	Coverage under the incentives offered by State Government for sick industrial units or any other incentives	Relief sought from NCLT Bench	Resolution Applicant shall approach appropriate department in terms of Section 31(4) of the Code.	Resolution Applicant shall approach the appropriate department in terms of Section 31(4) of the Code.
3.	Time period of twelve months from the effective date to ensure compliance in relation to non-compliance of Applicable laws by the Corporate Debtor to any period up to effective date without any additional interest and penalty.	Relief sought from the applicable forum.	Resolution Applicant shall approach appropriate department in terms of Section 31(4) of the Code.	Resolution Applicant shall approach the appropriate department in terms of Section 31(4) of the Code.

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4.	The relevant Government/ Statutory authorities shall not initiate any investigation, action or proceeding against the Resolution Applicant or the new management (upon acquisition of Corporate Debtor) including the Board of Directors, in relation to any non-compliance with Applicable laws by the Corporate Debtor pertaining to any period up to effective date.	Relief sought from the relevant Government/ Statutory authorities	Relief can be granted in terms of Section 32A of IB Code 2016	No relief can be granted under Section 32A of IBC from the liabilities for prior offenses as the Resolution Plan does not result in the change in management and control of the Corporate Debtor, which is a MSME.
5.	All Government authorities that have issued or granted business permits to provide reasonable time period of at least twelve months after the effective date in order to the Resolution Applicant to assess the status of business permits and applicable laws without initiating any investigation, action or proceeding in relation to non-compliance, and to permit the Resolution Applicant to continue to operate the business of the corporate debtor as carried out prior to effective date.	Relief sought from the relevant Government authorities	Resolution Applicant shall approach appropriate department in terms of Section 31(4) of the Code.	The SRA is to approach the appropriate authority, who may consider the same expeditiously keeping in mind the objective of the Code.
6.	No amount shall be payable for any liability of the Corporate Debtor towards any creditor other than as already provided under the Resolution Plan.	Relief sought from the Hon'ble NCLT.	Section 31(1) read with Section 53 of IB Code 2016 and in view of the judgment passed by Hon'ble Apex Court in the matter of Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (Civil Appeal No. 8129 of 2019) DOJ – 13.04.2021	Allowed as per the provisions of the IBC.

7.	All concerned revenue or stamp authorities to waive penalties for non-registration and inadequate or non-stamping of documents executed by the Company up to the effective date.	Relief sought from the Hon'ble NCLT.	Section 31(1) read with Section 53 of IB Code 2016 and in view of the judgment passed by Hon'ble Apex Court in the matter of Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (Civil Appeal No. 8129 of 2019) DOJ – 13.04.2021	As their no change in management, the SRA is to approach the concerned authorities, who will consider the same keeping in view the spirit of IBC. .
8.	No liability towards unearned increase, processing fee, extension fee and other fee, charges, dues as may be applicable on account of transfer of leasehold rights pursuant to change in the ownership structure of the Corporate Debtor.		Section 31(1) read with Section 53 of IB Code 2016 and in view of the judgment passed by Hon'ble Apex Court in the matter of Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. (Civil Appeal No. 8129 of 2019) DOJ – 13.04.2021	As there is no change in management, the SRA is to approach the concerned authorities, who will consider the same keeping in view the spirit of IBC.
E.	Other Reliefs:			
i.	There shall be no Stamp Duty implications and any other levies for transfer of assets or otherwise and the state Government shall not object to such.	Relief sought from the State Government.	Resolution Applicant shall approach appropriate department in terms of Section 31(4) of the Code.	SRA to approach the concerned authorities.

ii.	On approval of the Resolution Plan by the Hon'ble NCLT, all the litigations, proceedings of whatever nature, including those relating to direct or indirect taxation, or of any other nature, in respect of the issues, claims, etc., pertaining to the period prior to the date of approval of the Resolution Plan by the Adjudicating Authority, shall stand closed immediately and the Corporate Debtor and Resolution Applicants, shall not be liable for any civil or any other consequence including penalty arising therefrom;	Relief sought from the Hon'ble NCLT.	Relief can be granted in terms of Section 32A of IB Code 2016	No relief can be granted under Section 32A of IBC from the liabilities for prior offenses as the Resolution Plan does not result in the change in management and control of the Corporate Debtor, which is a MSME.
iii.	To extinguish all the contingent liability as may arise after the approval of the resolution plan and pertaining to the period prior to CIRP and also which are not captured related to period before approval of Resolution Plan.	Relief sought from the Hon'ble NCLT.	Relief can be granted in terms of Section 32A of IB Code 2016	No relief can be granted under Section 32A of IBC from the liabilities for prior offences as the Resolution Plan does not result in the change in management and control of the Corporate Debtor, which is a MSME.
iv.	The Resolution applicant shall be responsible only for the liabilities specifically mentioned and undertaken by it in the Resolution Plan. To clarify, the Applicant shall not be responsible for the liabilities not mentioned/ undertaken in the Resolution Plan.	Relief sought from the Hon'ble NCLT.	Relief can be granted in terms of Sections 31(1) and 32A of IB Code 2016	No relief can be granted under Section 32A of IBC from the liabilities for prior offences as the Resolution Plan does not result in the change in management and control of the Corporate Debtor, which is a MSME

