

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

I.A. No. 81 of 2022

IN

C.P. No. 3703 of 2019

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

Ms. Teena Saraswat Pandey

...Applicant/Resolution Professional

In the matter of

Rani Agro Private Limited

... Financial Creditor

V/s.

S and H Gears Private Limited

... Corporate Debtor

Order Pronounced on: 10.07.2023

Coram:

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

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

Appearance (through video conferencing):

For the Applicant: Adv. Kunal Kanungo a/w Adv. Tanushree Sogani

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. This is an Application filed under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant, Mr. Gautam R. Gajra (Lead Member), M/s Gajra Gears Private Limited and M/s Elve Corporation (“**Gajra Consortium**”), which was approved by 77.21% voting share of the members of the Committee of Creditors (hereinafter referred to as ‘**COC**’).

2. The facts leading to the Application are as under:
 - i. Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated by this Bench by an order dated 24.01.2020 under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as ‘**the Code**’) and Mr. Navin Khandelwal, was appointed as Interim Resolution Professional. The IRP constituted the Committee of Creditors. The COC in its 1st meeting held on 22.06.2020 appointed Mr. Navin Khandelwal as the Resolution Professional and the COC in its 10th meeting held on 07.06.2021 resolved to replace the Resolution Professional and appointed Ms. Teena Saraswat Pandey (**the present Applicant**) as the Resolution Professional (**RP**). The IRP published a public announcement as per Section 13 & 15 of the Code inviting claims from the creditors of the Corporate Debtor.

 - ii. The Applicant published a Public Announcement in Form A in accordance with Section 15 of the Code, on 18.03.2020, in English Newspaper Financial Express and in Marathi newspaper Navrashtra, inviting claims from the creditors of the Corporate

Debtor. The Interim Resolution Professional (IRP) formed the COC consisting of the following Financial Creditors, having voting percentage rights as stated below:

LIST OF COC		
Name	Secured/Unsecured	Voting Percentage
Bank of Baroda	Secured	61.75
MPFC Dewas	Secured	5.67
M/s. Garha Utilbrocce Tools Limited	Unsecured	4.27
M/s. Rani Agro Private Limited	Unsecured	23.45
M/s. Prithviraj Hospatility Limited	Unsecured	4.9

- iii. The Applicant submits that the claims received and accepted by the Interim Resolution Professional as under:

Particulars /Name	Secured/Unsecured	Claim received	Total Claim Accepted	% of claim in COC
Bank of Baroda	Secured	6,41,11,708.00	6,41,11,708.00	61.75
MPFC Dewas	Secured	58,88,907.00	58,88,907.00	5.67

M/s. Garha Utilbrocce Tools Limited	Secured	46,60,145.00	44,30,000.00	4.27
M/s. Rani Agro Private limited	Secured	6,47,90,554.00	2,43,46,536.00	23.45
M/s. Prithviraj Hospitality Limited	Secured	98,35,329.00	50,50,000.00	4.86
M/s. Gajra Bevel Gears Limited	Secured	80,24,658	80,24,658	NIL

Out of the above list, Gajra Bevel Gears Limited was found to be a related party and as per Section 21, related party does not have a right of representation, participation or voting in COC.

3. The Applicant submits that in the 4th COC meeting, dated 31.08.2020, Six (6) valuers for Plant & Machinery, Land & Building and Securities or Financial Assets (SFA) to determine the fair value and liquidation value of the Plant & Machinery, Land & Building and Securities or Financial Assets (SFA) were appointed, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These valuers had submitted their reports. The Liquidation and fair value are as follows:

S AND H GEARS PVT LTD 13.12.2021		
INVENTORY		
PLANT AND MACHINERY	FMV	LV
Bijay Kumar Agrawala	3,65,00,000	3,00,00,000

