

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-II**

IA. No. 03/2024
In
CP(IB)No. 1269/MB/C-II/2021

Application filed under section 30(6), r/w Section 31(1) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,

Filed by

**Mr. Mayur Rajendra Kumar Popat,
Resolution Professional**

...Applicant

In the matter of

Rajul Mehta & Ors.

...Financial Creditor

Versus

Richfeel Health & Beauty Pvt Ltd

...Corporate Debtor

Order Pronounced on: - 20.06.2024

Coram:

**Anil Raj Chellan
Member (Technical)**

**Kuldip Kumar Kareer
Member (Judicial)**

Appearances -

For the Applicant/RP : Counsel, Shyam Kapadia a/w Rahul Sarda,
Abhishek Kale, Shalvika Nacharkar and Vidhur
Malhotra

For the Resolution Applicant : Counsel, Tushar Hathiramani

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. The present Interlocutory application is filed by **Mr. Mayur Rajendra Kumar Popat**, the Applicant and Resolution Professional of **Richfeel Health & Beauty Pvt Ltd** (“the Corporate Debtor”) seeking approval of the resolution plan under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“the Code”) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) submitted by Ms. Bina Mukesh Shah and Seema Goel (“Successful Resolution Applicant”) and duly approved by 90.41% of the Committee of Creditors (“CoC”) of the Corporate Debtor in its 12th CoC meeting held on 19.12.2023.
2. The Applicant submits that the Financial Creditor, Rajul Mehta & Ors., initiated the Corporate Insolvency Resolution process (“CIRP”) against the Corporate Debtor under Section 7 of the Code. Vide Order of this Tribunal dated 26.8.2022, CIRP against the Corporate Debtor was initiated and Mr. Anuj Bajpai was appointed as Interim Resolution Professional (“IRP”).
3. The IRP made a Public Announcement for inviting claims on 28.8.2022 in Form

- 'A' and the last date specified for receipt of claims was 09.09.2022. Based on the claims received, the CoC was constituted on 18.9.2022. The IRP convened the first meeting of the CoC on 26.09.2022, which included only one secured financial creditor i.e., Unity Small Finance Bank Ltd having 100% voting share. During the meeting, the sole secured financial creditor did not approve the proposed fees for independent valuers or transaction auditors and did not pass any resolution confirming the IRP as the Resolution Professional.
4. In compliance with the Code, the IRP published the list of claims and respective voting shares on the IBBI website on 25.11.2022 and reconstituted the CoC on 13.12.2022 comprising two secured financial creditors. As per the list of claims published, nineteen unsecured creditors submitted their claims. In the second meeting of CoC appointment of registered valuers, publication of Form G, and detailed Invitation for Expression of Interest were resolved.
 5. The IRP appointed registered valuers to determine the Liquidation Value and Fair Value of the Corporate Debtor for each class of assets namely, Adroit Appraisers and Research Private Limited (for all 3 categories), GN Fair Valuation Pvt Ltd for land & building and plant & machinery and Mr. Gyaneshwar Sahai for Securities and Financial Assets. Subsequently, the CoC in its meeting held on 31.03.2023 approved the replacement of Adroit Appraisers and Research Pvt Ltd with new valuers for different asset categories. Mr. Anil Kakode for Plant and Machinery, Mr. Raseek Bhagat for Land and Building, and Mr. Jayesh Shah for Securities and Financial Assets along with their respective fees.
 6. In the 3rd meeting on 20.02.2023, the CoC approved the fees of the valuers and transaction auditors, the Evaluation Matrix, and detailed Invitation for

Expression of Interest, etc. On 28.03.2023, the IRP issued the provisional list of eligible prospective resolution applicants who submitted EoI in response to Form G. Thereafter, IRP issued Request for Resolution Plan (RFRP), Evaluation Matrix, and Information Memorandum to all the prospective Resolution Applicants on 02.05.2023.