v.	Amend the constitutional documents of the corporate debtor		Resolution Applicant can seek such relief under Regulation 37 of IBBI (CIRP) Regulations	Allowed to ensure complete freedom to take decisions to keep the CD as a going concern.
vi.	cost cutting measures including but not limited to rationalization/optimization of manpower		Resolution Applicant can seek such relief under Regulation 37 of IBBI (CIRP) Regulations	Allowed to ensure complete freedom to take decisions to keep the CD as a going concern.
vii.	Liberty to change the name of the company and the State Government shall approve the same without any charges/fees.		Resolution Applicant shall approach appropriate department in terms of Section 31(4) of the Code.	To approach the concerned authorities.
viii.	Coverage under the incentives offered by State Government for sick industrial units.		Resolution Applicant shall approach appropriate department in terms of Section 31(4) of the Code.	To approach the concerned authorities.
ix.	All obligations, liabilities (whether contingent or crystallized) claims and proceedings in relation to any corporate guarantees, indemnities and all other forms of credit support provided by the Corporate Debtor prior to the Effective Date and all contingent liabilities disclosed / undisclosed in the annual audited financial statements as well as financial statement as on CIRP Commencement Date of the Corporate Debtor and liabilities which are not in notice of Corporate Debtor or not acknowledged by the Corporate Debtor shall stand extinguished and discharged on and with effect from the Effective Date .	Relief sought from the NCLT	Relief can be granted in terms of Section 32A of IB Code 2016	No relief can be granted under Section 32A of IBC from the liabilities for prior offences as the Resolution Plan does not result in the change in management and control of the Corporate Debtor, which is a MSME.

<p>x.</p>	<p>All enquiries, investigations, notices, causes of action, suits, claims, liabilities, demand, obligations, penalties, disputes, litigations, arbitrations or other judicial, regulatory or administrative proceedings against the CD or the affairs of the CD, pending or threatened, present or future, (including without limitation, any investigation by Central Bureau of Investigation or the Serious Fraud Investigation Office), whether or not on account of acts or omissions in breach of Applicable Law (including but not limited to environmental laws, foreign exchange laws and regulations, labour and employment laws, and laws relating to anti-corruption and prevention of money laundering) and including but not limited to the proceedings specifically under this Plan in relation to any period prior to the Effective Date shall stand extinguished and accordingly, all such proceedings, inquires, investigations, etc. shall be disposed of and all liabilities or obligations in relation thereto, whether or not set out in the Provisional Balance Sheet, the balance sheet of the CD or the profit and loss account statements of the CD or the List of Creditors, shall, in accordance with Regulation 37 of the CIRP Regulations, be deemed to have been written off in full and permanently extinguished by virtue of the order of NCLT approving this Plan and the RA, shall at no point of time be, directly or</p>	<p>Relief sought from the department including Central Bureau of Investigation or the Serious Fraud Investigation Office, environmental laws, foreign exchange laws and regulations, labor and employment laws, and laws relating to anti-corruption and prevention of money laundering.</p>	<p>Relief can be granted in terms of Section 32A of IB Code 2016</p>	<p>No relief can be granted under Section 32A of IBC from the liabilities for prior offences as the Resolution Plan does not result in the change in management and control of the Corporate Debtor, which is a MSME.</p>
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	indirectly, held responsible or liable in relation thereto. By virtue of the order of the NCLT approving this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitration or other judicial, regulatory or administrative proceedings will not be initiated or admitted if these relate to any period prior to the Effective Date or on account of the acquisition of control by RA over the CD pursuant to this Resolution Plan, against the CD or any of its employees or directors who are appointed or who remain in employment or directorship after the Effective Date or pursuant to the implementation of the Resolution Plan;			
xi.	Upon approval of this Plan by the NCLT, all dues under the provisions of all the indirect Taxes, including but not limited to, the Central Excise Act, 1944, the Finance Act, 1994 (service Tax), the Customs Act, 1962, the Central Sales Tax Act, 1956, the Goods and Services Tax Act, 2017, property tax, liquor tax, the various states' value added tax acts and any other indirect Tax laws, including Taxes, duty, penalties, interest, fines, cesses, charges, unpaid Tax deducted at source/ Tax collected at source (to the extent applicable), whether admitted or not, due or contingent, whether part of the above mentioned contingent liability schedule dues or not, whether claimed by the Tax authorities or not, asserted	Reliefs sought from the concerned department, as may applicable.	Relief can be granted in terms of Section 32A of IB Code 2016	No relief can be granted under Section 32A of IBC from the liabilities for prior offences as the Resolution Plan does not result in the change in management and control of the Corporate Debtor, which is a MSME