Sanjay Khandelwal	3,83,81,600	2,87,85,000
TOTAL	7,48,81,600	5,87,85,000
AVERAGE	3,74,40,800	2,93,92,500
LAND AND BUILDING		
Atul Shukla	11,24,63,180	7,74,00,000
Gajra Gears	5,73,24,800	4,01,27,360
	16,97,87,980	11,75,27,360
Lalit Kale	11,26,00,000	8,35,00,000
Gajra Gears	5,73,00,000	4,29,75,000
	16,99,00,000	12,64,75,000
TOTAL	33,96,87,980	24,40,02,360
AVERAGE	16,98,43,990	12,20,01,180
SFA		
Hiten Prajapati	3,97,918	1,81,676
Darshil Shah	3,97,918	1,81,000

TOTAL	7,95,836	3,62,676
AVERAGE	3,97,918	1,81,338
TOTAL A+B+C	20,76,82,708	15,15,75,018

4. In the 7th COC meeting dated 01.04.2021, the COC resolved to publish Form G for inviting Expression of Interest (“**EOI**”) from Prospective Resolution Applicants as per section 25(2)(h) of the Code. Accordingly, Public announcement for inviting EOI was issued. The Form G inviting EOI was published on 07.04.2021. The last date for submission of Expression of Interest (EOI) from Prospective Resolution Applicants was 22.04.2021 and last date of submission of Resolution Plan was 06.06.2021.
5. The Applicant submits that in the 8th COC Meeting dated 29.04.2021, the COC took note of the fact that Form G was published, as required under Regulation 36A of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016. In furtherance of the Form-G issued by Applicant, the applicant received EOI from two (2) Prospective Resolution Applicants (PRAs) within the stipulated time period. The names of the prospective resolution applicant are as under:
- i. M/s Atambhu Buildwell Pvt. Ltd
 - ii. GRG Family Trust in consortium with Gajra Gears Pvt. Ltd.
& Elve Corporation

6. In the 10th COC meeting dated 07.06.2021, the COC resolved to replace the then Resolution Professional and appointed Ms. Teena Saraswat Pandey as the new Resolution Professional of the Corporate Debtor under Section 22 of the Code and the same was allowed by this Tribunal vide order dated 24.06.2021, wherein the erstwhile Resolution Professional i.e., Mr. Navin Khandelwal was replaced with the present Resolution Professional i.e. Ms. Teena Saraswat Pandey.
7. In the 11th COC meeting dated 13.07.2021, it was deliberated that the last date of submission of Resolution Plan was 16.06.2021 but till then the visit of Prospective Resolution Applicants (PRAs) was pending and many data requested by them was also not ready, as no final list of plant and machinery, inventory had been made available. Hence, it was decided to re-issue the EOI.
8. In the 13th COC meeting, dated 06.09.2021, the Applicant informed the COC that after re-issuance of Form – G dated 20.08.2021, the Applicant received EOI from two applicants:
 - a) **Gajra Consortium: Mr. Gautam Gajra, Gajra Gears Pvt. Ltd. & Elve Corporation**
 - b) **Association of Persons: Anil madaan, Anjana Madaan, Priya Kapoor and Siddharth Kakkar.**
9. **The COC, in its 21st meeting held on 13.12.2021 and 14.12.2021, approved Resolution Plan submitted by Gajra Consortium with a voting share of 77.21%. Thereafter, the Applicant has issued compliance certificate in Form “H”.**
10. **The Salient Features of the Resolution Plan are as under:**

A. Brief Background of the Company / Corporate debtor

- i. S & H Gears Private Limited (S&H / Company/ Corporate Debtor) is a Private limited company, incorporated on 18th November 1972, with Corporate Identification Number U29130MH1972PTC016126. The registered office of S & H Gears Private Limited is situated at 104 A, Wing Atalantic Apartment Co Op Hsg Soc Ltd, Swami Samarth Nagar Lokhandwala Complex Andheri(W) Mumbai MH 400053.
- ii. S&H was engaged in the business of manufacturing various components of transmission gear for Domestic and Export market. The Company was also engaged in doing job work.

