

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

IA No.2293 of 2022

IN

CP (IB) No. 703 /MB/C-I/2019

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

In the Application of

Ankur Kumar,

**Resolution Professional of “General Composite
Private Limited.”**

...Applicant/Resolution Professional

In the matter of

Corporation Bank

...Petitioner

Versus

General Composite Private Limited.

...Corporate Debtor

Order Delivered on :- 11.08.2023

Coram:

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

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

Appearances:

For the Applicant : Ms. Bindu Bhatia, Advocate a/w

Mr. Ankur Kumar, RP

For the Resolution Applicant : Mr. Gauraj Shah a/w Ms. Priyanka Sinha
i/b A&P Partners, Advocate

ORDER

Per: Anu Jagmohan Singh, Member(Technical)

1. The present application is moved by Resolution Professional **Mr. Ankur Kumar** (hereinafter called as “the Applicant”) under section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the resolution plan of Mr. Pushkar Gulati (hereafter called as the “**Successful Resolution Applicant/SRA**”) under the provisions of Section 31(1) of the code, for the Corporate Debtor **General Composite Private Limited** (hereinafter called as the “**Corporate Debtor**”) and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.
2. The CIRP was initiated against the Corporate debtor vide Order dated 26.09.2019 and the Applicant herein was appointed as the IRP. The Interim Resolution Professional (hereinafter referred to as the IRP) made a public announcement in Form A on 11.09.2019. The IRP constituted the Committee of Creditors (hereinafter referred to as the

CoC). Subsequently, the First CoC meeting took place on 14.10.2019 wherein the IRP was appointed as the Resolution Professional.

3. Form G was published in newspapers on 04.09.2019. The last date for submitting the EOI was fixed on 19.12.2019. However, no formal EOI was received by the Applicant. In the meantime, the CIRP period was coming to an end, the Applicant filed an Application seeking extension for a period of 90 days. This Tribunal allowed the said Application vide Order dated 20.11.2020.
4. The Applicant submits that due to the outbreak of Covid-19 pandemic and the nation wide lockdown imposed by the Government of India, the Hon'ble Supreme Court in the Suo Moto Judgment dated 10.01.2022 in MA No. 21 of 2022 in MA No. 665 of 221 in Writ Petition No. 03 of 2022 held that the period from 15.03.2020 to 28.02.2022 would stand excluded from the period of Limitation.
5. The Applicant states that in the 6th Meeting of the CoC convened on 10.12.2020, the CoC advised the Applicant to publish fresh Form G for inviting EOI's. Fresh Form G was published in two newspapers on 23.12.2020. The last date for submission of EOI was fixed on 07.01.2021.
6. It is stated that only one EOI was received from Mr. Gulati. However, the Resolution Plan was not received from Mr. Gulati within the

stipulated timeline. The CoC on request made by Mr. Gulati granted additional time to submit the Resolution Plan till 16.03.2021.

7. The Resolution Plan was submitted by Mr. Gulati on 18.03.2021. The Applicant states that in the tenth meeting of the CoC was convened on 29.04.2021 wherein the Applicant/resolution Professional appraised the CoC members that the Revised Resolution Plan was submitted by Mr. Gulati in terms of the observations mailed by the Applicant.
8. The Applicant submits that the revised Resolution Plan was also not in compliance and accordingly, the CoC decided to grant an additional time of 7 days to Mr. Gulati for compliance.
9. The CoC in its 11th meeting negotiated with Mr. Gulati and advised him to submit a revised Resolution Plan on or before 19.06.2021. The thirteenth CoC meeting was convened on 23.07.2021, wherein the CoC was of the view that sufficient time was granted to Mr. Gulati and the Revised Resolution Plan submitted by Mr. Gulati was not viable. Therefore, the CoC resolved that the Corporate Debtor should be Liquidated.
10. Subsequently, IA No. 1974 of 2021 was filed before this Adjudicating Authority for Liquidating the Corporate Debtor. Meanwhile, Mr. Gulati had filed IA No. 2128 of 2021 seeking to stay the Liquidation process of the Corporate Debtor. This Adjudicating Authority

considering the Application, granted Mr. Gulati some time to submit fresh Resolution Plan and directed the Applicant to consider the same before proceeding with Liquidation.