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Admitted)

	or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Effective Date, shall stand extinguished and the Corporate Debtor will not be liable to pay any amount against such demand.			
xii.	After acquisition, there may be receipts by the Resolution Applicant over and above those recorded in books. Such receipts will solely be under the right/control/ownership of resolution Applicants and others will not have any right on such receipts except that of Avoidance Applications, which shall be distributed in terms of Section 53 of IBC, 2016.;	Relief sought from the Hon'ble NCLT.	Section 31(1) read with Section 53 of IB Code 2016	Allowed as per the provisions of IBC.

28. On a perusal of the reliefs etc., sought above, it is seen that the same are claimed under the general reliefs as per the provisions of IBC, under the ratios of various judicial pronouncements. Some of the reliefs sought come within the jurisdiction of Government Authorities/Departments. As regards the aforementioned claims under the IBC, it is clarified that this Adjudicating Authority has powers to decide the reliefs claimed which are directly relatable to the Resolution Process and not over those pertaining to extraneous issues. Regarding the reliefs/waivers pertaining to the domain of various Departments/Governmental Authorities, it is further clarified that this Adjudicating Authority has no power to sanction these waivers, etc., and the Successful Resolution Applicants are at liberty to approach the competent authorities/courts/legal

appropriate relief(s) sought in the plan. Approval of the Resolution Plan does not mean automatic waivers.

29. It is directed that any relief sought in the resolution plan, where the contract/agreement/understanding/proceedings/actions/notice etc., is not specifically identified or is for future and contingent liability, is at this moment not acceded to..

30. For the implementation of the plan following names have been proposed as the members of the Monitoring Committee:

Name(s) of the proposed member(s) of implementation and monitoring committee	Brief description of the Proposed member(s) of the I&M committee
<p>Ms. Sunita, Resolution Professional, One member of RA, One member of COC</p>	<p>Page 317 of the Resolution Plan Application being I.A. No. 1516 of 2023 provides as under: -</p> <p><i>The Resolution Applicants have proposed to appoint a Monitoring Agency in consultation with COC for monitoring and supervision of implementation of the Resolution Plan in terms of Provisions of section 30(2)(d) of Insolvency and Bankruptcy Code, 2016 read with Regulation 38(2)(c) of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The appointment shall be at the mutually agreed terms and with approval of COC Members for the period with effect from the Date of Approval of Resolution Plan by Hon'ble AA, NCLT till the implementation of plan.</i></p>

	<p><i>“Within 10 business days of the Effective Date, a three Member Committee (“Monitoring Committee”) shall be constituted comprising of: -</i></p> <p><i>One representative of the RA;</i></p> <p><i>One representative of the CoC; and</i></p> <p><i>The Resolution Professional</i></p> <p><i>The committee shall monitor the implementation of the Plan after the Effective date and until the term of implementation of plan.”</i></p> <p>In view of the above, the agenda for appointment of Ms. Sunita as the Monitoring Professional was placed for approval by the CoC in the 10th meeting of the CoC held on 11.05.2023 which got approved by the CoC with 100% voting share.</p>
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31. The matter was relisted by Administrative Order dated 12.12.2023 seeking clarification on treatment of Government dues in the Resolution Plan. The applicant has filed an affidavit stating as under:

“ (b) *That on 10.03.2023, the Resolution Professional of Vivo Healthcare Private Limited (“Corporate Debtor”) filed an application bearing I.A. No. 1516 of 2023 under Section 31 of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of the Corporate Debtor) Regulations, 2016 (“CIRP Regulations”) for approval of resolution plan for the Corporate Debtor by this Hon’ble Adjudicating Authority*

("Application for Approval of Resolution Plan") as approved by the Committee of Creditors of the Corporate Debtor ("CoC") with 100% voting share.