7. Based on the resolution passed by the CoC in the meeting held on 13.03.2023, an IA No. 1251/2023 was filed to replace the IRP, Mr. Anurag Kumar Sinha with Mr. Mayur Rajendra Kumar Popat as the Resolution Professional ('RP') which was allowed by the Tribunal vide its order dated 16.06.2023.
8. In the 6th CoC meeting held on 2.05.2023, it was decided to extend the time limit for submitting the Resolution Plan as four prospective applicants submitted an Expression of Interest in response to Form G published on 23.02.2023. On 10.07.2023, the CoC noted that two Resolution Applicants viz., a consortium of Ms. Bina Singh & Ms. Seema Goel; and Mr. Vikas Phadnis have submitted their Resolution Plans, which are to be reviewed and discussed at the next meeting.
9. Based on the discussions with CoC, the consortium of Ms. Seema Goel and Ms. Bina Shah submitted its revised plan on 21.08.2023 and the resolution plan submitted by Mr. Vikas Phadnis remained unchanged. Both the Resolution Plans were extensively discussed in the 10th CoC held on 14.09. 2023 and 11th CoC held on 13.10.2023. The Applicant submitted to the CoC that both the Resolution plans are compliant with the mandatory provisions of the Code and capable of being implemented. The Applicant presented the Resolution Plans together with other relevant matters to the CoC for considering the viability and feasibility of the Resolution Plans and approval.
10. The Resolution Plan submitted by the consortium of Ms. Bina Shah and Ms.

Seema Goel got 90.41 % voting whereas the voting percent for the Resolution Plan of Mr. Vikas Phadnis is NIL. Having scored 90.41% votes, the consortium of Ms. Bina Shah and Ms Seema Goel was declared as the Successful Resolution Applicant (SRA), and a Letter of Intent was issued to them on 18.12.2023.

11. The SRA submitted a performance bank guarantee for an amount of Rs.2.5 crore in accordance with Clause 6(l) of the RFRP and in further of the Resolution Plan
12. This Tribunal approved the extension of CIRP by 90 days (beyond 180 days) vide order dated 01.03.2023, exclusion of 78 days vide order dated 15.06.2023, allowed extension of 60 days (beyond 270 days) vide order dated 29.11.2023 and this application was filed on 23.12.2023 before the expiry of CIRP period on 24.12.2023.

13. **Brief Background of the Corporate Debtor**

a. The Corporate Debtor provides services of hair care, beauty, personal care encompassing diagnosis, counseling, medication, and treatment with patented methods. The Corporate Debtor produces its cosmetic products at factories located in Baddi and Parwanoo, Himachal Pradesh. It manages 49 clinics nationwide through franchise arrangements. The products manufactured at the factories are supplied to the clinics for rendering services to the customers. Presently, manufacturing solely occurs at the Baddi facility, while manufacturing operation at the Parwanoo factory are closed. Additionally, the Corporate Debtor has granted franchise rights to trichology clinics throughout India.

b. The business operations of the Corporate Debtor were affected by disruptions due to uncertainties and the COVID-19 pandemic, resulting in

clinic closures and a sharp decline in business. This led to Corporate Debtors' accounts being declared as Non-Performing Assets which, in turn, prevented the Corporate Debtor from repaying debts to financial creditors.

15. Brief Background of the Successful Resolution Applicant

The Successful Resolution Applicant (SRA) is a consortium of Ms. Bina Shah and Ms. Seema Goel.

(a) As per the applicants, Ms. Bina Shah (Resolution Applicant 1) is an entrepreneur and a dynamic businesswoman with a multitude of thinking processes converting through her acumen “opportunities” into “successful business opportunities”. She is one of the first lady diamond entrepreneurs, who is in the business of designing her own diamond jewelry under the brand name “Regalia” established over long period and her brand has been adored by famous Hollywood actresses. She has also been featured on cover page of popular magazine “Vogue”.

(b) Besides her jewelry entrepreneurship business, she is also adept at investing in various corporate and non-corporate entities, including listed companies, funds, and private limited companies. Her investment portfolio was worth 24.40 crores as of March 31, 2022.

(c) Ms. Seema Goel (Resolution Applicant 2) is the sole proprietor of Berkowits Hair and Skin Clinics. She acquired this business in 2003 and has been growing her business since then and currently runs 20 clinics distributed in 6 cities namely Delhi, Hyderabad, Kolkata, Pune, Bangalore, and Raipur. Ms. Goel has grown her business substantially and maintains profitability.

16. SALIENT FEATURES OF THE APPROVED RESOLUTION

A. SRA is a consortium of Resolution Applicant 1 and Resolution Applicant 2. As per the Resolution Plan, the Trichology Division of the Corporate Debtor shall be transferred to Resolution Applicant 2 for its effective revival through a transfer of business/assets under a Business Transfer Agreement, as annexed to the Resolution Plan, between Resolution Applicant 1 and Resolution Applicant 2 for Rs. 6 crores or the value of actual clinics. All the remaining assets, FMCG business, immovable property, rights brand, etc shall continue to remain within the Corporate Debtor and be revived by the Resolution Applicant 1. The Resolution Applicant 1 shall infuse an amount of Rs.10 crore for revival of the business remaining with the Corporate Debtor.

