

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**IA-1523/2024**

**IA-17/2024**

Under Section 60(5) & 30(6) of Insolvency &  
Bankruptcy Code, 2016

**Mr. Rakesh Kumar Tulsyan**

Resolution Professional/  
...Applicant

In the matter of

**CP (IB) No.50/MB/C-IV/2021**

**Xylem Integrated Solutions Private Limited**

...Applicant/Corporate Applicant

**Order Pronounced on: 28.06.2024**

*Coram:*

Ms. Anu Jagmohan Singh  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

For the Applicant/RP :

Mr. Nausher Kohli a/w Adv.  
Gargi Maideo, Learned Counsel  
present.

**ORDER**

**IA-1523/2024**

1. Before we deal the Application for approval of Resolution Plan, it is important to deal with the IA-1523/2024 filed during the course of hearing for seeking condonation of delay for 3 Days beyond the CIRP (Corporate Insolvency Resolution Period) in filing the Resolution Plan Application before the Adjudicating Authority.

2. The Bench takes notes that the Resolution Plan was approved by the CoC on 09.01.2024 which is well within the Corporate Insolvency Resolution Process i.e. 180 days from the Insolvency Commencement date. However, there is a delay in filing the Resolution Plan with the Adjudicating Authority for 3 Days. In view of the above stated facts, we are inclined to condone the delay of 3 Days.
3. Accordingly, IA- 1523/2024 is allowed accordingly disposed off.

**IA-17/2024**

1. This Application has been filed on 13.01.2024 by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 on behalf of the Committee of Creditors seeking approval of the Resolution Plan submitted by the Successful Resolution Applicant and approved by 89.4% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'CoC') of the Corporate Debtor viz. Xylem Integrated Solutions Private Limited (hereinafter referred to as 'Corporate Debtor').
2. **The brief facts of the Application are as follows:**
  - 2.1 Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated vide an order dated 14.07.2023 of this Court in C.P.(IB)-50(MB)/2021 on an application filed by Xylem Integrated Solutions Private Limited (Corporate Debtor) under Section 10 of the Insolvency and Bankruptcy Code 2016. Mr. Sunil

- Gajanan Nanal (Reg. No.: IBBI/IPA-002/IP-N00194/2017-18/10560) was appointed as Interim Resolution Professional (IRP). The Erstwhile IRP made a public announcement in the newspapers (in Mumbai) in Form-A on 18.07.2023 inviting claims from the creditors, workers/employees of the Corporate Debtor and from government bodies. IRP constituted the Committee of Creditors (CoC) based on the claims received by him and the first meeting of the CoC held on 24.08.2023 wherein the resolution was passed for appointment of Mr. Rakesh Tulsyan as the Resolution Professional of the Corporate Debtor and the same was allowed vide an order of this Tribunal dated 12.09.2023.
- 2.2 Form G was published on initially on 25.10.2023 and the last date for submission of the resolution plan was 11.11.2023 and subsequently another Form G was published on & 14.11.2023 and the last date for submission of the resolution plan was 01.01.2024, Four Prospective Resolution Applicant submitted their Expression of Interest out of which Sadguru Properties (Kalpesh Shah) which submitted the Resolution plan and got approved in E-voting held pursuant to 7<sup>th</sup> CoC Meeting held on 09.01.2024.
- 2.3 The Resolution Plan submitted by the Resolution Applicant viz. Sadguru Properties was approved by the

CoC in the 7<sup>th</sup> meeting held on 09.01.2024 through e-voting by 89.4% of the CoC member voting in favor of the Resolution Plan. The resolution is reproduced below

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*“Resolved that, as per applicable provisions of the Insolvency and Bankruptcy Code,2016, the Resolution Plan submitted by the M/s Sadguru Properties (Kaplesh Shah) presented in the 7<sup>th</sup> CoC Meeting, circulated to the CoC members, be and is hereby approved.”*

2.4 Therefore, RP states that the Resolution Plan approved by the CoC is in compliance with the requirements of Section 30(2) of the Code.

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 management of the affairs of the Corporate Debtor after approval of Resolution Plan;
- c. The implementation and supervision of Resolution Plan;

- d. Does not prima facie contravene any of the provisions of the law for time being in force,
- e. Conforms to such other requirements as may be specified by the Board.
- f. As per the Affidavit received and the further documents submitted, the Resolution applicants are not covered under 29A.