11. In the 14th CoC meeting, the Applicant appraised the CoC members that a fresh Resolution plan was submitted by Mr. Gulati on 29.12.2021. Thereafter, in various COC meetings negotiations took place amongst CoC members and the Resolution Applicant. The Applicant in the 19th CoC meeting which was held on 04.06.2022 placed before CoC revised Resolution Plan submitted by Mr. Gulati on 27.05.2022 and placed the compliance certificate confirming that the Plan contains mandatory requirements of the Resolution plan.
12. The Agenda of approval of resolution plan was put for e-voting through email on 04.06.2022 in the 19th CoC meeting. The minutes of the 19th CoC meeting are placed as Exhibit E of the Petition. The CoC after ascertaining the viability and feasibility approved the Resolution Plan by 100% vote.
13. The Applicant submits that Letter of Intent was issued to the Successful Resolution Applicant herein on 25.07.2022. The Resolution Applicant has transferred Rupees Fifteen Lakh into the account of the Corporate Debtor for opening a fixed deposit in lieu of personal bank guarantee.

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14. The Applicant has filed an Additional Affidavit dated 14.03.2023 placing on record MSME Certificate of the Corporate Debtor.

15. The SRA proposes to make the following payments

Amount in Rupees.

	Tenure	Principal
CIRP Costs	60 days	45,00,000.00
Financial Creditor (Union Bank of India)	60 days	50,00,000.00
	120 days	50,00,000.00
	12 months	4,00,00,000.00
	18 months	2,00,00,000.00
	24 months	4,50,00,000.00
Operational Creditors	60 days	5,00,000.000
Total		12,00,00,000.00

The details of CIRP costs incurred from CIRP commencement date i.e.

09.09.2019 till 14.03.2023.

Sr. No.	Particulars	Total expenses	Paid by Bank	Paid by CIRP A/c	Unpaid
1	RP Fees				
a	IRP Fees + Applicable GST	1,47,264.00	1,47,264.00	-	-

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b.	RP fees + Applicable GST	5,031,520.00	1,840,800.00	-	3,190,720.00
2	Advocate Fees				
a	Advocate fees for filing of cases	300,793.00	-	-	300,793.00
3	Expenses				
a.	Travel and conveyance	62,500.00	-	21,500.00	41,000.00
b.	Printing and stationery and postage expenses	18,500.00	-	9,500.00	7,000.00
c.	Email Creation charges	1,000.00	-	-	1,000.00
d.	IBBI Fees	8,966.00	-	-	8,966.00
4	Advertiseme nt				
a.	Cost of public announceme nt (Form A and Form G(2))	40,278.00	-	40,278.00	-
5	Secretarial				
A	Filing MCA fees-INC-28 under IBC	1,200.00		600.00	600.00
6.	Auditors				
a.	Professional fees for statutory auditors	1,18,000.00	-	-	1,18,000.00
b.	Transaction Auditors Fees	41,300.00	-	41,300.00	-
7.	Valuers				

a.	Valuers Fees for two valuers	133,860.00	-	52,200.00	81,660.00
8.	Security Services				
a.	Security Guard	972,540.00	-	396,000.00	576,540.00
9.	Compliance Expenses				
a.	GST Registration Fee	7,500.00	-	7,500.00	-
Total		6,885,221.00	1,988,064.00	568,878.00	4,208,279.00

Section 30(2) of the Code

16. In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant and confirms that this Resolution Plan:

- a) Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the corporate debtor;
- b) Provides for payment of debts of operational creditor in such manner as may be specified by the board which shall not be less than
 - (i) The amount to be paid to such creditors in the event of liquidation of the corporate debtor under Section 53; or

(ii) The amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distribute in accordance with sub-section (1) of Section 53 in the event of liquidation of the corporate debtor.

