

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA NO.568/2023 IN CP (IB) NO.7/ALD/2021

In the matter of:

An application under Section 30(6) read with Section 31 of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016

IN THE MATTER OF:

Sanyam Goel,
Resolution Professional
M/s Primuss Pipes & Tubes Ltd.
(Formerly known as Premier Pipes Limited)

Having its office at:

Unit No.111, First Floor, JMD Pacific Square,
Sector-15, Part-II, Gurugram - 122001

..... Applicant

AND IN THE MATTER OF:

M/S ANJALI CAPFIN PVT. LTD. **.....Financial Creditor**

Versus

M/S PRIMUSS PIPES & TUBES LTD. **.....Corporate Debtor**

Order pronounced on 04.06.2024

Coram:

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Abhishek Anand with : *For the Applicant/ RP, Mr. Sanyam*
Sh. Karan Kohli, Adv. : *Goel present in person*

Sh. Sandeep Arora, Adv. : *For Kotak Mahindra Bank Ltd./ COC*

ORDER

1. The present interlocutory application bearing IA No.568/2023 was moved on behalf of Mr. Sanyam Goel, Resolution Professional ("**RP**") of M/s Primuss Pipes & Tubes Ltd. (under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as "**the Code**" or "**IBC**"] read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") for approval of the Resolution Plan in respect of M/s Primuss Pipes & Tubes Ltd. ("**Corporate Debtor**").

2. The underlying Company Petition CP (IB) No.7/ALD/2021 filed by M/s Anjali Capfin Pvt. Ltd. under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor namely M/s Primuss Pipes & Tubes Ltd., which was admitted by this Adjudicating Authority *vide* its order dated 13.06.2022 ("**Admission Order**"). On that

date, i.e., 13.06.2022 (**“Insolvency Commencement Date”**), Mr. Sanyam Goel (IBBI/IPA-002/IP-N00138/2017-2018/10397) was appointed as IRP. Subsequently, IRP Conducted 1st CoC meeting on 12.07.2022 whereby IRP was confirmed to be appointed as RP.

Collation of claims by RP

3. It is stated in Resolution Plan that during the 1st meeting of COC, RP apprised about the public announcement made on 15.06.2022, in *Financial Express (English)* and *Jansatta (Hindi)* in Delhi NCR as well as Lucknow Edition, which was also uploaded on the website of the Insolvency and Bankruptcy Board of India, and he called for proof of claims from the creditors of the Corporate Debtor and informed lenders to submit their claims as envisaged under the Code. The last date of submissions of claims was 27.06.2022.
4. That pursuant to the public announcement made in FORM-A by the Resolution Professional, the details of claim submitted is as follows :-

S.N.	Name of Creditors	Type of Creditors	Amount Claimed	Amount Admitted	Voting Share (% of total COC)
1.	Anjali Capfin Private Limited	Financial Creditor (Un-Secured)	4,22,15,068/-	4,22,15,068/-	20.18%
2.	Bank of Baroda	Financial Creditor (Secured)	15,04,252/-	15,04,252	0.72%
3.	Kotak Mahindra Bank	Financial Creditor (Secured)	16,54,33,990.91/-	16,54,33,990.91/-	79.10%
4.	BSE Limited	Operational Creditor	58,60,470 /-	Under Verification	Nil
5.	Rajesh & Co	Operational Creditor	29,500/-	Under Verification	Nil
6.	New Tirupati Transport Co.	Operational Creditor	46,42,947/-	34,39,220/-	Nil
7.	Purvanchal Vidyut Vitran Nigam Ltd.	Operational Creditor	39,71,542/-	Under Verification	Nil
8.	Commercial Tax Department (Deputy Commissioner of State Tax)	Operational Creditor	5,51,82,265/-	2,97,85,871/-	Nil

5. Thereafter, Applicant/ RP constituted the CoC on the basis of the financial statements *interalia* information available and provided at the relevant time. The constituted CoC dated 05.07.2022 with the following Financial Creditors by mentioning their voting percentage, are as under : -

Financial Creditors	Amount of Claim Filed	Amount of Claim Admitted	Voting Share
Anjali Capfin Private Limited	4,22,15,068	4,22,15,068	20.18%
Bank of Baroda	15,04,252	15,04,252	0.72%
Kotak Mahindra Bank Ltd.	16,54,33,990.91	16,54,33,990.91	79.10%
Total	20,91,53,310.91	20,91,53,310.91	100%