B. Snapshot of the source of funds and payment to the stakeholders.

Sr. No.	Source of Funds		Fund Allocation
	Sale of Trichology Division to Resolution Applicant 2		60000000
	Sale of non-core immovable assets of the Corporate Debtor		90000000
	Contribution of Resolution Applicant 1 from her funds or raised from other sources		*20000000
	Total		350000000
	Category of Stakeholder	Amount Admitted (INR)	Amount provided under the Plan (INR)

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1.	CIRP Cost	25,00,000	25,00,000 (Payment in full)
2.	Secured Financial Creditors	79,35,71,218	24,42,94,265
3.	Unsecured Financial Creditors	18,29,37,851	18,29,379
4.	Statutory Creditors	72,81,791	72,818
5.	Employees Dues	2,80,58,806	2,80,586
6.	Operational Creditors (other than the Workmen and Employees Dues)	10,22,95,030	10,22,950
	Need-based working capital		10,00,00,000
	Total	1,11,41,44,697	35,00,00,000

* (including need-based working capital of Rs.10 crore)

@ The above table does not include the allotment of equity shares to Secured Financial Creditors by way of conversion of part loan into equity.

C. CIRP Cost

The total amount provided by the Successful Resolution Applicant towards CIRP Cost is INR 25,00,000/-. If the outstanding CIRP cost increases beyond 25,00,000, the excess amount above such additional amount shall be adjusted from the Secured Financial Creditor Settlement Amount proposed under the Resolution Plan. In the event, any part of proposed CIRP Cost is not required to be infused, then such excess amount is to be allotted towards Working Capital as and when required.

Any outstanding expenses associated with CIRP Cost shall be settled as a priority over other creditor payments prior to the Approval Date. Following the complete

settlement of these CIRP Cost, it absolves the Successful Resolution Applicant from any further obligation to address claims, liabilities, fines, costs or expenses categorized as CIRP Cost.

D. Treatment of Secured Financial Creditors

The Successful Resolution Applicant assures that the Secured Financial Creditors shall be paid as mentioned below:

Name of the Secured Financial Creditors	Admitted Claims	Proposed Payment to be made
Unity Small Finance Bank Limited	75,08,96,351	23,11,57,174
HDFC Bank Limited	4,26,74,867	1,31,37,102
Total	79,35,71,218	24,42,94,265

1. The amount INR 24,42,94,265/- (Twenty-four Crores Forty-Two Lakhs Ninety-Four Thousand Two Hundred and Sixty-Five Only) (“Secured Creditors Settlement Amount”) shall be paid over a period of 36 months from NCLT Approval Date. The Secured Creditor Settlement Amount, as stated above, shall not carry any interest and any other charges.

2. The deferred payment schedule for Secured Financial Creditors is as follows:

Secured Financial Creditors	Upfront Amount	At the end of 12 months from Approval Date	At the end of 24 months from Approval Date	At the end of 30 months from Approval Date	At the end of 36 months from Approval Date	Total
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Unity Small Finance Bank Limited	4,19,12,309	8,15,60,185	3,46,94,890	3,46,94,890	3,46,94,890	23,11,57,164
HDFC Bank Limited	23,81,956	48,39,815	19,71,777	19,71,777	19,71,777	1,31,37,101
Total	4,42,94,265	9,00,00,000	3,66,66,667	3,66,66,667	3,66,66,667	24,42,94,265

3. The Successful Resolution Applicant reserves the right to pre-pay the above total commitment considering the discounting factor of 12% p.a.

4. The entire outstanding amount of Secured Financial Creditors after adjusting for payment under the Resolution Plan shall be converted to equity and securities premium of the Corporate Debtor. The Successful Resolution Applicant proposes to allocate a 9.99% equity shareholding of the Corporate Debtor to Secured Financial Creditors. The Resolution Applicant 1 is will possess a right of first offer and final refusal rights over shares allotted to/owned by Secured F5nancial Creditors. Parties will execute a suitable Shareholders Agreement outlining the responsibilities regarding the shares held by Secured Financial Creditors. The Resolution Applicant retains the authority to purchase the equity shared held by Secured Financial Creditors at any time from the NCLT Approval Date at a valuation determined by a registered valuer appointed by the Corporate Debtor, as it deems appropriate.

