

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

IA-5226/2023

IA- 2723/2023

IN C.P (IB) NO. 3231/2019

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

IA 5226/2023

In the Application of

National Steel and Agro Industries Limited
...Applicant

Vs.

Mr. Saurabh Dhoot, Resolution Professional of
Mitesh Trading Private Limited
...Respondent No.1

M/s GS India Services Private Limited
...Respondent No. 2

Sagar Deposits and Advances Limited
...Respondent No. 3

IA 2723/2023

In the Application of

Saurabh Dhoot
Resolution Professional/
...Applicant

In the matter of

CP (IB) No.3231/MB/C-IV/2019

**National Steel and Agro Industries Private
Limited**

...Operational Creditor

Vs.

Mitesh Trading Private Limited

...Corporate Debtor

Order Pronounced on: 16.05.2024

Coram:

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

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant/RP : Adv. Aniruth Purusothaman Present.

For the Applicant in Objection

Application: Mr. Dhruvad Vaghani a/w Adv. Gaurav
Jain, Ld. Counsel Present.

ORDER

IA 5226 OF 2023

1. Before we deal with the Application for approval of the Resolution Plan, it is important to deal with the IA No. 5226 of 2023 hereinafter referred to as (Objection Applications) to the Resolution Plan, filed by National Steel and Agro Industries Limited i.e. the Applicant being the Objector to the Resolution Plan approved by the Committee of Creditor of the Corporate Debtor i.e. Mithesh Trading Private Limited. The bone of contention and relief sought in the said Applications are reproduced herein below:
 - i. *Declare that the CIRP of the Corporate Debtor be restarted owing to the misconduct of the Respondent No. 1;*
 - ii. *Declare that the Resolution Plan fails to consider the interest of all the stakeholders and resultantly is in violation of the provisions of the Code and CIRP Regulations;*
 - iii. *Declare that the Resolution Plan approved by the CoC be rejected and fresh resolution plans may be invited for the Corporate Debtor;*
 - iv. *Direct the Respondent No. 1 to take steps to determine if there is an avoidance transaction, preferential or undervalued or fraudulent transaction done by the Corporate Debtor;*

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- v. *Direct Insolvency and Bankruptcy Board of India (IBBI) to initiate investigation on the conduct and performance of the Respondent No. 1 as the resolution professional of the Corporate Debtor during CIRP of the Corporate Debtor;*
 - vi. *Declare that the impugned Resolution Plan is in violation of Code and Regulations framed thereunder inter-alia for the reason that the Applicant (Operational Creditor) has been provided only 1.42% of the total admitted claim amount against 88.50% of the total debt to the Corporate Debtor and thus, the Resolution Plan is in violation of the code and regulation thereunder and infirm with misrepresentations;*
 - vii. *Pass such orders(s) and/ or direction(s) in interest of the justice which the tribunal deems fit.*

BRIEF FACTS OF OBJECTION APPLICATION:

2. The Applicant submits that in the First CoC meeting held on 15.02.2022, the Applicant being the Operational Creditor (holding 88.5% of the total debt) had limited right to attend the CoC meeting with no voting power, whereas Sagar Deposits and Advance Limited (SDAL) being the sole financial creditor, held 100 % voting rights. That the transaction of the Corporate Debtor with SDAL falls within the purview of an avoidance Transaction.
3. The Applicant submits that pursuant to issuance of Form G, Two Prospective Resolution plans were shortlisted and one plan submitted by M/s Bagaria & Company Pvt. Ltd. which were put for voting before the CoC members in the 5th CoC meeting was approved with the majority of members vote. A resolution was passed in the 6th CoC meeting for replacement of the Resolution Professional (RP) and that the new Resolution Professional was appointed. In the 8th CoC meeting the CoC disregarded the decision of the CoC with respect to the approved Resolution Plan. In the 11th CoC meeting, the process for voting on resolution plans were re-done. On this, the Resolution plan submitted by M/s GS Services Private Limited got approved by the CoC, and the Resolution Plan submitted by M/s Bagaria & Company Pvt. Ltd. stood withdrawn without any reason.