B. Background of the Resolution Applicant

The Consortium of Mr. Gautam R. Gajra (Lead Member), M/s Gajra Gears Private Limited and M/s Elve Corporation (partnership firm) ("**Gajra Consortium**")/ "**Resolution Applicant**")/ "**RA**"). It is submitted by the Resolution Applicant that Gajra Gears Private Limited ("**GGPL**") is engaged in manufacturing automotive parts and components since its incorporation. Further, Mr. Gautam R.Gajra is the Chairman & Managing Director of Gajra Gears Private Limited. Elve corporation was founded as a trading house for diesel engines and spare parts. Elve corporation is also in manufacturing/ doing job work of Auto Components. Elve Corporation is an Export House of Gajra Group which caters to International market activities of the group.

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

11. Implementation Steps and Schedule

The Resolution Plan shall be implemented in the following manner, as per the timelines stated below:

Steps	Activity	Indicative Time Line
1.	Formation of SPV by the Resolution Applicant	Before X
2.	NCLT Approval Date	X
3.	Monitoring Committee comes into force	X
4.	Capitalisation by the Resolution Applicant	X + 30 days (Closing Date)
5.	Infusion of debt and equity by the Resolution Applicant/ SPV into S & H	X + 30 days (Closing Date)
6.	Return of PG by the beneficiary	X + 30 days (Closing Date)
7.	Board Reconstitution: (a) Automatic Vacation of Office by the existing directors (b) Automatic appointment of directors nominated by the Resolution Applicant	X + 30 days (Closing Date)
8.	Capital restructuring:	X + 30 days (Closing Date)

	(a) Extinguishment of existing shareholding of the Company (b) Issuance of Equity Shares to the Resolution Applicant against the share capital of the Company	
9.	Payment of outstanding CIRP Costs	X + 30 days (Closing Date)
10.	Payment to Operational Creditors (Workmen and Employees)	X + 30 days (Closing Date)
11.	Payment to Operational Creditors (other than Workmen and Employees)	X + 30 days (Closing Date)
12.	Payment to Other Creditors	X + 30 days (Closing Date)
13.	Payment to Financial Creditors	X + 30 days (Closing Date)
14.	Financial Creditors to issue No-Dues Certificate and handover charge satisfaction forms and title documents for the Underlying Company Security	Within X + 30 days (Closing Date)

Disclaimer: The above steps are broad in nature and do not include minutiae involved in implementation of these steps. These steps may be carried out simultaneously or in any other order as deemed fit by the Resolution Applicant / Monitoring Committee/ any other concerned party. Further, the timelines are merely indicative in nature and shall not in any manner create a binding obligation on any party to take any of the aforesaid steps within the timelines provided thereto. In case of any inconsistency between the aforesaid table and the contents of the Resolution Plan, the provisions of the Plan shall prevail for all purposes and effect.

12. Summary of Payment

Sr. No	Summary of Payments Stakeholder	Amount Claimed (INR)	Amount Admitted (INR)	Pay out in Resolution Plan	Settlement % of Admitted claim
A	FINANCIAL CREDITOR				
1.	MPFC	58,88,907.00	58,88,907.00	58,88,907.00	100
2	Bank of Baroda	10,87,19,775.00	10,87,19,775.00	10,87,19,775.00	100
3	M/s. Garha Utilbrocce Tools Limited	46,60,145.00	44,30,000.00	44,30,000.00	100
4	M/s. Prithviraj Hospitality Limited	98,35,329.00	50,50,000.00	50,50,000.00	100
5	M/s. Rani Agro Private limited	6,47,90,554.00	2,43,46,536.00	2,43,46,536.00	100
Total		19,38,94,710.00	14,84,35,218.00	14,84,35,218.00	100
B	OPERATIONAL CREDITOR				
1	Workmen and Employees	12,92,70,541.00	96,83,497.00	96,83,497.00	100