6. The RP submits that a total of 11 CoC meetings have been held during the whole CIRP period.

Evaluation and voting

7. It is stated in the Resolution plan that the 2nd CoC was held on 19.08.2022, whereby the CoC *interalia* approved the publication of Form G, Request for Resolution plan, Evaluation Matrix, and eligibility criteria. Accordingly, invitations for Expression of Interest (EOIs) in Form-G were published on 24.08.2022 in Financial Express (English) and Jansatta (Hindi) in Lucknow Edition, wherein the last date of receipt of the EOI was fixed as 08.09.2022.

8. In the 3rd Meeting of CoC, the Applicant apprised the members of CoC regarding the receipt of Expression of Interest from the following (hereinafter referred to as “PRAs”):

List of Prospective Resolution Applicants	
1.	<i>Unicon Bulidtech</i>
2.	<i>Pioneer Engineering Industries</i>

9. After discussion and deliberations on the Resolution Plan in the said CoC meeting that since the Resolution Plans were not profitable/ worthwhile as both the Resolution Plans are conditional in nature, the members of CoC directed the PRAs to propose a concrete figure for payment.
10. Thereafter, in the 5th CoC meeting dated 27.12.2022, which was adjourned to 02.01.2023, it was discussed *vide* Item no.4, and held as under :-

The Chairman recalled the attention of the CoC that the RP has been requested by the Coe members to send an email to all the PRA's and request them to submit the revised Resolution Plan accordingly the RP sent an email to the all the PRA's however, none of them came forward to submit the revise or improve the Resolution Plan.

After the detailed discussion and taking into the account the value of both the Resolution Plan especially of Pioneer Engineering industries which offer around Rs 7 Cr upfront payment and Rs 10 Cr contingent amount i.e. excluding the contingent amount that would be received from State Highway Authority in case of acquisition of

land if any, which is more than the liquidation value i.e. Rs. 12 Crore (Approx.), the Coe decided to proceed with the liquidation of the Corporate Debtor.

As per discussion, following resolution was passed with 99.28% Voting Share

"RESOLVED THAT pursuant to the provisions of Section 30(4) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the Resolution Plan of both M/s Pioneer Engineering Industries and M/s Unicon Buildtech be and are hereby rejected with 99.28% majority as the same does not seem to be feasible and viable to the COC.

RESOLVED FURTHER THAT pursuant to the provisions of Section 33 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and the Rules and Regulations made thereunder, the Resolution Professional be and is hereby authorized to do all such acts, deeds and things as may be required or considered necessary or incidental in respect of this Resolution".

11. It is further stated that the Applicant had received an email on 30.07.2023 from the counsel of "Pioneer Engineering Industries", expressing their views to improve their financial proposal and distribution, and brought the same in alignment with the terms of ruling as laid in judgment passed by the Hon'ble Supreme Court in the matter of "Paschimanchal Vidyut Vitran Nigam Limited vs Raman / spat Private Limited and Ors., Civil Appeal No.7976 of 2019".
12. Thereafter, in the 7th CoC meeting held on 04.08.2023, the

Applicant/ RP placed the contents of the above stated email dated 30.07.2023 before the members of CoC, and in pursuance thereof, the members of CoC agreed to receive a new proposal Resolution Plan from "*Pioneer Engineering Industries*", and the representative of whom undertook to re-submit their complete and final Resolution Plan within seven to ten days to the Applicant.

13. It is further submitted that in the 9th meeting of the CoC held on 20.09.2023, the Applicant/ RP apprised the members of CoC that the comments on the Resolution Plan as submitted by Resolution Applicant i.e., "*Pioneer Engineering Industries*", from both the Financial Creditors have been received, which was shared with the Resolution Applicant for necessary consideration for submission of a final legal compliant Plan, which in term will be shared with the eligible stakeholders.