(c) That the VAT department submitted a claim amounting to Rs 0.05 Cr. pursuant to judgment passed by the Hon'ble Supreme Court in the matter of Sale Tax Officer v. Rainbow Paper Limited. VAT dues are secured & rank pari passu with secured financial creditors. In accordance to the same, VAT dues have been proposed to be paid in the same proportion, as of secured financial creditors, i.e., 21.76%, and are being paid an amount of Rs. 0.01 Cr. That in view of the aforesaid, the Resolution Professional undertakes that Resolution Plan considers the claim of statutory Authorities, where a security interest is created by law, as secured creditors for distribution under section 53(1) of the Code and thus, the resolution plan is compliant of the provisions of the Code"

32. The following two issues also came up for discussion during the present Adjudicating:

- (i) Whether the pendency of the PUFEE application filed under Sections 43, 45, 66 of IBC, 2016 in the present case against the Resolution Applicant will have an impact on its eligibility. In this connection, reliance has been placed on the decision of the Hon'ble Apex Court in the matter of **"Hari Babu Thota, Civil Appeal No.4422/2023:**

5. Learned counsel for parties have taken us through Section 29A of the said Code. It has been pointed out that other sub-Clauses except Clauses (c), (g) and (h) which apply to

promoters and guarantors are generic in nature. We reproduce the relevant provisions as under:

29A. Persons not eligible to be resolution applicant-

(C) 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 (10 of 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 to the corporate debtor.

Explanation I — For the purposes of this proviso, 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 or completion of such transactions as may be prescribed, 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 prior resolution plan approved under this 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 this Code.

(g) has been a promoter or in the management or control of a corporate debtor 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 this 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 this 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.

(h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against 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.”

6. We may note that the aforesaid section was added as an amendment by Act 8 of 2018 with effect from 23.11.2017. The objective was to cure the mischiefs of the persons who may be responsible for the financial situation of the company against trying to submit a plan and take over the company. If we turn to Clause (c), it provides a time frame i.e. a period of one year should elapse from the date of classification as a nonperforming asset (NPA). In the factual scenario, it is stated that there are no bank dues/outstanding which would at all invite a concept of NPA much less the period of one year.

7. Insofar as Clause (g) is concerned, it is pointed out that only one preferential transaction was identified by the appellant but no order was passed by the adjudicating authority as on the date of the impugned order.

10. The aforesaid discussion thus, shows that as per the factual scenario on record, there is no per se disqualification under Section 29A and we could have left the matter at that.

23. Thus, even on this count, the plan submitted in question will not incur the disqualification. We may also note that the aforesaid intent is reflected in the statutory provision itself that

in Section 29A (c) which begins with “at the time of submission of the resolution plan”.

31. In view of the aforementioned decision of the Hon'ble Supreme Court, it is submitted that eligibility of the Resolution Applicant is to be seen as on the date of submission of the Resolution Plan. As in the present case, there was no order of this Bench in the PUFEE application pending on the date of submission of the Resolution Plan, no adverse inference in this regard has been drawn.

- (ii) In the course of the present proceedings, the applicant has also clarified that no undertaking for payment of future liability towards Provident Fund and Gratuity is required in the absence of any claim by the authority before the Resolution Professional. In this connection, reference has been made to the following judicial decision of NCLAT in the matter of ***Regional PF Commissioner vs. Vivek Raheja & Ors [Company Appeal (AT) (Insolvency) No. 429 of 2023]*** :

“The Appellant having not filed his claim within time, and the belated claim filed was after approval of plan by the Committee of Creditors, we do not find any ground to interfere with the order of the Adjudicating Authority approving the resolution plan”

- (iii) As regards the ESIC it is clarified that the ESIC dues have not been dealt with at par and Gratuity dues. In this connection, reference has been made to the following decision of NCLT, Ahmedabad Bench-2 in

Regional Director, ESIC vs Manish Kumar Bhagat, Liquidator of Gupta Dyeing & Printing Mills Pvt. Ltd. :

“17. The application has been filed by the Regional Director, ESIC, Ahmedabad, Gujarat under rule 11 of NCLT rules, 2016 against the Liquidator of M/s Gupta Dyeing & Printing Mills Pvt Ltd, Navrangpura, Ahmedabad for settling the claim due to the ESIC Fund . The applicant has prayed to pass orders restraining the liquidator from including the ESI contribution in the liquidation estate and to give priority of dues of ESI corporation and give pari passu charge with secured creditors on assets for the dues payable amounting to Rs.1,21,49,393/-.