4. The Applicant stated that permitting the PRA to withdraw the Resolution Plan after approval by CoC is violative of the provisions of the Code and the principles laid down by the *Hon'ble Supreme Court* in the matter of *Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited* ("*Ebix Singapore*").
5. It is submitted that pursuant to the admission of CIRP, the Applicant submitted its claim for INR 70,00,00,000/- out of which INR 45,98,40,154/- was admitted by the RP. However, under the approved Resolution Plan, the payout to the Applicant will be 1.42% of the total admitted claim. Thus, the claim made by the operational creditor has not been given any consideration.
6. It is submitted that the Resolution Plan is in violation of Regulation 38(1- A) of the IBBI (CIRP) Regulations, as it does not discuss how the interests of all stakeholders have been dealt with.
7. It is submitted that the ruling made by the *Hon'ble Supreme Court* in the matter of *Committee of Creditors of Essar Steel India Limited (through authorized signatory) v. Satish Kumar Gupta and Others, (2020) 8 SCC 531*, held that the decision of the CoC must reflect the interest of all stakeholders have been balanced. (para 46) However, in the present facts and circumstances of the present matter, the interests of the operational creditors have not been balanced.

SUBMISSIONS MADE BY THE RESPONDENT

8. The Respondent submits that Respondent No.1 along with the sole member have approved the withdrawal of the Resolution Plan of M/s Bagaria and Company, who was one of the Prospective Resolution Applicant.
9. It is submitted that facts of the matter in the instant case and *Ebix Singapore* judgement holds that the withdrawal of the Resolution Plan on the behest of Successful Resolution Applicant is not permitted once the same is submitted to the Adjudicating Authority. However, in the present case, the Applicant had not submitted the Resolution Plan of M/s.

Bagaria and Company to the Adjudicating Authority. Moreover, the withdrawal of the Resolution Plan was approved by the member of the CoC and Respondent No. 1 in the 11th meeting of the CoC held on 24.03.2023 on and thus, the ratio of *Ebix Singapore* laid down by the *Hon'ble Supreme Court* does not apply in the instant case.

10. Regarding the Contention of the Applicant only 1.42% of the claim being provided in the Plan, the counsel for RP submits that the Total Liquidation Value of the Corporate Debtor is Rs. 81,51,064/- and the SRA has provided an amount of Rs. 50,64,236/- to the Financial Creditors and Rs. 4,00,000/- towards CIRP Costs, thus leaving a balance of Rs. 26,86,828/- for the Operational Creditors. In the instant case, the SRA has provided an amount of Rs. 65,35,764/- which is much above the amount to be paid to the Operational Creditor under Section 53 of the IBC 2016, in the event of liquidation of the Corporate Debtor. Thus, interest of all the stakeholders is considered in the Resolution Plan.
11. The Respondent submits that it is also alleged by the Applicant that the Respondent No. 1 has not taken any steps to determine any avoidance transactions. In this regard, the Respondent No. 1 submits that there are no material transactions undertaken by the Corporate Debtor and thus, in the opinion of the Respondent No. 1, the Corporate Debtor is not subject to any avoidance transactions. Therefore, the Respondent No. 1 had determined NIL avoidance transactions in respect of the Corporate Debtor.

FINDINGS

1. We take note of the facts of the case. Two Resolution plans were submitted and in the 5th CoC meeting. The Resolution Plan submitted by M/s Bagaria & Company Private Limited was approved with the majority of members vote. However, the minutes of the 5th CoC meeting were not confirmed in the next CoC meeting. Meanwhile, the CoC sought replacement of Resolution Professional, which was allowed by this bench. Post the 5th CoC meeting, the sole CoC member sent an email to

Resolution Professional stating that *“In continuation to the trail mail we request you to call a CoC for reviewing the resolution plan received in respect of Mitesh Trading Private Limited”*.

2. We take note of the 11th CoC meeting held on 24.03.2023 wherein the Resolution Plan which was previously approved stood withdrawn, and CoC approved the Resolution Plan submitted by M/s GS Services Private Limited.
3. In the facts of the case, we do not find any infirmity in the decision of the CoC and find no reason to interfere in the decision on the Resolution Plan taken by the CoC in their Commercial Wisdom.
4. It is contested that the Resolution Plan provides only 1.42% of the total admitted claim. The Bench takes note of the Resolution Professional submissions that the total Liquidation Value of the Corporate Debtor is Rs. 81,51,064/- and that the Operational Creditor has been provided an amount of Rs. 65,35,764/- which is much higher from what they will get at the time of Liquidation as per section 53 waterfall mechanism. Section 30(2)(b) of the Insolvency & Bankruptcy Code, 2016 provides *“for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*
 - i. *the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*
 - ii. *the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,*
whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor”.
5. The Bench observes that amount provided under the Resolution Plan to Operational Creditor in the Resolution Plan is in accordance

with the provisions of the IBC. Hence, we are not inclined to entertain the prayers of the applicant.