14. Further, in the 10th CoC meeting dated 13.10.2023, the Applicant/ RP presented the Revised Resolution Plan before the CoC members, which was submitted by "*Pioneer Engineering Industries*" on 09.10.2023 for consideration and voting of the CoC, and also apprised the CoC members that the Due Diligence pursuant to the provisions of the Code has been

conducted and declared that *"the Resolution Plan by M/s Pioneer Engineering Industries is legally compliant."* Accordingly, the detailed discussion took place regarding the Resolution Plan and minor changes were suggested and discussed, and it was also discussed that whatever change would be made in the proposed Resolution Plan would be carried out as an addendum to the Resolution Plan, as the changes in the Resolution Plan could be done only once as per the CIRP Regulations. The Applicant apprised the members of CoC that upon receipt of the proposed addendum, the same shall be circulated to the CoC members and plan will be put up for voting after taking the views of the CoC on feasibility and viability.

15. Thereafter, the Applicant/ RP presented before the CoC in its 11th meeting dated 27.10.2023, regarding the Revised Resolution Plan dated 09.10.2023 along with addendum dated 21.10.2023 submitted by *"Pioneer Engineering Industries"*. It was further apprised that the members of CoC that the Due Diligence pursuant to the provisions of the Code has been conducted and the Resolution Plan of *"Pioneer Engineering Industries"* is found to be legally compliant.

16. Accordingly, the revised Resolution Plan dated 09.10.2023

along with the Addendum to the Resolution Plan dated 21.10.2023 submitted by "Pioneering Engineering Industries" was put up for e-voting in terms of Section 30(4) of the Code, whereby the Resolution was passed by the members of CoC with 79.10% voting share, and it was resolved *vide* item no.4 as under :-

"RESOLVED THAT pursuant to the provisions of Section 30(4) of the Insolvency and Bankruptcy Code, 2016, read with rules and regulations made thereunder, the revised Resolution Plan dated 09.10.2023 along with the Addendum to the Resolution Plan dated 21.10.2023 submitted by "Mis Pioneer Engineering Industries" be and is hereby approved by the Committee of Creditors with 79.10% voting share.

RESOLVED FURTHER THAT pursuant to the provisions of Section 30(6) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under the Resolution Professional be and is hereby authorized to submit suitable application under applicable provisions for filing of the approved Resolution Plan before the Hon'ble Adjudicating Authority, and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto."

- 17.** The voting results of the 11th CoC meeting held on 27.10.2023, is as follows :-

Item no.4

To consider and vote upon the Resolution Plan along with the addendum to the Resolution Plan submitted by “Pioneer Engineering Industries”. The Resolution Applicant “RA” after considering the feasibility and viability of the Resolution Plan pursuant to Section 30(4) of the Insolvency & Bankruptcy, 2016 “Code” and filing of the application before the Hon’ble Adjudicating Authority under Section 30(6) of the Code.

S.No.	Name of CoC Member	% of voting right	Voted in favour Yes/ No
1.	Anjali Capfin Private Limited	20.18%	No
2.	Kotak Mahindra Bank Limited	79.10%	Yes
3.	Bank of Baroda	0.72%	Abstained

The aforesaid Resolution was approved/ passed with 79.10% of total voting share.

- 18.** A compliance Certificate in terms of prescribed Form H under regulation 39(4) of the CIRP Regulations was also filed before this Tribunal. As per FORM H, the fair value of the Corporate Debtor is **Rs.17,27,34,000/-** and the liquidation value is **Rs.12,09,14,000/-** as per the registered valuers report.
- 19.** This Adjudicating Authority has granted extensions/ exclusions in the whole CIR Process, which are in tabular form as follows :-

Particulars	Timelines
CIRP commencement date	13.06.2022
180 days	10.12.2022
Extension of 45 days beyond 180 days (vide order dated 09.12.2022)	24.01.2023
Exclusion of 214 days (25.01.2023 to 25.08.2023) (vide order dated 14.09.2023)	25.08.2023
Exclusion from 26.08.2023 to 05.10.2023 as well as Extension of 60 days (vide order dated 05.10.2023)	05.12.2023

Details of Resolution Plan/ Payment Schedule

- 20.** The successful Resolution Applicant i.e. M/s Pioneer Engineering Industries is a company engaged into the business of real estate construction, demolition and refabrication.
- 21.** The amount proposed in the Resolution Plan are tabulated below :-

Sl. No.	Types of debts	Resolution Amount (In Rs.)	Payment Term
1.	CIRP Cost and IBBI fees	1,04,23,940/- (1,00,00,000/- CIRP Cost + Rs.4,23,940/- IBBI Regulatory Fees)	Shall be paid within 90 days of the approval of Resolution Plan.