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

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

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

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

- d) The terms of the plan and its implementation schedule.
- e) The management and control of the business of the CD during its term.
- f) Adequate means of Supervising its implementation.
- g) The Resolution Plan Demonstrate that it addresses
 - i. The cause of the Default
 - ii. It is feasible and viable
 - iii. Provision for effective implementation
 - iv. Provisions for approvals required and the time lines for the same.
 - v. Capability to Implement the Resolution Plan

18. The Resolution Professional has annexed Form H to the Application under Regulation 39(4) of the CIRP Regulations to certify that the resolution plan approved by the CoC meets all the requirements of the IBC and its Regulations.

FORM H
COMPLIANCE CERTIFICATE

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

I, Mr. Ankur Kumar, an insolvency professional enrolled with The ICSI Institute of Insolvency Resolution Professional and registered with the Board with registration number IBBI/IPA-002/IP-N00113/2017-18/10283, am the resolution professional for the corporate insolvency resolution process (CIRP) of General Composites Private Limited ('Corporate Debtor' or 'CD').

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	General Composites Private Limited
2	Date of Initiation of CIRP	9 th September 2019(NCLT order dt. 3 rd September 2019, received on 9 th September 2019)
3	Date of Appointment of IRP	9 th September 2019(NCLT order dt. 3 rd September 2019, received on 9 th September 2019)
4	Date of Publication of Public Announcement	11 th September, 2019
5	Date of Constitution of CoC	9 th October, 2019
6	Date of First Meeting of CoC	14 th October, 2019
7	Date of Appointment of RP	14 th October, 2019
8	Date of Appointment of Registered Valuers	5 th November, 2019
9	Date of Issue of Invitation for EoI	1 st Form G - 4 nd December, 2019 2 nd Form G - 23 rd December 2020
10(m4)	Date of Final List of Eligible Prospective Resolution Applicants	No EoI received pursuant to 1 st Form G 2 nd Form G - 20 th January 2021

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11	Date of Invitation of Resolution Plan	No EoI received pursuant to 1 st Form G 2 nd Form G - 16 th January 2021
12	Last Date of Submission of Resolution Plan	2 nd Form G - 14 th February, 2021 ¹
13	Date of Approval of Resolution Plan by CoC	22 nd July 2022
14	Date of Filing of Resolution Plan with Adjudicating Authority	_____
15	Date of Expiry of 180 days of CIRP	7 th March, 2020
16	Date of Order extending the period of CIRP	20 th November 2021
17	Date of Expiry of Extended Period of CIRP	28 th May 2022 ²
18	Fair Value	14,54,82,163/-
19	Liquidation value	10,83,88,007/-
20	Number of Meetings of CoC held	19

3. I have examined the Resolution Plan received from Resolution Applicant (RA) (Mr. Pushkar Gulati) and approved by Committee of Creditors (CoC) of General Composites Private Limited.

4. I hereby certify that-

¹ CoC in its meeting held on 6th March, 2021 considered the request made by the resolution applicant (RA), granted him additional time till 16th March 2021, 18.00 Hrs. to submit the Resolution Plan. Pursuant to negotiations, the CoC rejected the resolution plan and I.A. No. 1974 of 2021 was filed with NCLT, Mumbai Bench for the Liquidation. Thereafter, RA filed an I.A. No.2148 of 2021 before NCLT for opportunity to re-submit the resolution plan so that CD being SME liquidation can not be initiated against the CD.

Thereafter, pursuant to direction passed in I.A. No. 1974 of 2021 and I.A. No.2148 of 2021 in order dt. 21st October 2021, the RA submitted new resolution plan. Thereafter followed by several rounds of negotiations and hearings and extensions by the hon'ble NCLT, the RA has submitted the final revised resolution plan on 27th May 2022.