5. The Successful Resolution Applicant proposes that Secured Financial Creditors

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shall have the option to receive cash valued at INR 1,00,00,000/- (Indian Rupees One Crore only) instead of acquiring 9.00% equity shares in the Corporate Debtor. This cash option is equivalent to the entire 9.99% shareholding interest. Accordingly, below is the summary of options available to both Secured Financial Creditors:

Name of the Secured Financial Creditors	Option 1 (Equity Option)	Option 2 (Cash Option Amount in INR)
Unity Small Finance Bank Limited	9.5%	95,00,000
HDFC	0.49%	5,00,000
Total	10.00%	100,00,000

6. Unity Bank has an option to opt for 9.5% of equity shareholding in Corporate Debtor or to opt cash option of INR 95,00,000/- (Indian Rupees Ninety-Five Lakhs Only) and HDFC Bank Limited has an option to opt for 0.49% of equity shareholding in Corporate Debtor or to opt for cash option amounting to INR 5,00,000/- (Indian Rupees Five Lakhs Only). After the voting was concluded, HDFC Bank opted for a cash option of INR 5,00,000 increasing their total payment to INR 1,36,37,101/- whereas Unity Bank chose an equity option and will receive 9.5% equity along with the proposed payment.

7. Secured Financial Creditors of RHBPL shall regularize all loan accounts of the Corporate Debtor to "Standard" status in their records starting from the NCLT Approval Date. However, the payment to Secured Financial Creditors is without prejudice to the right to proceed against the guarantors, if any,

without creating any right of subrogation against the Corporate Debtor.

E. Payment to Unsecured Financial Creditors

As per the Information Memorandum, the liability admitted by RP towards Unsecured Financial Creditors is INR 18,29,37,851/-. The Successful Resolution Applicant proposes payment of INR 18,29,379/- to Unsecured Financial Creditors.

F. Treatment to the Claims of the Operational Creditors (other than workmen and employees)

As per the Information Memorandum, the liability admitted by RP towards Operational Creditors (other than workmen and employees) is INR 10,22,95,031/-. The Successful Resolution Applicant proposes payment of INR 10,22,950/- to Operational Creditors towards their outstanding dues (whether admitted or under verification), which shall apply uniformly to all Operational Creditors (other than workmen and employees).

G. Treatment of Statutory Creditors

As per Information Memorandum, the outstanding liability as of August 26, 2022, is INR 72,81,791. The Resolution Applicants proposed the payment of INR 72,818 to Statutory Creditors towards all outstanding dues (whether admitted or under verification).

H. Existing Shareholders

No amount is proposed to be paid to the existing shareholders of the Corporate Debtor and the existing issued, subscribed and paid-up share capital of the Corporate Debtor shall stand cancelled without any payment.

I. Treatment towards Employees

As per the Information Memorandum, the claims of employees admitted by RP as of August 26, 2022 is INR 2,80,58,806/-. The Successful Resolution Applicant proposes payment of INR 280,588/- against settlement of all dues.

In case, any claim for provident fund or gratuity is payable under section 36(4)(a)(iii) of the Code, the same shall be paid by the Successful Resolution Applicant in its entirety and accordingly, the share of secured financial creditors shall be reduced to that extent and the total amount offered in the Resolution Plan by the Successful Resolution Applicant shall not exceed in any manner.

J. Formation of Implementation and Monitoring Committee (IMC).

1. An Implementation and Monitoring Committee shall be formed for monitoring the implementation of the Resolution Plan until the Closing Date (as defined) which will include a total of 4 persons (i) the Resolution Professional (ii) one nominee from Secured Financial Creditors to safeguard their concern/interests (iii) 2 nominees from Successful Resolution Applicant (one nominee by Resolution Applicant 1 and one by Resolution Applicant 2) for further action required from RHBPL.

2. The Resolution Professional shall be the Chairman of the Implementation and Monitoring Committee. The decisions in the meetings of the Implementation and Monitoring Committee shall be taken on the basis of a majority vote.