2.	Secured Financial Creditor	Kotak Mahindra Bank Rs.16,54,33,990/-	Shall be paid within 90 days of the approval of Resolution Plan.
		Bank of Baroda Rs.15,04,252/-	
		Total 16,69,38,242/-	
3.	Unsecured Financial Creditor	26,37,818/-	Shall be paid within 90 days of the approval of Resolution Plan.
4.	Operational Creditors (Statutory dues)	NIL	NIL
4.	Operational Creditors (Goods & Services)	NIL	NIL
5.	Workmen/ Employees	NIL	NIL
6.	Contingent Liabilities (Non Statutory)	NIL	NIL
7.	Statutory Dues as per Information Memorandum	NIL	NIL
8.	Infusion of funds for Capex	NIL	NIL

22. Estimated Total Amount Proposed to be brought in the Corporate Debtor for the turnaround of the Corporate Debtor:

S. No.	Particulars	In Rupees
A	CIRP Cost	1,04,23,940/-
B	Upfront cash payment to the Financial Creditors to be paid within 90 days from the approval date	16,95,76,060/-
C	Total Upfront Cash Payment as part of Resolution Plan (A+B)	18 Crore
D	Workmen & Employee/due/claim retirement benefit	NIL
E	Operational Creditor (Goods & Services)	NIL
F	Other Creditors	NIL
G	Payment to outside party (C+D+E+F)	18 Crore
H	Contingent Liabilities (Non Statutory)	NIL
I	Repairs/Refurbishment (To be brought through equity)	NIL
J	Working capital margin (To be brought through equity)	<u>NIL</u>
K	Total Fund Required (G+H+I+J)	18 Crore

Sources of Funds

23. The overall Resolution Plan is for a total amount of approximately Rs.18 Crore, which shall be funded with a mix of Equity/ Preference Shares, secured and unsecured loans/ debentures by the Resolution Applicant.

Compliance of the successful Resolution Plan with various provisions:

24. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations, which a Resolution Plan is required to adhere to, as follows :-

Compliance with Section 30(2) of the Code:

Section 30(2) of Insolvency and Bankruptcy Code, 2016	Compliance under Resolution Plan	Relevant Page Number of Application
(a) Plan must provide for payment of CIRP cost in priority to repayment of other debts of the CD in the manner specified by the Board.	Provided in para no.7 Chapter 4 of the Resolution Plan	Page 223 of the Application (Page 14 of Resolution Plan)
(b) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than	Provided in para no.7 Chapter 4 of the Resolution Plan	Page 236-240 of the Application (Page 28-32 of Resolution Plan)
(b)(i) the amount payable to them in the event of liquidation u/s 53; or	Provided in para no.7 Chapter 4 of the Resolution Plan	Page 236-240 of the Application (Page 28-32 of Resolution Plan)

(b)(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be not less than 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	Provided in para no.7 Chapter 4 of the Resolution Plan	Page 236-240 of the Application (Page 28-32 of Resolution Plan)
b (iii) provides for 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.	Provided in para no.7 Chapter 4 of the Resolution Plan	Page 224-235 of the Application (Page 15-27 of Resolution Plan)
(c) Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Provided in para no.15 Chapter 5 of the Resolution Plan	Page 248 of the Application (Page 40 of Resolution Plan)
(d) Implementation and Supervision.	Provided in para no.15 Chapter 5 of the Resolution Plan	Page 251-253 & 283-284 of the Application (Page 43-45 of Resolution Plan & page no.2 & 3 of addendum thereto)
(e) Plan does not contravene any of the provisions of the law for the time being in force.	Provided in para no.24 Chapter 5 of the Resolution Plan	Page 260 of the Application (Page 52 of Resolution Plan)
(f) Conforms to such other requirements as may be specified by the Board.	Provided in the different parts of the Resolution plan	-

Mandatory contents of Resolution Plan in terms of Regulation 37 of CIRP Regulations

Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Compliance under Resolution Plan	Relevant Page Number of Application
a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Provided in para no.25-28 & 30 of Chapter 7 of the Resolution Plan	Page 261-267 of the Application (Page 53-59 of Resolution Plan)
b) sale of all or part of the assets whether subject to any security interest or not;	Provided in para no.25-28 of Chapter 7 of the Resolution Plan	Page 261-263 of the Application (Page 53-55 of Resolution Plan)
ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not proposed by the Resolution Applicant.	-
c) the substantial acquisition of shares of the corporate debtor, or the merger or the consolidation of the corporate debtor with one or more persons;	Provided in para no.8 of Chapter 4 and para no.15 of Chapter 5 of the Resolution Plan	Page 242 & 248-249 of the Application (Page 34 & 40-41 of Resolution Plan)
ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Provided in para no.8 of Chapter 4 and para no.15 of Chapter 5 of the Resolution Plan	Page 242 & 248-249 of the Application (Page 34 & 40-41 of Resolution Plan)
d) satisfaction or modification of any security interest;	Provided in para no.10 of Chapter 4 and para no.43 of Chapter 7 of the Resolution Plan	Page 243-246 and 272 of the Application (Page 35-38 & 64 of Resolution Plan)
e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Provided in para no.10 of Chapter 4 and para no.43 of Chapter 7 of the Resolution Plan	Page 243-246 and 263-267 of the Application (Page 35-38 & 55-59 of Resolution Plan)

f) reduction in the amount payable to the creditors;	Provided in para no.10 of Chapter 4 of the Resolution Plan	Page 243-246 of the Application (Page 35-38 of Resolution Plan)
g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Provided in para no.10 of Chapter 4 of the Resolution Plan	Page 243-246 of the Application (Page 35-38 of Resolution Plan)
h) amendment of the constitutional documents of the corporate debtor	Provided in para no.16 of Chapter 5 of the Resolution Plan	Page 254 of the Application (Page 46 of Resolution Plan)
i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Provided in para no.15 of Chapter 5 of the Resolution Plan	Page 248-254 of the Application (Page 40-46 of Resolution Plan)
j) change in portfolio of goods or services produced or rendered by the corporate debtor;	Provided in para no.18 of Chapter 5 of the Resolution Plan	Page 254-255 of the Application (Page 46-47 of Resolution Plan)
k) change in technology used by the corporate debtor; and	Not proposed in the Resolution Plan.	-
l) obtaining necessary approvals from the Central and State Governments and other authorities.	Provided in para no.19 of Chapter 5 and para 30 of Chapter 7 of the Resolution Plan	Page 255-259 and 263-267 of the Application (Page 47-51 & 55-59 of Resolution Plan)
m) Sale of one or more assets of the Corporate Debtor to one or more successful resolution applicants submitting resolution plans for such assets and manner of dealing with remaining assets.	Not proposed in the Resolution Plan.	-

Mandatory contents of Resolution Plan in terms of Regulation 38(1) of CIRP Regulations:

Regulation 38(1) and (2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Compliance under Resolution Plan	Relevant Page Number of Application
38(1)(a) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors	NA	NA
38(1)(b) The amount payable under a Resolution Plan - (b) to the financial creditors, who have a right to vote under sub-section (2) of Section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the Plan.	Provided in para no.7 Chapter 4 of the Resolution Plan	Page 237 of the Application (Page 29 of Resolution Plan)
38 (1A) Shall include a statement as to how it has dealt with the interests of all the stakeholder, including financial creditors and operational creditors of the Corporate Debtor	Provided in para no.20 Chapter 5 of the Resolution Plan	Page 259 of the Application (Page 51 of Resolution Plan)
38 (1B) shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past	Provided in para no.21 Chapter 5 of the Resolution Plan	Page 259 of the Application (Page 51 of Resolution Plan)