6. In view of the above, the IA- 5226/2023 is dismissed.

IA 2723 OF 2023

1. This Application has been filed on 18.04.2023 by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'the Code') on behalf of the Committee of Creditors seeking approval of the Resolution Plan submitted by the Successful Resolution Applicant and approved by 100% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'CoC') of the Corporate Debtor viz. Mitesh Trading Private Limited [CIN: U74900MH2010PTC199988] (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 19.01.2022 of this Court in C.P.(IB)-3231(MB)/2019 on an application filed by National Steel and Agro Industries Private Limited (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code 2016. Mr. Rajesh Lohia was appointed as Interim Resolution Professional (IRP) and later on was replaced by CoC in 6th CoC meeting held on 12.09.2022 and Mr. Saurabh Dhoot was appointed as the Resolution Professional vide the order dated 18.01.2023 of this Hon'ble Tribunal. The

Applicant made a public announcement in the newspapers in Form-A on 22.01.2022 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 14.02.2022.

2.2 Form G was published on 06.04.2022 for inviting Expression of Interest and the last date for submission of the resolution plan was 06.06.2023, two Prospective Resolution Applicant i.e., GS India Services Private Limited & M/s Bagaria Company Private Limited submitted the Resolution Plan out of which GS India Services Private Limited which submitted the Resolution plan on 05.08.2023 read with addendum dated 28.03.2023 and got approved in E-voting held pursuant to 11th CoC Meeting.

2.3 The Resolution Plan submitted by the Resolution Applicant viz. GS India Services Private Limited was approved by the CoC in the 11th meeting held on 24.03.2023 through e-voting by 100% of the CoC member voting in favor of the Resolution Plan. The resolution is reproduced below -

“Resolved that, the consent of Committee of Creditors be and is hereby accorded to the approval of the resolution plan submitted by the

*resolution applicant **M/s GS India Services Private Limited** as per section 30 of the Insolvency and Bankruptcy Code,2016, read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016.”*

2.4 The RP issued Letter of Intent on 03.04.2023 in favor of the Resolution Applicant and also sought for Performance Security of Rs. 10,00,000/- (Rupees Ten Lakh Only). Further, on 04.04.2023 the Successful Resolution Applicant (SRA) furnished the duly countersigned copy of the letter of intent and on 08.04.2023 the SRA furnished the Performance security in the form of cheque of INR 10,00,000/-. 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;

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- 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.

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.

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- 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

2.5 The Resolution Applicant viz. GS India Services Private Limited is a company engaged in the Principal business activities of Management and consultancy services, having office at Flat No. 101, Amar Tower, GF- 37 Scheme No. 54, Vijay Nagar, Indore, MP- 452010. The Resolution Applicant confirmed that it is eligible to submit Resolution Plan as per Section 29A of Insolvency and Bankruptcy Code.

2.6 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.

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

Fair Value	Rs. 1,04,99,149/-
Liquidation Value	Rs. 81,51,064/-

3. **Resolution Plan for the Corporate Debtor (the key features of the Resolution Plan submitted by GS India Service Private Limited is summarized below):**

3.1 *The value of the said Resolution Plan is Rs. 1,20,00,000/- which includes the payments towards the CIRP cost, payment to the Secured Financial Creditors and Operational Creditor (others) the summary of payment is enumerated below:*

Creditors	Claims Admitted (in INR)	Amount Proposed under the Plan (in INR)	% of Proposed amount to the admitted amount

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CIRP Cost (Within 30 days from NCLT approval of Resolution Plan)		4,00,000	
Secured Financial Creditors (Upfront payment within 3 months from the date of NCLT approval of Resolution Plan)	50,64,236/-	50,64,236/-	100%
Unsecured Financial Creditors (Related Parties)	-	-	-
Operational Creditors (Employees & Workmen)	-	-	-
Operational Creditors (Others)[Payment within 3 months of NCLT approval date]	45,98,40,154/-	65,35,764	1.42%
Other Creditors	-	-	-
TOTAL	46,53,04,390	1,20,00,000/-	

4. 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 as approved by the CoC meets all the requirements of the IBC and its Regulations.