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

- i. The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.
- ii. It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD.
- iii. 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.
- iv. The terms of the plan and its implementation schedule.
- v. The management and control of the business of the CD during its term.

- vi. Adequate means of Supervising its implementation.
- vii. The Resolution Plan Demonstrates that it addresses
  - a. The cause of the Default
  - b. It is feasible and viable
  - c. Provision for effective implementation
  - d. Provisions for approvals required and the time lines for the same.
  - e. Capability to Implement the Resolution Plan

2.6 The Resolution Applicant viz. Sadguru Properties is a Partnership Firm involved in the Principal business activities of Real Estate Development and Construction, having office at Eastern Court, "B" Wing, 1<sup>st</sup> Floor Junction Tejpal Road and Parleshwar Road, Vile Parle (E), Mumbai- 400057. The Resolution Applicant confirmed that it is eligible to submit Resolution Plan as per Section 29A of Insolvency and Bankruptcy Code.

2.7 The Resolution Applicant has confirmed that -

- i. its connected persons are not convicted for any offence during the preceding five years and no criminal proceedings are pending against any person.
- ii. not disqualified under Companies Act, 2013 to act as a Director.

- iii. not identified as a willful defaulter by any bank of financial institution or consortium thereof in accordance with the guidelines of the Reserve Bank of India.
- iv. not debarred from accessing to, or trading in securities markets under any order or directions of the Securities and Exchange Board of India.

2.8 As per the RP the Fair Value and Liquidation Value determined by the registered Valuer are as follows:

Fair Value	NIL
Liquidation Value	NIL

**3. Resolution Plan for the Corporate Debtor (the key features of the Resolution Plan submitted by Sadguru Properties is summarized below):**

*3.1 The value of the said Resolution Plan is Rs. 20,00,000/- which includes the payments towards the CIRP cost, payment to Financial Creditors, Operational Creditor & Employees and the summary of payment is enumerated below:*

Sr. No	Particulars	Amount (Rs) Upfront Payment (T + 7 Days)
1	Corporate Insolvency Resolution Process Cost	7,34,900/- At actual till the date of order
2	Payment to <i>Financial Creditor</i>	12,30,000/-

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3	Payment to Gratuity, PF & Employees Dues	100
4.	Payment to the Operational Creditor (other than Workmen/employees and other Statutory dues)	781
5	Payment to the Operational Creditor (Statutory dues)	34,219
	Total	20,00,000/-

4. It is submitted by the Applicant in the Resolution Plan that a monitoring Committee shall be constituted on the approval of the Resolution Plan by the Adjudicating Authority. The Monitoring Committee shall comprise of the following members:
- a. One Representative of Financial Creditor.
  - b. One Representative of Resolution Applicant; and
  - c. Resolution Professional.
5. Ld. Counsel for the Resolution Professional has annexed a certificate of the Form-H to the Application under Regulation 39(4) In Form-H of the CIRP Regulations, 2016 to certify that the Resolution Plan has 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. Rakesh Kumar Tulsyan, an insolvency professional enrolled with Indian Institute of Insolvency Professional of ICAI and registered with the Board with registration number IBBI/IPA-001/IP-P01144/2018-19/11970, am the resolution professional for the corporate insolvency resolution process (CIRP) of Xylem Integrated Solutions Private Limited.

2. The details of the CIRP are as under:

<b>Sl. No.</b>	<b>Particulars</b>	<b>Description</b>
1	Name of the CD	Xylem Integrated Solutions Private Limited
2	Date of Initiation of CIRP	July 14, 2023
3	Date of Appointment of IRP	July 14, 2023
4	Date of Publication of Public Announcement	July 18, 2023
5	Date of Constitution of CoC	August 12, 2023

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6	Date of First Meeting of CoC	August 24, 2023
7	Date of Appointment of RP	September 12, 2023 (NCLT Order date)
8	Date of Appointment of Registered Valuers	November 20, 2023
9	Date of Issue of Invitation for Expression of Interest (EOI)	October 25, 2023 and November 14, 2023
10	Date of Final List of Eligible Prospective Resolution Applicants	December 12, 2023
11	Date of Invitation of Resolution Plan	December 02, 2023
12	Last Date of Submission of Resolution Plan	January 1, 2024
13	Date of Approval of Resolution Plan by CoC	January 09, 2024
14	Date of Filing of Resolution Plan with Adjudicating Authority	January 12, 2024
15	Date of Expiry of 180 days of CIRP	January 10, 2024
16	Date of Order extending the period of CIRP	-
17	Date of Expiry of Extended Period of CIRP	-
18	Fair Value	0
19	Liquidation value	0
20	Number of Meetings of CoC held	7 (Till Jan 9, 2024)

3. I have examined the Resolution Plan received from Resolution Applicant (Sadguru Properties) and approved by Committee of Creditors (CoC) of Xylem Integrated Solutions Private Limited.