3. Upon execution of Definitive Agreements in relation to the transfer of Trichology Clinics Business not later than 2 days from the date of NCLT Approval Date, the nominee appointed by Resolution Applicant 2 shall immediately,

irrevocably and automatically resign and accordingly, Resolution Applicant 1 shall have a right to appoint two nominees to the IMC.

K. Timeline of Implementation

Sr. No.	Process Milestone	Timeline
I-Approval Process		
1	Approval of Resolution Plan by Adjudicating Authority Approval Date (such date, "T")	T
2	Constitution of Implementation and Monitoring Committee as per resolution plan approved by Adjudicating Authority.	T+7
3	Issue of shares as per terms of this Resolution Plan including the issue of 5% equity shares to Resolution Applicant 2	T+7
4	Appointment of new Directors as per terms of this Resolution Plan and removal of earlier directors.	T+7
II- Obtaining Requisite Approvals		
5	Convening and approval at the meeting of the Board of	T+7

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	Directors of the Corporate Debtor for execution of the following Definitive Agreements in relation to transfer of Trichology Division to Resolution Applicant 2.	
6	Execution of Definitive Agreements by the Corporate Debtor and Resolution Applicant 2.	T+7
7	Resignation of 1 (one) director nominated by the Resolution Applicant 2 to the board of the Corporate Debtor.	T+7
III- Infusion of Funds and Acquisition Actions		
8	Successful Handover of rights in at least 15 (fifteen) clinics, of which at least 10 (ten) clinics shall be such whose 'lease/leave and license agreement' is in favour of Corporate Debtor in favour of Resolution Applicant 2 by the Corporate Debtor and receipt of proportionate consideration	T+45 days

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	as per the Definitive Agreements.	
9	Transfer of 5% (five percentage) shareholding held by Resolution Applicant 2 to the Resolution Applicant at the same subscription price.	Within 2 (two) days of completion of point 8 above.
10	Resignation of the remaining 2 (two) directors nominated by Resolution Applicant 2 to the board of Corporate Debtor. Resignation of 1 (one) nominee of Resolution Applicant 2 in the Monitoring Committee.	Within 2 (two) days of completion of point 8 above.
11	Upfront payment to the creditor under the plan.	T+60 days
Management		
12	Transfer of remaining assets and contracts of Trichology Division (other than those covered under 8 above) and receipt of balance consideration in accordance with the terms of BTA.	T+3 months

13	Transfer of deferred payment under the Resolution Plan.	As per the resolution plan
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L. Management of the Corporate Debtor

Upon the approval of the Resolution Plan by the Adjudicating Authority in favour of the Successful Resolution Applicant, the management of the Corporate Debtor will be reconstituted as under:

- **Function of the Reconstituted Board:**

After approval of the Resolution Plan by the NCLT, the IMC shall oversee the governance of the affairs of the Corporate Debtor to the extent it affects the rights of Secured Financial Creditors therein. The Reconstituted Board shall consist of 5 (five) directors. Upon the NCLT Approval Date, 3 (three) directors shall be nominated by Resolution Applicant 2 and the other 2 (two) directors shall be nominated by Resolution Applicant 1. The resignation letters for 3 directors and share transfer forms for 5% shareholding of Resolution Applicant 2 nominees to the reconstituted board and the IMC shall be deposited with a mutually acceptable corporate/bank trustee. From the Closing Date onwards, the Reconstituted Board shall control and supervise the financial and non-financial operations of the Corporate Debtor. The induction of 3 (three) directors of Resolution Applicant 2 has been proposed solely to ensure the execution of Definitive Agreements in relation to the Trichology Clinic business in favour of Resolution Applicant 2.

M. Performance Guarantee

The Successful Resolution applicant has arranged a performance guarantee in the form of a Bank Guarantee for an amount of Rs 2,50,00,000/- (Rs. Two Crores and Fifty Lakhs Only) in favour of the Financial Creditor which shall be valid till all the payments proposed in the Resolution Plan are made to all the creditors. It shall be valid for at least an additional 6 months (after the total period of payment is over) for invoking the Bank Guarantee.

N. Recoveries from Preferential/Fraudulent/Undervalued Transactions.

1. Any amount recovered out of preferential/ fraudulent/ avoidance transactions u/s. 43, 45, 50 and 66 of the Code, if any, filed by the IRP/RP shall be passed on to the Financial Creditors and the distribution of such proceeds shall be in a manner deemed fit by the CoC or as directed by the Adjudicating Authority, as the case may be, and such distribution shall be made within 10 days of receipt of such proceeds. However, it is stated that there are no avoidance applications filed by the IRP/RP.
2. The Successful Resolution Applicant and the Corporate Debtor are not liable to suspended directors or related parties of Corporate Debtor concerning avoidance transactions and their recovery. The Successful Resolution Applicant and the Corporate Debtor shall act in accordance with the order of the Court for the distribution of the recovery/ realization from the avoidance transaction.