² The NCLT order dt. 20.11.2021 of extending CIRP period provides for exemption of lockdown period due to Covid 19 Pandemic, hence pursuant to Suo Moto judgment of Supreme Court dated 10th January 2022 in MA no. 21 of 2022 in MA no. 665 of 221 in WP no. 03 of 2020, the Apex Court held that the period from 15th March 2020 to 28th February 2022 would stand excluded for the purpose of limitation and therefore may be considered to be excluded from calculating CIRP timeline.

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

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

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

~~(iv) The voting was held in the meeting of the CoC on (date) where all the members of the CoC were present.~~

Or

I sought vote of members of the CoC by electronic voting through registered email which was kept open from 7th June 2022 and extended at various times at the request of Union bank of India till 22nd July 2022 till 7.00 PM.

[strike off the part that is not relevant]

5. The list of financial creditors of the CD [General Composite Private Limited] being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	Union Bank of India	100	Voted for

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

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

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(Amount in Rs.)

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	-	-	-	-
		(b) Other than (a) above:	-	-	-	
		(i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan (UNION BANK OF INDIA)	12,92,10,274	12,92,10,274	11,50,00,000	
		Total[(a) + (b)]	12,92,10,274	12,92,10,274	11,50,00,000	
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-

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		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan \	-	-	-	
		(ii) who voted in favour of the resolution plan				
3	Operational Creditors	(a) Related Party of Corporate Debtor	NA	NA		
		i) Sarita Metal	1,17,889	1,02,512	5,000	4.24
		ii) Asst. Comm. Of State Tax	78,16,878	78,16,878	95,000	1.22
		iii) MVP India-Faisal Ottathayil	37,71,622	37,71,622	2,00,000	5.30
		(b) Other than (a) above: (i) Workmen and Employees (ii) Operational Creditors including statutory authorities (excluding Workmen	-	-	-	

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		and Employees)				
		Total[(a) + (b)]	1,17,06,389	1,16,91,012	3,00,000	2.56
4	Other debts and dues: Related party dues		-	-	-	-
Grand Total			14,09,16,663	14,09,01,286	11,53,00,000	81.82

*If there are sub-categories in a category, please add rows for each sub-category.

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

Note: The Resolution Applicant provided payment of Rs. 2,00,000.00 towards the statutory dues (Income Tax) payable as per FY 2021. However, no claim has been received from the Income Tax Authority.

8. The interests of existing shareholders have (not) been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	44,000	44,000	100	100
2	Preference	-	-	-	-

9. The compliance of the Resolution Plan is as under:

Section of Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan of	Compliance (Yes / No)
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		Resolution Plan	
25(2) (h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Submitted with expression of interest	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional?	Declaration u/s 29A	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an undertaking stating that he is eligible?	Declaration u/s 29A	Yes
Section 30(2)	Whether the Resolution Plan:		
	(a) provides for the payment of insolvency resolution process costs?	Clause a. Page No.30. Table No.11, Page no.32 Table no. 12, Page no.36.	Yes
	(b) provides for the payment of the operational creditors?	Clause (a) Page No. 30, Table 12, Clause	Yes
	(c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	(D) page No.37 & page no. 42	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Page no. 51	Yes

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	(e) Provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?	Page No. 21, 22, 23, 24 Section 5 Page No. 54 Page no.4,para 3	Yes No
Regulation 30 (4)	Whether the Resolution Plan - (a) Is feasible and viable according to CoC? (b) Has been approved by the CoC with 66% voting share?	Not Applicable	Yes, as approved by 100% voting in favour by CoC.
Section 31(1)	Whether the Resolution Plan has provision for its effective implementation plan, according to the CoC?	Section 6- Table no.14, Page no. 54 and 55,57	Yes
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Table no.12 Page no. 36	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Table no.12 Page no. 36	Yes
Regulation 38(1B)	i. Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution	Not Applicable	Not Applicable