38 (2)(a) shall provide for the term of the plan and its implementation schedule;	Provided in para no.11 & 15 Chapter 5 of the Resolution Plan	Page 247 & 251-252 and 283 of the Application (Page 39 & 43-44 of Resolution Plan and page no.2 of addendum thereto)
38 (2)(b) shall provide for the management and control of the business of the Corporate Debtor during its term	Provided in para no.15 Chapter 5 of the Resolution Plan	Page 253 & 284 of the Application (Page 45 of Resolution Plan and page no.3 of addendum thereto)
38 (2)(c) Shall provide for the adequate means for supervising its implementation.	Provided in para no.15 Chapter 5 of the Resolution Plan	Page 248-253 of the Application (Page 40-45 of Resolution Plan and page no.3 of addendum thereto)
38 (3) A resolution plan shall demonstrate that – it addresses the cause of default;	Provided in para no.18 Chapter 5 of the Resolution Plan	Page 254-255 of the Application (Page 46-47 of Resolution Plan)
it is feasible and viable;	Provided in para no.34 Chapter 7 of the Resolution Plan	Page 269 of the Application (Page 61 of Resolution Plan)
it has provisions for its effective implementation	Provided in para no.11 & 15 Chapter 5 of the Resolution Plan	Page 247 & 251-252 and 283 of the Application (Page 39 & 43-44 of Resolution Plan and page no.2 of addendum thereto)
It has provisions for approvals required and the timeline for the same; and	Provided in para no.15 Chapter 5 of the Resolution Plan	Page 251-252 & 283 of the Application (Page 43-44 of Resolution Plan and page no.2 of addendum thereto)
The resolution applicant has the capability to implement the resolution plan.	Provided in para no.22 Chapter 5 of the Resolution Plan	Page 259 of the Application (Page 51 of Resolution Plan)

Details of Monitoring Committee:

Name(s) of the proposed member(s) of implementation and monitoring committee	Brief description of the Proposed member(s) of the I & M committee
1. Sanyam Goel	Resolution Professional
2. Two representatives of Financial Creditors.	Representatives of CoC
3. Two representative of Resolution Applicant.	Representatives of Successful Resolution Applicant

- 25.** It has been averred in para no.15 Chapter 5 of the Resolution Plan (*at page no.3 of addendum dated 21.10.2023, and page no.284 of the application*) that as per sub-clause (c) of clause 'I', *“each decision of Monitoring Committee should be approved by majority approval of the members of the Monitoring Committee. It is clarified that the Resolution Professional being the member of the Monitoring Committee shall not have a right to vote in the decisions undertaken by the Monitoring Committee.”*
- 26.** The Applicant submits that the Successful Resolution Applicant has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the Successful Resolution Applicant, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations. The affidavit

under Section 29A is at page no.366-368 in the application, which is reproduced thereunder:-

*"I Dharamveer Yadav authorized person of PIONEER ENGINEERING INDUSTRIES (Sole proprietorship), S/o Sh. Budh Ram currently residing at House No. 1666, Housing Board Colony, Sector 10A, Near Wood School, Sector 10A, Gurgaon-12200, Haryana, India designated as proprietor of Pioneer Engineering Industries (**Resolution Applicant**) having its office at Plot No. 711, Bhanmati Complex, Sector 37, Phase- II, Gurugram-122001, Haryana India do solemnly affirm and declare on oath as under:-*

1. *I understand that an insolvency resolution process has been initiated against Primuss Pipes & Tubes Limited (**Corporate Debtor**) vide order dated 13.06.2022 (**Admission Order**) passed by National Company Law Tribunal, Allahabad Bench (**Adjudicating Authority**) in an application filed by Financial Creditor against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (amended up to date) (**IBC**).*
2. *I state that the present affidavit is sworn by me on behalf of the Resolution Applicant, in compliance of section 29A of the IBC.*
3. *I on behalf of the Resolution Applicant and any other person acting jointly or in concert with the Resolution Applicant hereby confirm that:*
 - (i) *The Resolution Applicant and any connected person as per the Explanation I provided under section 29A of the IBC is not an un-discharged insolvent; or*
 - (ii) *The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC, is not identified as a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949; or*
 - (iii) *At the time of submission of the Resolution Plan, the account of the Resolution Applicant and any connected person as Explanation I provided under section 29A of the IBC or an account of the corporate debtor under the*

management or control of such person of whom such person is a promoter, IBC is not classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or guidelines of a financial sector regulator issued under any other law at the time being in force and at least a period of one year or more has lapsed from the date of such classification till the date of commencement of corporate insolvency resolution process of the corporate debtor and that I have not failed to make the payment of all overdue amounts with interest thereon and charges relating to non-performing asset before submission of Resolution Plan; or