2	Other than workmen and employees a) Regional Director ESI Corporation b) EPFO	88,40,824.00 2,98,11,102.00	80,22,671.00 1,26,12,838.00	52,92,398.00 83,20,440.00	66
C.	Related party claims	80,24,658.00	80,24,658.00	10,000.00	
D.	Certain other unverified or claimed liabilities	NA	NA	60,000.00	
E.	Existing Share Holders	NA	NA	NIL	
	Total B+C+D+E	16,86,66,719.00	3,03,19,006.00	2,33,66,335.00	
	Total	37,05,86,087.00	18,67,78,882.00	17,18,01,553.00	92
F.	CIRP Cost			35,00,000.00	
	TOTAL (Including CIRP Cost)			17,53,01,553.00	

Note:

1. *Closing Date: Within 30 days of the NCLT Approval Date.*
2. *Notwithstanding anything contained in the Resolution Plan, the total payments proposed by the Resolution Applicant to the*

stakeholders (including CIRP Cost) shall not exceed INR 17,53,01,553.00. In case any further claims in any category of the stakeholder are admitted and/or ordered are to be paid, the total amount proposed for such category shall stand redistributed to include any such additional claim/ liability without increasing the overall amount proposed for such category. In case the NCLT orders additional payment to any stakeholder not included within the aforesaid category, such additional payment shall be reduced from the total amount payable to same category of stakeholder. Any other liability for the period prior to the NCLT Approval Date, whether admitted or not, contingent or crystallised, claimed or not claimed, shall stand settled at NIL and be extinguished on the NCLT Approval Date, even if such liabilities are claimed or arise or crystallise in future.

13. **Sources of Funds**

- I. The Resolution Applicant/SPV within 30 days from the NCLT Approval Date, shall bring in an amount INR 17,53,01,553.00* (Indian Rupees Seventeen Crores Fifty Three Lakhs One Thousand Five Hundred and Fifty Three) (“Initial Infusion Amount” and such date of infusion, the “Closing Date”) into the Company.

**Amount paid as Earnest Money deposit / security deposit by Gajra Consortium members shall be adjusted from Initial Infusion Amount.*

***If for any reason SPV formation is delayed or Bank account is not opened for any other reason beyond control of Gajra Consortium members, Gajra Consortium member will Infuse the initial amount and same will be treated as their contribution on behalf of SPV.*

II. Such Initial Infusion Amount shall be brought in as:

- a) Debt of INR 11,53,01,553.00 (Indian Rupees Eleven Crores Fifty Three Lakhs One Thousand Five Hundred and Fifty Three) to be given by the Resolution Applicants/SPV to the Corporate Debtor.
- b) Equity of INR 6,00,00,000.00 (Indian Rupees Six Crores) to be infused by the Resolution Applicants/SPV into the Corporate Debtor.

14. **Treatment of Various Stakeholders**

The Resolution Applicant has, to the extent possible, taken into account the interests of all Stakeholders of the Corporate Debtor. A synopsis of how the Resolution Applicant proposes to deal with the interest of Stakeholders is stated as under:

A. **Payment of CIRP Costs**

- i. Unpaid CIRP Costs outstanding as on the NCLT Approval Date shall be paid on actuals, in priority to any payments to any creditor, within 30 days from the NCLT Approval Date. The Resolution Applicant has also been informed that part of the CIRP Costs, which has been paid or will be paid/ contributed by certain Financial Creditors, shall be paid back by the resolution applicant to such financial creditors.

Summary of Payments	Admitted Claim (INR) (X)	Total Pay-out (INR) (Y)	Timing of Payments
CIRP Costs	NA	Outstanding CIRP Costs to be paid as per actuals on priority basis. Estimated as up to INR 35,00,000 (Indian Rupees Thirty Five Lakhs)	Closing Date: Within 30 days of the NCLT Approval Date (in priority to any other payments)

- ii. On the Closing Date, the Resolution Professional shall certify the outstanding CIRP Costs to the Resolution Applicant. Such outstanding CIRP Costs shall be paid from the internal accruals of the Corporate Debtor as on the Closing Date (including any amounts received by the Corporate Debtor from sale of its assets during the CIRP period). If the internal accruals of the Corporate Debtor are not sufficient to pay all the outstanding CIRP Costs, the Resolution Applicant shall fund the additional CIRP Costs to the extent of INR 35,00,000 (Indian Rupees Thirty Five Lakhs) (“Allocated CIRP Costs Amount”). The RA will infuse Allocated CIRP cost amount into the Corporate Debtor in the form of debt. However, if the unpaid CIRP Costs also exceeds the Allocated CIRP Costs Amount, the excess amount (i.e. amount in excess of Allocated CIRP Costs

Amount) shall be deducted from the other Operational Creditor Payment (“Excess CIRP Costs”).