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	<p>plan approved under the Code.</p> <p>ii. If so, whether the Resolution Applicant has submitted the statement giving the details of such non-implementation?</p>		
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p> <p>(b) for the management and control of the business of the corporate debtor during its term?</p> <p>(c) adequate means for supervising its implementation?</p>	<p>Section 6- Table no.14, Page no. 54 and 55,57</p> <p>Page No. 21</p> <p>Section 5 Page No.54</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default.</p> <p>(b) it is feasible and viable?</p> <p>(c) it has provisions for its effective implementation.</p> <p>(d) it has provisions for approvals required and the timeline for the same?</p> <p>(e) the resolution applicant has capability to implement the resolution plan?</p>	<p>Page no. 25</p> <p>Page no. 44</p> <p>Section 5 Page No.54</p> <p>Section 6- Page No. 55, Page No.64</p> <p>Page no. 12 to 16</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

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39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Not Applicable	No
Regulation 39(4)	Provides details of performance security received, as referred to in sub-regulation (4A) of regulation 36B	Page No. 30	Letter of intent issued however PBG not received yet.

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

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date*
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	09-09-2019
Regulation 6(1)	Publication of Public Announcement	T+3	11-09-2019
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	23-09-2019
Regulation 13(1)	Verification of Claims	T+21	9-10-2019
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	9-10-2019
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	14-10- 2019

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Regulation 35A	Determination of fraudulent and other transactions	T+115	02-01-2020
Regulation 27	Appointment of two Registered Valuers	T+47	5-11- 2019
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54	2-12-2019
Regulation 36A	Invitation of EoI	T+75	1 st Form G – 4-12- 2019 2 nd Form G – 23-12- 2020
	Publication of Form G	T+75	1 st Form G – 4-12- 2019 2 nd Form G – 23-12- 2020
	Provisional List of Resolution Applicants	T+100	29-01-2021
	Final List of Resolution Applicants	T+115	29-01-2021
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	01-02-2021
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	After 22-07-2022
Section 31(1)	Approval of Resolution Plan	T=180	

* Refer Foot Note No.1 & 2

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

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
Not Applicable				

12. The Resolution Plan is not subject to any contingency.

or

~~The Resolution Plan is subject to the following contingencies (Elaborate the contingencies):~~

i.....

ii.....

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made, or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

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

14. The Resolution Plan is being filed after (with prior approval for extension) the expiry of the period of CIRP provided in section 12 of the Code.

The NCLT order dt. 20.11.2021 of extending CIRP period provides for exemption of lockdown period due to Covid 19 Pandemic, hence pursuant to Suo Moto judgment of Supreme Court dated 10 January 2022 in MA no. 21 of 2022 in MA no. 665 of 221 in WP no. 03 of 2020, the Apex Court held that the period from 15 March 2020 to 28 February 2022 would stand excluded for the purpose of limitation and therefore may be considered to be excluded from calculating CIRP timeline.

Pursuant to 2nd Form G issued on 23rd December 2020, Mr. Pushakar Gulati (Resolution Applicant or RA) has submitted the Resolution Plan on 16th March 2021 after various modifications also, the said Resolution Plan was rejected by the CoC. Thereafter, the resolution for liquidation of CD was passed by CoC in its meeting held on 23rd July 2021 and I.A. No. 1974 of 2021 was filed with Hon'ble NCLT, Mumbai Bench for the same. Thereafter, RA filed an application I.A. No.2148 of 2021 before the Hon'ble Bench for considering the resolution plan submitted by him.

The Hon'ble Bench granted opportunity to RA to submit the revise Resolution Plan vide order dated 21st October 2021. After due extensions given by the Hon'ble Bench followed by several hearings, the RA submitted the resolution plan on 29th December 2021, after due negotiations with CoC

the final resolution plan was submitted by RA on 27th May 2022, which was put before the CoC for e-voting on 07th June 2022 which is approved by CoC through e-voting (via registered email) on 22nd July 2022 (Considering extension of evoting time at various intervals at request of CoC).