**FORM H
COMPLIANCE CERTIFICATE**

**FORM H
COMPLIANCE CERTIFICATE**

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

1. I, CA Saurabh Dhoot, insolvency professional enrolled with Indian Institute of Insolvency Professional of ICAI and registered with the Board with registration number IBBI/IPA-001/IP-P-02367/2021-2022/13988, am the resolution professional for the corporate insolvency resolution process (CIRP) of Mitesh Trading Private Limited (CD).
2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	Mitesh Trading Private Limited
2	Date of Initiation of CIRP	19-01-2022
3	Date of Appointment of IRP	19/01/2022 (Order received on 22/01/2022 through Applicant

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		Operational Creditor)
4	Date of Publication of Public Announcement	23-01-2022
5	Date of Constitution of CoC	08-02-2022
6	Date of First Meeting of CoC	14-02-2022
7	Date of Appointment of RP	15-02-2022
8	Date of Appointment of Registered Valuers	07-03-2022
9	Date of Issue of Invitation for EoI	07-04-2022
10	Date of Final List of Eligible Prospective Resolution Applicants	17-05-2022
11	Date of Invitation of Resolution Plan	07-05-2022
12	Last Date of Submission of Resolution Plan	05-08-2022
13	Date of Approval of Resolution Plan by CoC	29-03-2023
14	Date of Filing of Resolution Plan with Adjudicating Authority	13-04-2023
15	Date of Expiry of 180 days of CIRP including extension allowed by the AA	18-04-2023
16	Fair Value	Rs. 1,04,99,149
17	Liquidation value	Rs. 81,51,064

18	Number of Meetings of CoC held	11 CoC Meeting
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3. I have examined the Resolution Plan received from Resolution Applicant M/s GS INDIA SERVICES PRIVATE LIMITED and approved by Committee of Creditors (CoC) of Mitesh Trading 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 M/s GS INDIA SERVICES PRIVATE LIMITED has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

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

(iv) The voting was held in the 11th meeting of the CoC on 24th March 2023 where all the members of the CoC were present and I sought vote of members of the CoC by electronic voting system which was kept open at

least for 24 hours from Tuesday 28th of March 2023 to Wednesday 29th of March 2023 as per the regulation 26.

5. The list of financial creditors of the Mitesh Trading 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)
01	SAGAR DEPOSITS & ADVANCES LIMITED	100%	Voted in favour of resolution plan

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 Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)

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1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	Nil	Nil	Nil	Nil
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	50,64,236	50,64,236	50,64,236	100%
		Total[(a) + (b)]	50,64,236	50,64,236	50,64,236	100%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	Nil	Nil	Nil	Nil
		(b) Other than (a) above: (i) who did not vote in favour of	Nil	Nil	Nil	Nil

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		the resolution Plan (ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	Nil	Nil	Nil	Nil
3	Operational Creditors	(a) Related Party of Corporate Debtor	Nil	Nil	Nil	Nil
		(b) Other than (a) above:				
		(i)Government	Nil	Nil	Nil	Nil
		(ii)Workmen	Nil	Nil	Nil	Nil
		(iii)Employees	Nil	Nil	Nil	Nil
		(iv)Operational Creditor other than workman & Employees	7,61,207,742	4,59,840,154	65,35,764	1.42%
		Total[(a) + (b)]	7,61,207,742	4,59,840,154	65,35,764	1.42%
4	Other debts and dues		Nil	Nil	Nil	Nil

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Grand Total		79,13,59,09	4,64,904,39	1,16,00,00	
		3	0	0	

*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	10,000	Nil	100%	Nil
2	Preference	Nil	Nil	Nil	Nil

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)
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?	According to the EOI eligibility criteria the PRAs must have Net worth of Rs. 25 lakhs, as on latest available	Yes

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		financial statements. The RA has provided latest available financial statements as on 31st March 2021 having Net worth more than Rs. 25 Lakhs.	
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?	Affidavit under 29A	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit under 29A	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?	Clause 3.4/point 1 read with Point 1 of Clause 3.13 Clause 3.1/point 2 read with Point 2 of Clause 3.13 Clause 3.3	Yes Yes Yes