B. Payment to Financial Creditors

- i. As on 27TH July 2020, the admitted debt of Financial Creditors is INR 14,84,35,218.00

- ii. The Resolution Applicant proposes to pay a total of INR 14,84,35,218.00 (Indian Rupees Fourteen Crore Eight Four Lakhs Thirty Five Thousand Two Hundred and Eighteen) to the Financial Creditors, divided into Secured Financial creditors shall be paid INR 11,46,08,682.00 (Indian Rupees Eleven Crore Forty Six Lakhs Eight Thousand Six Hundred Eighty Two) (“Secured FC Payment”) and Unsecured Financial creditors shall be paid INR 3,38,26,536.00 (Indian Rupees Three Crore Thirty Eight Lakhs Twenty Six Thousand Five Hundred Thirty Six) (“Unsecured FC Payment”).(detail payment proposed to each financial creditors is given in below table)

Sr. No	Summary of Payments Stakeholder	Amount Claimed (INR)	Amount Admitted (INR)	Total Pay-out (INR)	Pay out % of Admitted claim	Timing of Payments
A	SECURED FINANCIAL CREDITOR					

1	MPFC	58,88,907.0 0	58,88,907.00	58,88,907.0 0	100	
2	Bank of Baroda	10,87,19,77 5.00	10,87,19,775. 00	10,87,19,77 5.00	100	
B	UNSECURED FINANCIAL CREDITOR					
3	M/s. Garha Utilbrocce Tools Limited	46,60,145.0 0	44,30,000.00	44,30,000.0 0	100	
4	M/s. Prithviraj Hospitality Limited	98,35,329.0 0	50,50,000.00	50,50,000.0 0	100	
5	M/s. Rani Agro Private limited	6,47,90,554. 00	2,43,46,536.0 0	2,43,46,536. 00	100	
Total		19,38,94,71 0.00	14,84,35,218 .00	14,84,35,21 8.00	100	Closing Date: Within 30 days of the NCLT Approval Date

C. Payment to Workmen and Employees

- i. As per the updated list of Operational Creditors (Workmen and Employees) the total claims filed by Operational Creditors (employees and workmen) is INR 12,92,70,541.00 (excluding related parties). Out of the total operational creditors claim, admitted amount INR 96,83,497.00 is owed towards workmen and employees in the following manner:

Sr. No	Summary of Payments Stakeholder	Amount Claimed (INR)	Amount Admitted (INR)	Total Pay-out (INR)	Pay out % of Admitted claim	Timing of Payments
A	Workmen and Employees	12,92,70,541.00	96,83,497.00	96,83,497.00	100	Closing Date: Within 30 days of the NCLT Approval Date (in priority to Financial Creditors)

D. **Payment to Operational Creditors (Other Than Workmen and Employees)**

- i. As per the updated information of Operational Creditors (other than Workmen and Employees) shared by the RP, as of March 20, 2021, the total claims filed by Operational Creditors (other than employees/workmen) is INR 2,06,35,509.00 Out of the claims filed, the RP has admitted claims of Operational Creditors (other than employees/workmen) to the extent of INR 2,06,35,509.00. The Resolution Applicant proposes a payment of INR 1,36,12,838.00 (Indian Rupees One Crore Thirty Six Lakhs Twelve Thousand Eight

Hundred and Thirty Eight) to the Operational Creditors as specified in the below table:

Sr. No	Summary of Payments Stakeholder	Amount Claimed (INR)	Amount Admitted (INR)	Total Pay-out (INR)	Pay out % of Admitted claim	Timing of Payments
A	Other than workmen and employees (statutory & Government dues):-					Closing Date: Within 30 days of the NCLT Approval Date (in priority to Financial Creditors)
	a) Regional Director ESI Corporation	88,40,824.00	80,22,671.00	52,92,398.00	66%	
	b) EPFO	2,98,11,102.00	1,26,12,838.00	83,20,440.00	66%	
	TOTAL	3,86,51,926.00	2,06,35,509.00	1,36,12,838.00		

- ii. With regards to the above proposal, this Bench has noted that the Resolution Applicant had made a pay-out in Resolution Plan for an amount of Rs. 83,20,440/- against an admitted claim of Rs. 1,26,12,838/- towards the EPFO dues. However, as per Section 36(4) of the Insolvency and Bankruptcy Code, 2016, the EPFO dues does not form part of the Liquidation Estate and as per the law laid down in ***Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia, Resolution professional of Jet Airways (India) Ltd***, non-payment of the provident fund amount to the workmen and employees and the gratuity payment in entirety until the insolvency commencement date amounts to non-compliance with provisions of the IBC and the same has been upheld by the Hon'ble Supreme Court in case of ***Jalan Fritsch Consortium v. Regional Provident Fund Commissioner, 2023 SCC OnLine SC 106***, dated 30-01-2023. Therefore, the matter was put for clarification on 23.06.2023, wherein the Learned counsel appearing on behalf Resolution Applicant were confronted with the above cited short coming in the Resolution Plan as the EPFO amount of Rs. 1,26,12,838/- was not being paid in full. During clarification, the counsel for the RP, agreed and confirmed to pay the EPFO Dues in full, as admitted by the Resolution Professional. Pursuant thereto, the Ld. Counsel for the Resolution Applicant also has filed an affidavit dated 23.06.2023 confirming and proposing to pay 100% of the amount admitted by the Resolution Professional of the

Corporate Debtor i.e. Rs. 1,26,12,838/-. For the aforesaid purpose, the SRA proposes to make good the shortfall of Rs.42,92,398/- by adjusting the same from the payment being offered to Employee State Insurance Corporation (ESIC) i.e. Operational Creditor as originally offered in the resolution plan. By way of the said adjustment, the EPFO the payment stands revised from Rs. 83,20,440/- to Rs. 1,26,12,838/- and for ESIC it stands revised to Rs.10,00,000/-. That being so, the plan is compliant of Jet Airways (*Supra*) and does not suffer from any infirmity any longer.

E. Payment to Related Parties

- i. As per the updated list of Related Party claims, as of 27 July 2020, the total claims filed by the Related Parties is INR 80,24,658.00 Out of the said claims, the RP has admitted Related Party claims to the extent of INR 80,24,658.00
- ii. The Resolution Applicant proposes a payment of INR 10,000 (Indian Rupees Ten Thousand) to the Related Parties as specified below table against and in discharge of their Claims (admitted or not), within 30 days of the NCLT Approval Date. Such payment shall be made by the Company, from the amounts infused by the Resolution Applicant into the Company on the Closing Date (i.e., from the Initial Infusion Amounts).

S. No	Summary of Payments Stakeholder	Amount Claimed (INR)	Amount Admitted (INR)	Total Pay-out (INR)	Timing of Payments
A	Related party claims	80,24,658.00 (FCs)	80,24,658.00	INR 10,000 (Indian Rupees Ten Thousand.)	Closing Date: Within 30 days of the NCLT Approval Date

- iii. The Applicant submits that the Resolution Plan stipulates that the total payments proposed by the Resolution Applicant to the Stakeholders (including CIRP cost) shall not exceed INR 17,53,01,553.00.

15. **Monitoring and Supervision**

- i. As per the proposed Resolution Plan, an appropriate monitoring committee shall be constituted on the NCLT Approval Date (Monitoring Committee), which shall comprise of the Resolution Professional, two representatives as appointed by the Resolution Applicant and two representatives of the Financial Creditors. The Resolution Professional shall act as the Chairman of the Monitoring Committee and shall hold office from the NCLT Approval Date till the Closing Date.