14A. Whether the resolution professional has, in accordance with the resgulation 35A –

- a) applied to the Adjudicating Authority o or before the one hundred and thirty fifth day of the insolvency commencement date: ~~Yes~~ / No (Not Applicable)
- b) filed form CIRP 8 with the Board on or before the one hundred and fortieth day of the insolvency commencement date: Yes ~~/No~~

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

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	Not Applicable	-	-
2	Undervalued transactions under section 45	Not Applicable	-	-
3	Extortionate credit transactions under section 50	Not Applicable	-	-
4	Fraudulent transactions under section 66	Not Applicable	-	-

15A. The committee has approved a plan providing for contribution under regulation 39B as under: **Not Applicable**

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

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1	-	-
2	-	-
Total	-	-

15B. The committee has recommended under regulation 39C as under: **Not Applicable**

a. ~~Sale of corporate debtor as a going concern:~~ _____ Yes / No

b. ~~Sale of business of corporate debtor as a going concern:~~ _____ Yes / No

~~The details of recommendation are available with the resolution professional.~~

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D. **Not Applicable**

16. I Mr. Ankur Kumar hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

Name of the Resolution Professional: Mr. Ankur Kumar

IP Registration No: IBBI/IPA-002/IP-N00113/2017-18/10283

Address as registered with the Board: Office No. 18, 10th floor, Pinnacle Corporate Park, next to Trade Centre Bandra Kurla Complex, Bandra (E), Mumbai- 400022

Email id as registered with the Board: ankur.srivastava@ezylaws.com

19. In the present case, the plan is submitted by a promoter of the Corporate Debtor, Mr. Pushkar Gulati. Therefore, this bench had to examine whether the Successful Resolution Applicant Mr. Pushkar Gulati meets the eligibility criteria stipulated under Section 29A of the Code.

20. The Applicant has placed on record UDYAM Registration Certificate of the Corporate Debtor vide Additional Affidavit dated 14.03.2023. Upon perusal of the said certificate it is evident that date of UDYAM Registration is 19.04.2022. It is important to note that the CIRP was initiated way back on 03.09.2019. Accordingly, the matter was listed for clarification on the point whether the Corporate Debtor was registered as an MSME prior to initiation of CIRP. Mr. Ankur Kumar the Resolution Professional submits that the company was already registered as an MSME and has placed on record Entrepreneurs Memorandum Acknowledgement Part II dated 28.04.2010.
21. The Applicant has relied on Official Gazette notification issued by the ministry of micro, small and medium enterprises on 26.06.2020 which clarified that all existing enterprises registered under EM Part-II or UAM shall register again on UAM portal on or after 01.07.2020. The notification further says that all enterprises registered till 30.06.2020 shall be reclassified and the existing enterprises registered prior to 30.06.2020 shall continue to be valid upto 31.03.2021. However, vide notification dated 19.06.2022 the said date 31.03.2021 was substituted by 31.03.2022. The notification dated 06.05.2022 further extended the period till 30.06.2022.

22. The Corporate Debtor was registered as an MSME under UDYAM on 19.04.2022. Therefore, we are satisfied on the issue that the Corporate Debtor was registered as an MSME prior to initiation of CIRP.
23. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
24. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.
25. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the CoC with 100% voting through e-voting held on 22.07.2022 of the 19th meeting held on 04.06.2022.
26. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for

the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

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

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

28. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.
29. The Application IA No. 2293 of 2022 in CP No.703 of 2019 is allowed. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.
- i. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
 - ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned in light of the Judgment of Supreme Court in *Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited*, the relevant para's of which are extracted herein below:
“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no

person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

ANU JAGMOHAN SINGH

Member (Technical)

11.08.2023

Priyal

Sd/-

H.V. SUBBA RAO

Member (Judicial)