18. The liquidator had considered the claim of the applicant in terms of provisions of IBC 2016 and also included the applicant as an Operational (Unsecured) Creditor. Applicant also attended various COC meetings during the CIRP. The claim was settled in terms of the IBC provisions treating the applicant as an operational unsecured creditor and proportionately allotted the amount to be disbursed. Therefore, the Appellant for the purpose of determining the workmen's dues as mentioned in Section 53(1)(b) cannot derive any advantage of explanation (iv) of Section 326 of the Companies Act 2013.

21 The consequences o/ non-payment of employees contribution from wages deducted in terms of Section 40(4) of the ESI Act, 1948 and when not paid would be the responsibility of the principal employer which

amounts to "breach of trust" and is punishable under IPC 406, 409 and also an offence u/s 85 of ESI Act. The liquidator has admitted the claim as per provision of the IBC 2016. The applicant has not proceeded in any manner against the Corporate Debtor, individually for which a provision is available in the ESI Act.

22 Role of Liquidator and powers are defined in Section 35 of the IBC, Liquidation Estate in Section 36 and determination of value of claims in Section 41 of IBC. Section 36(4)(iii) of the IBC does not define the ESIC dues as workmen dues except for PF, Pension Fund and the Gratuity Fund. Secured Creditor is defined in Section 52 of liquidation proceedings in which the ESIC cannot make a claim or status to be included.

23 Insurance is a coverage on the premium paid whether run by private or government institution and offers a service when there is an event which is triggered and cannot be equated with other benefits which are protected under IBC. This applies for both state run and private institution, but there are imbibed provisions in the State Insurance which gives it a statutory status for compliance and is on par with the other authorities who are treated as operational creditors. There is no provision in the statute of ESIC for any charge or special status other than those provided in Section 45A of the ESIC whereby the applicant could have proceeded individually against the defaulter.

24. While treating the claim filed by the applicant the liquidator has arrived at the admissible amount and priority as per the provisions of IBC, 2016.”

33. After hearing the submissions made by the learned counsel for the Resolution Professional and perusing the records, we find that the Resolution Plan has been approved on the terms both financial and others as detailed therein.

34. As per the CoC, the Resolution Plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.

35. On a perusal of the documents on record, we are satisfied that the Resolution Plan, thereto, are in accordance with Sections 30 and 31 of the Code and complies with Regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

36. Therefore, subject to the observations made in this order, we hereby accord our approval to the Resolution Plan.

37. It is further directed that the Resolution Applicant, on taking control of the corporate debtor, shall ensure compliance under all applicable laws for the time being in force. As far as the question of granting time to comply with the statutory obligations or seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under Section 31(4) of the Code.

- 37.1 The Resolution Plan as approved shall be binding on the corporate debtor and its employees, members, and creditors, including the Central Government, State Government, or Local Authority, to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.
- 37.2 The Moratorium imposed under Section 14 shall cease to have effect from the date of this order.
- 37.3 The Resolution Professional shall stand discharged from his duties with effect from the date of this order. However, he shall perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.
- 37.4 The Resolution Professional is further directed to hand over all records and properties to the Resolution Applicant and shall finalize the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Resolution Professional to finalize the further line of action required for starting the operation.
- 37.5 The monitoring professional will pursue the avoidance transaction application and once the monitoring professional is discharged, the same will be pursued by financial creditors/as decided by financial creditors. The financial creditors will also meet the expenses incurred therein.
- 37.6 In case of non-compliance with this order or withdrawal of the Resolution Plan, the performance security amount already paid by the Resolution

Applicant shall be liable to be forfeited, in addition to such further action as may be permitted under the law.

37.7 Liberty is hereby granted for moving any application if required in connection with the implementation of this Resolution Plan.

38. The Resolution Professional shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

39. The Resolution Professional shall file a copy of this order with the concerned Registrar of Companies, inter alia, for updating the status of the corporate debtor.

40. Additionally, the Registry shall send a copy of this order to the concerned Registrar of Companies.

41. The Resolution Plan is approved with above-mentioned some observations and thus application bearing IA No. 1516 of 2023 in the main Company Petition, i.e., CP(IB) No.193/Chd/Hry/2020 stands allowed and is disposed of accordingly.

42. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

December 22 , 2023

ASG/TBG

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

IA No.1516/2023

In

CP(IB) No.193/Chd/Hry/2020
Admitted)