4. I hereby certify that-

- (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 Sadguru Properties 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 89.40 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
- (iv) I sought vote of members of the CoC by email voting which was kept open at least for 24 hours as per the regulation 26.

5. The list of financial creditors of the CD Xylem Integrated Solutions 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.	.APAC Financial Service Private Limited	89.40%	Voted for approval of Resolution Plan
2.	.Bifco Leasing and Finance Private Limited	10.60%	Abstained

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:

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan#	Amount Provided to the Amount
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						<b>Claimed (%)</b>
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Secured Financial Creditors	a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0
		b) Other than (a) above:				
		(i) who did not vote in favour of the resolution plan	0	0	0	0
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]				
	Unsecured Financial Creditors	a) Creditors not having a right to vote under sub-section (2) of section 21				
		b) Other than (a) above:				

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		(i) who did not vote in favour of the resolution plan	0	0	0	0
		(ii) who voted in favour of the resolution plan	5,84,20,155	5,84,20,155	8,08,977	1.38%
		(iii) absentism	69,77,096	69,22,429	95,919	13.8%
		Total [(a) + (b)]	6,53,97,251	6,53,42,584	9,04,896	1.38%
	Operational Creditors	a) Related Party of Corporate Debtor	0	0	0	0
		b) Other than above:				
		(i) Government	3,94,35,985	3,22,08,112	34,219	0.11%
		(ii) Workmen	0	0	0	0
		(iii) Employees	0	0	0	0
		(iv) Other than Workmen, Employees and Government	7,35,104	7,35,104	78	0.11%
		Total [(a) + (b)]	4,01,71,089	3,29,43,216	35,000	0.11%
	Other debts and dues		0	0	0	0

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Grand Total		10,55,68,340	9,82,85,800	10,60,104	1.08%
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\*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.]

8. The interests of existing shareholders have 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	16,90,100	0	100%	0
2	Preference	0	0	0	0

9. 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)
Section 25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the		Yes

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	CoC having regard to the complexity and scale of operations of business of the CD?		
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?	Refer to clause 3.2, 5.2 and 6.1 (Page 25, page 32 and Page 37)	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	The RA has submitted an affidavit under Section 29A of the IBC, 2016 confirming his eligibility for submission of Resolution Plan.	Yes
Section 30(2)	Whether the Resolution Plan –		
	a) provides for the payment of insolvency resolution process costs?	Para 3.6 (Page No. 28) The RA has mentioned that CIRP cost will be paid as per actuals as approved by the CoC. The RA has mentioned	Yes



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		that the full amount of outstanding CIRP Cost shall be payable at actual by the RA on upfront basis on trigger date i.e. 30 <sup>th</sup> day from the approval and receiving the NCLT Order. The RA also mentioned that such payment shall be made in priority to the payment of other liabilities of the CD, as proposed under the Resolution Plan. Any shortfall in the plan will be paid from the amount payable to Financial Creditors.	
	b) provides for the payment to the operational creditors?	Refer to Para 4.4 (Page 30) of the Resolution Plan	Yes
	c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Refer to Para 4.4 (Page 30) of the Resolution Plan	Yes

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	d) provides for the management of the affairs of the corporate debtor?	.Refer to para 5.2 of the Resolution Plan (Page 35)	Yes
	e) provides for the implementation and supervision of the resolution plan?	Refer to para 5.3 of the Resolution Plan (Page No 35)	Yes
	f) contravenes any of the provisions of the law for the time being in force?	Refer to Paragraph 3.1 (h) of the Resolution Plan. (Page 24)	Yes
Section 30(4)	Whether the Resolution Plan –		
	a) is feasible and viable, according to the CoC?	Refer to para 3.5.11 of the Resolution Plan	Yes
	b) has been approved by the CoC with 66% voting share?	Voting sheet as per 7 <sup>th</sup> COC meeting minutes	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes

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Regulation 35A	Where the resolution profesional 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?		Yes. CoC not approve d the cost for transact ion auditors and the books were not ready at the time of taking over from IRP.
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in	Refer to para 3.6 and 4.4 of the Resolution Plan (Page 33)	Yes

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	payment over financial creditors?												
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Refer to para 4.4 of the Resolution Plan	Yes										
		<table border="1"> <thead> <tr> <th>Application of Funds</th> <th>Amount in Rs.</th> </tr> </thead> <tbody> <tr> <td>a. Insolvency Resolution Process Cost till</td> <td>7,349,00 At actual till the date of order</td> </tr> <tr> <td>b. Financial Creditors</td> <td>12,30,00 0</td> </tr> <tr> <td>c. Gratuity, PF &amp; Employee Dues</td> <td>100</td> </tr> <tr> <td>d. Operational Creditors (Other than Workmen &amp; Employees &amp; Government</td> <td>781</td> </tr> </tbody> </table>	Application of Funds	Amount in Rs.	a. Insolvency Resolution Process Cost till	7,349,00 At actual till the date of order	b. Financial Creditors	12,30,00 0	c. Gratuity, PF & Employee Dues	100	d. Operational Creditors (Other than Workmen & Employees & Government	781	
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		<table border="1"> <tr> <td>&amp; Statutory Dues)</td> <td></td> </tr> <tr> <td>e. Operational Creditors (Statutory Dues)</td> <td style="text-align: right;">34,219</td> </tr> <tr> <td>f. Contingent Liabilities</td> <td style="text-align: center;">-</td> </tr> <tr> <td><b>Total Cost of Resolution Plan</b></td> <td style="text-align: right;"><b>20,00,000</b></td> </tr> </table>	& Statutory Dues)		e. Operational Creditors (Statutory Dues)	34,219	f. Contingent Liabilities	-	<b>Total Cost of Resolution Plan</b>	<b>20,00,000</b>	
& Statutory Dues)											
e. Operational Creditors (Statutory Dues)	34,219										
f. Contingent Liabilities	-										
<b>Total Cost of Resolution Plan</b>	<b>20,00,000</b>										
Regulation 38(1B)	<p>(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.</p> <p>(ii) If so, whether the Resolution Applicant has</p>	<p>The RA has mentioned that the RA hereby declare that RA or any of its related party has not failed to implement or not contributed to the failure of implementation of any other resolution plan approved by Adjudicating Authority at any time in the past.</p>	No								

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	submitted the statement giving details of such non-implementation?		
Regulation 38(2)	Whether the Resolution Plan provides:		
	(a) the term of the plan and its implementation schedule?	Refer to Table 1 of the Resolution Plan (Page 35)	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Refer to Para 5.3 of the Resolution Plan (Page 35)	Yes
	(c) adequate means for supervising its implementation?	Refer to Para 5.3 of the Resolution Plan (Page 35)	Yes
38(3)	Whether the resolution plan demonstrates that –		
	(a) it addresses the cause of default?	Refer to Para 3.5 of the Resolution Plan (Page 35)	Yes
	(b) it is feasible and viable?	Refer to Para 3.5 of the Resolution Plan (Page 35)	Yes
	(c) it has provisions for its effective implementation?	Refer to Para 3.5 of the Resolution Plan (Page 35)	Yes

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	(d) it has provisions for approvals required and the timeline for the same?	Refer to Para 3.5 of the Resolution Plan (Page 35)	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	The RA seems to have the capability to implement the resolution plan.	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) of regulation 36B.	Refer to para 3.8 of the Resolution Plan (Page 35)	Yes

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

Section of the Code/	Description of Activity	Latest Timeline under	Actual Date

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<b>Regulation No.</b>		<b>regulation 40A</b>	
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	14-07-2023
Regulation 6(1)	Publication of Public Announcement	T+3	18-07-2023
Section 15(1)(c)/ Regulation 12 (1)	Submission of Claims	T+14	29-07-2023
Regulation 13(1)	Verification of Claims	T+21	05-08-2023
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	11-08-2023
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	24-08-2023



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Regulation 35A	Determination of fraudulent and other transactions	T+115	NA
Regulation 27	Appointment of two Registered Valuers	T+47	20-11-2023
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54]	23-10-2023
Regulation 36A	Invitation of EoI	T+75	26-10-2023
	Publication of Form G	T+75	26-10-2023& 14-11-2023
	Provisional List of Resolution Applicants	T+100	21-11-2023
	Final List of Resolution Applicants	T+115	12-12-2023
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	02-12-2023
Section 30(6)/ Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	09-01-2024
Section 31(1)	Approval of Resolution Plan	T+180	

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

<b>Sl. No.</b>	<b>Nature of Approval</b>	<b>Name of applicable Law</b>	<b>Name of Authority who will grant Approval</b>	<b>When to be obtained</b>
1	N.A.			