- ii. The Monitoring Committee shall convene its first meeting within 7 days of the NCLT Approval Date. All decisions of the Monitoring Committee shall be undertaken with unanimous consent until the Closing Date. After the NCLT Approval Date, the Resolution Professional/ Monitoring Committee shall run the Company in ordinary course, without undertaking or incurring any liabilities on behalf of the Company (except liabilities arising in ordinary course).
- iii. The Monitoring Committee, so appointed, shall have inter alia the following roles and responsibilities:
 - (a) To supervise the implementation of the Resolution Plan and ensure that the Resolution Plan is implemented as approved without any deviations;
 - (b) To ensure timely disbursement of funds to the stakeholders, as per the payment terms set out herein;
 - (c) To ensure that approvals, to the extent required for implementation of the Resolution Plan, are applied for and obtained in a timely manner.
 - (d) To bring to the notice of Adjudicating Authority, any deviations/violations, of the Resolution Plan, by any person;
 - (e) To provide regular updates to the Adjudicating Authority, as and when required; and
 - (f) Control and management of the Company from NCLT Approval Date till the Closing Date.

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

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Chapter III	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Chapter III	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (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?	Chapter VI Clause 6 Page 46 Chapter IX pg 73	Yes as per IBC provisions

		Chapter X pg75	
		Chapter XIII pg 83	
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Yes	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Yes	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	No such transaction identified	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?	Chapter VI pg 46	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Chapter VI clause 6 pg46	Yes

Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Chapter XIII Clause 13 pg 83	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Chapter X and Chapter XI Pg 80	Yes
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Chapter V pg 40 Chapter X and XI pg75,80 Chapter III Annexure 1A pg 18	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NA	NA
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A)	Yes	Yes

	of regulation 36B.		
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17. **Observations and Findings:**

We have carefully examined the Resolution Plan as detailed above and find that it complies with the statutory provisions of the Code and the Regulations framed thereunder in the following terms:

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has agreed that dissenting financial creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor.
- iv. The plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- v. The plan provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d) & Regulation 38(2)(c).
- vi. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - Resolution

Plan provides for the implementation and supervision of the resolution plan as per Section 30(2) (e)

- vii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- viii. As per IBBI Guidelines 38(1)(b) - the amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- ix. The resolution applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- x. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
 - d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.

- e. The amount payable under the resolution plan to the Financial Creditors, who have right to vote under sub-section (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- h. The plan provides for the management and control of the business of the Corporate Debtor during its term.
- i. All the above factors demonstrate that the plan address as the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- j. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
- k. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).

18. So far as the scope and jurisdiction of this Bench is concerned the same is quite limited, while considering a Resolution Plan for approval. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
19. In ***India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)*** the Hon'ble Apex Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that

the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

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

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

21. In view of the above cited case law, the legislature has given paramount importance to the commercial wisdom of committee of

creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent of scrutiny provided under section 31 of Code and the direction of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code.

22. In view of the discussions and the law thus settled, this Bench is of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. Resolution Applicant has agreed to pay the full CIRP costs and also future costs, if any, as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved. Accordingly, the plan is approved in the following terms:

ORDER

- a) The Interlocutory Application No. 81 of 2022 is **allowed**. The Resolution Plan submitted by **Gajra Consortium**, is hereby approved. **It shall become effective from this date and shall form part of this order**. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- b) The resolution plan, approved hereby, shall form part of this order.

- c) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant has sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of which are extracted herein below:

“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

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

proceedings in respect to a claim, which is not part of the resolution plan;

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

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

- d) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- e) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- f) The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.

- g) 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.
- h) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- i) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- j) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- k) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- l) The Interlocutory Application **No. 81 of 2022** is accordingly **allowed and disposed of.**

SD/-

Anuradha Sanjay Bhatia
Member (Technical)

SD/-

Kuldip Kumar Kareer
Member (Judicial)