O. Eligibility of Applicants under Section 29A of the Code:

The Successful Resolution Applicant has provided to the Resolution Professional an affidavit dated 23rd May 2023 confirming eligibility u/s. 29A of the Code.

P. Relief and Concessions

The Successful Resolution Applicant has sought various reliefs and concessions based on the clean slate concept laid down by the Hon'ble Supreme Court in various judgements, reliefs which are necessary to keep the Corporate Debtor as going concern, release from any and all liabilities/proceedings, disputes and noncompliance prior to the NCLT Approval Date and extended period for renewal or revival of licenses for running the business of the Corporate Debtor.

17. The Applicant further submits that the Resolution Plan submitted is in compliance **with Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations**. The RP has also provided a compliance certificate in "**FORM H**" as mandated under the Code for seeking approval of the Resolution Plan from this Tribunal.

Observations of the Adjudicating Authority.

18. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with the Application.

19. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30 (2) of the Code are fulfilled and no provision of the law appears to have been contravened.

20. Section 30 (4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a

vote of not less than sixty-six percent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.

21. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.
22. 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 the Resolution Plan, as specified u/s 30(2)(c) of the Code.
 - d) The implementation and supervision of the Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

23. The Resolution Plan has been approved by the CoC in its 12th meeting with 90.41% votes in terms of Section 30(4) of the Code.

24. 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 has 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 Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex 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.

25. 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 does not have the power to modify the Resolution Plan which the CoC in their commercial wisdom has 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).”

26. The Hon’ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, (Civil Appeal No. 8129 of 2019 decided on 13.04.2021)** held that on the date of the approval of the 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 a part of the Resolution Plan.

27. In view of the discussions and the law thus settled, we are 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 also not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. We are thus inclined to allow the Application in the following terms.

ORDER

28. **The Application IA No 03 of 2024 in CP (IB) No. 1269/2021 is allowed.** The Resolution Plan submitted by the consortium of individuals (Ms. Bina Mukesh Shah and Ms. Seema Goel) and passed by the CoC with the requisite majority 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, and 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.

29. Accordingly, No person or authority will be entitled to initiate or continue any proceedings with respect to a claim prior to the approval of the Resolution Plan which is not a part of the Resolution Plan.

30. The approval of the Resolution Plan shall not be construed as a waiver of any future statutory obligations/liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan relating to period after the date of this order, more particularly licenses and approvals for keeping the Corporate Debtor as going concern, shall be subject to approval by the Authorities concerned and this Tribunal will not deter such Authorities from dealing with any of the issues arising after effecting the Resolution Plan. This Tribunal, however, recommends due consideration of revival of the Corporate Debtor.

31. The Monitoring Committee, as proposed in para 17 of the Resolution Plan shall be constituted for supervising the effective implementation of the Resolution Plan.

32. If any application(s) relating to preferential/fraudulent transactions under sections 43 and 66 of the IBC, 2016 is pending before this Tribunal, the Financial

Creditors, as mentioned in the Resolution Plan, shall have exclusive right over such recoveries through those proceedings.

33. As regards the other reliefs and concessions, as sought, which exempt the Corporate Debtor from holding them liable for any offenses committed prior to the commencement of CIRP as stipulated under Section 32A of the Code, is granted to the Resolution Applicants. However, exemptions, if any, sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.

34. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), for information and record. The Resolution Applicant, for effective implementation of the Resolution Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed. However, if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

35. The concessions sought in relation to the stamp duty, taxes, registration charges, etc for implementation of the approved Resolution Plan are not granted. However, the Resolution Applicant is at liberty to approach the competent authorities for the exemptions, if permitted under the law.

36. The moratorium declared under Section 14 of the Code shall cease to have

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

I.A. NO. 03/MB/C-II/2024

In

C.P. (IB) No. 1269/MB/C-II/2021

effect from this date.

37. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with a copy of this Order for information.

38. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Successful Resolution Applicant, respectively for necessary compliance.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

//Chandrika, LRA//

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)