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

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):

<b>Sl. No.</b>	<b>Deviation/ Non-compliance observed</b>	<b>Section of the Code/ Regulation No./ Circular No.</b>	<b>Reasons</b>	<b>Whether rectified or not</b>
1	N.A.			

14. The Resolution Plan is being filed 57 days before the expiry of the period of CIRP provided in section 12 of the Code.

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

<b>Sl. No.</b>	<b>Type of Transaction</b>	<b>Date of Filing with Adjudicating Authority</b>	<b>Date of Order of the Adjudicating Authority</b>	<b>Brief of the Order</b>
1	Preferential transactions under section 43	-	-	-
2	Undervalued transactions under section 45	-	-	-
3	Extortionate credit transactions under section 50	-	-	-
4	Fraudulent transactions under section 66	-	-	-

15A. The committee has approved a plan providing for contribution under regulation 39B as under:

- a. Estimated liquidation cost: NA
- b. Estimated liquid assets available: Rs. 0
- c. Contributions required to be made: NA
- d. Financial creditor wise contribution is as under:

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<b>Sl. No.</b>	<b>Name of financial creditor</b>	<b>Amount to be contributed (Rs.)</b>
1		
2		
Total		

15B. The committee has recommended under regulation 39C as under:

a. Sale of corporate debtor as a going concern:

NA

b. Sale of business of corporate debtor as a going concern:

NA

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.]

16. I, Mr. Rakesh Kumar Tulsyan, 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: Rakesh Kumar Tulsyan

IP Registration No: IBBI/IPA-001/IP-P01144/2018-19/11970

Address as registered with the Board: B-4, Vinay Tower,

Kranti Nagar, Lokhandwala, Kandivali (East), Mumbai – 400 101

Email id as registered with the Board: [tulsyanrk@gmail.com](mailto:tulsyanrk@gmail.com)

6. In the circumstances mentioned hereinabove, the Applicant has filed Application seeking approval of this Tribunal on the Resolution Plan, submitted by the Resolution Applicant i.e. Sadguru Properties stating that the plan is in accordance with the Section 30(2) and other provisions laid down under the code.
7. 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.
8. 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.

9. 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 in the 7th meeting held on 09.01.2024 with 89.4% (Eighty-Nine Percent).
10. There is no such pending proceedings u/s 66(1) r/w 43(1) and 44(1) of the Code.
11. We make it categorically clear that approval of this Resolution Plan does not tantamount to allowance of any relief(s), concession(s) or dispensation(s) that fall within the domain of any government department(s) and/or authorities thereto. The reliefs, concessions and dispensations that pertain to other governmental authorities and/or departments shall be dealt with by the respective competent authorities/fora/offices, Government (State or Central) with regard to the respective reliefs, if any.
12. In the case of “**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.

13. 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).”*

14. 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.

**ORDER**

15. The Application **IA-1523/2024** & **IA-17/2024** in CP(IB)/50/(MB-IV)/2021 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.

- 15.1 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.



- 15.2 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. Further in terms of the judgment of **Hon'ble Supreme Court** in the matter of "**Ghanshyam Mishra And Sons Private Limited V/S Edelweiss Asset Reconstruction Company Limited**", 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 a part of the Resolution Plan.
- 15.3 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.
- 15.4 The moratorium under Section 14 of the Code shall cease to have effect from this date.

- 15.5 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.
- 15.6 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.
- 15.7 The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.
16. The Interlocutory Application i.e. IA-1523/2024 & IA-17/2024 in CP(IB)/50(MB)/2021 is allowed accordingly disposed of.

**Sd/-**  
**Anu Jagmohan Singh**  
**Member (Technical)**

**Sd/-**  
**Kishore Vemulapalli**  
**Member (Judicial)**