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	<p>(c) provides for the payment to the financial creditors who did not vote in favor of the resolution plan?</p> <p>(d) provides for the management of the affairs of the corporate debtor?</p> <p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?</p>	<p>Clause 3.7 read with clause 3.13/point 3</p> <p>Clause 3.8 read with clause 3.13/point 4</p> <p>Clause 3.13 /point 5</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
Section 30(4)	<p>Whether the Resolution Plan (a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	<p>The CoC member in the 11th CoC meeting held on 24-03-2023 confirmed that the plan feasible and viable & the same has been approved through e-voting.</p>	<p>Yes</p>
Section 31(1)	<p>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</p>	<p>Clause 2.8 & Clause 3.13/point 24</p>	<p>Yes</p>
Regulation 38 (1)	<p>Whether the amount due to the operational creditors under the</p>	<p>Clause 3.13/point 2</p>	<p>Yes</p>

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	resolution plan has been given priority in 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?	Clause 3.13/point 21	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?	Clause 3.1/ point w	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?	Clause 3.1 Clause 3.7 Clause 3.8	Yes Yes Yes
38(3)	Whether the resolution plan demonstrates that –	Clause 3.13/ point 24	Yes

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	(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?		
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No such application filed	-
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Amount of Rs 10 lakhs has been received from Successful RA on 08-04-2023	Yes

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

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	T

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Regulation 6(1)	Publication of Public Announcement	T+3	23-01-2022
Section 15(1)(c) /Regulation 12 (1)	Submission of Claims	T+14	05-02-2022
Regulation 13(1)	Verification of Claims	T+21	07-02-2022
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	08-02-2022
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	14-01-2022
Regulation 35A	Determination of fraudulent and other transactions	T+115	12-05-2022
Regulation 27	Appointment of two Registered Valuers	T+47	07-03-2022
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54	07-05-2022
Regulation 36A	Invitation of EoI	T+75	07-04-2022
	Publication of Form G	T+75	07-04-2022
	Provisional List of Resolution Applicants	T+100	02-05-2022
	Final List of Resolution Applicants	T+115	17-05-2022

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Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	07-05-2022
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan to AA	T+165	13-04-2023
Section 31(1)	Approval of Resolution Plan by AA	T=180	18-04-2023

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

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
NA				

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):

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

14. The Resolution Plan is being filed 5 days before the expiry of the period of CIRP provided in section 12 of the Code

14A. Whether the resolution professional has, in accordance with regulation 35A,-

(a) applied to the Adjudicating Authority on or before the one hundred and thirty-fifth day of the insolvency commencement date:

No

There are no such transaction found BY erstwhile RP & the same was informed to the CoC.

(b) filed Form CIRP 8 with the Board on or before the one hundred and fortieth day of the insolvency commencement date:

No]

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

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

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

- | | |
|--|-----------------|
| a. Estimated liquidation cost: | Rs 15,80,000 |
| b. Estimated liquid assets available: | Rs 30,00,000 |
| c. Contributions required to be made: | On actual basis |
| d. Financial creditor wise contribution is as under: | |

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1	SAGAR DEPOSITS & ADVANCES LIMITED	On actual basis
Total		On actual basis

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

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

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 CA Saurabh Dhoot 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.

CA Saurabh Dhoot

RP for Mitesh Trading Private Limited (Company under CIRP)

308, Sham Tower, 164/2 RNT Marg, Indore-452001

Reg. no. IBBI/IPA-001/IP-P-02367/2021-2022/13988

AFA valid till 28-04-2023

Process Specific Email ID: [cirp.mitesh@gmail.com/](mailto:cirp.mitesh@gmail.com)

IBBI Reg. Email ID : casaurabhdhoot@gmail.com

5. 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 GS India Service Private Limited stating that the plan is in accordance with the Section 30(2) and other provisions laid down under the code.
6. 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.
7. 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.
 8. 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 11th CoC meeting held on 24.03.2023 with 100% (Hundred percent).
 9. There is no such pending proceedings u/s 66(1) r/w 43(1) and 44(1) of the Code.
 10. 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.

11. 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.

12. 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).”*

13. 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

14. The Application **IA-2723/2023** in CP(IB)/3231/(MB-IV)/2019 is **allowed**. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

13.1. 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.

13.2. 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.

- 13.3. 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.
- 13.4. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- 13.5. 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.
- 13.6. 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.
- 13.7. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

15. The Interlocutory Application i.e. IA-2723/2023 in CP(IB)/3231(MB)/2019 is allowed accordingly disposed of and IA 5226/2023 is dismissed.

Sd/-

Anu Jagmohan Singh

Member (Technical)

Sd/-

Kishore Vemulapalli

Member (Judicial)