- (iv) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been convicted for any offence punishable with imprisonment for 2 years or more under any Act specified in the Twelfth Schedule or for seven years or more under any law for the time being in force or a period of two years has expired from the date of release of such imprisonment; or
- (v) The Resolution Applicant and any connected person as per Explanation I Provided under section 29A of the IBC have not been disqualified to act as a director under the Companies Act 2013; or
- (vi) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been prohibited by the Securities and Exchange Board of India from trading in securities or assessing the securities markets; or
- (vii) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not indulged in preferential transaction or undervalued transaction or extortionate credit transaction or fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under the IBC; or
- (viii) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have executed a guarantee in favour of a creditor, in respect of a corporate debtor against **which an application for**

insolvency resolution made by such creditor has been admitted under the IBC and no such guarantee has been invoked by the creditor or remains unpaid in full or part:
or

- (ix) *The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC are not subject to any disability, corresponding to clauses mentioned above under any law in a jurisdiction outside India.*
- (i) *That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected person as required under CIRP Regulations.*
- (ii) *That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as per the provisions of the CIRP and the rules and regulations framed there under to submit a resolution plan and that it shall provide all documents representations and information as may be required by the RP or the CoC to substantiate to the satisfaction of the RP and the CoC that the Resolution Applicant is eligible under the IBC and the rules and regulations there under to submit a resolution plan in respect of Corporate Debtor.*
- (iii) *That the Resolution Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.*
- (iv) *That the Resolution Applicant understands that the CoC and the RP may evaluate the resolution plan to be submitted by the Resolution Applicant or any other person acting jointly with it and such evaluation shall be on this basis of the confirmation, representations and warranties provided by the Resolution Applicant under this affidavit.*
- (v) *That the Resolution Applicant agrees that each member of the CoC and the RP are entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility*

and assessing, agreeing and approving the resolution plan submitted by the Resolution Applicant.

(vi) That in the event any of the above statements are found to be untrue or incorrect, then the Resolution Applicant unconditionally agrees to indemnify and hold harmless the RP and each member of the CoC against any losses, claims or damages incurred by the RP and/or the members of the CoC on account of such ineligibility of the Resolution Applicant.”

27. The Applicant has filed a Compliance Certificate in prescribed Form, i.e. Form ‘H’ in compliance with Regulation 39(4) of the CIRP Regulations. The RP has issued the Letter of Intent to the Successful Resolution Applicant and the Successful Resolution Applicant provided the Performance Bank Guarantee of Rs.3,60,00,000/- (Rupees Three Crore Sixty Lakh Only) dated 25.08.2023 which expires on 22.08.2024 and the same is annexed as Annexure A-23 at page nos.349-352, which is required under Regulation 36B (4A) of CIRP Regulations, 2016.

Details of Resolution Plan/ Payment Schedule

28. The Applicant submits the relevant information about the amount claimed, the amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant, *i.e., M/s Pioneer Engineering Industries* under the said Resolution Plan which is tabulated as under:-

Sl. No.	Category of claimants	Amount claimed	Amount admitted (in Rs.)	Resolution Amount (In Rs.)	Amount provided to the amount claimed (%)
1.	CIRP Cost	NA	NA	1,04,23,940/-	100%
2.	i. Financial Creditor (Secured Creditor) Kotak Mahindra Bank	16,54,33,990/-	16,54,33,990/-	16,54,33,990/-	100%
	ii. Financial Creditor (Secured Creditor) Bank of Baroda	15,04,252/-	15,04,252/-	15,04,252/-	100%
3.	Financial Creditor (unsecured Creditor)	4,22,15,068/-	4,22,15,068/-	26,37,818/-	6.25%
4.	Operational Creditors (Goods & Services)	NA	NIL	NIL	NA
5.	Operational Creditors (others)	1,05,32,917/-	34,39,220/-	NIL	NA
6.	Operational Creditors (workmen/ employees)	NIL	NIL	NIL	NA
7.	Operational Creditors Government dues (Commercial Tax Deptt.)	5,91,53,807/-	2,97,85,871/-	NIL	NA

The Resolution plan size is approximately of Rs.18,00,00,000/- (Rupees Eighteen Crore).

Details on Management and Implementation as per the Resolution Plan

29. The Resolution Plan also provides for details of management and control, implementation and supervision of the Resolution Plan and term of plan and the same is already set out in para no.15 Chapter 5 of the Resolution plan.

Details on fraudulent and avoidance transaction

30. The Resolution Professional has also filed some PUFÉ applications i.e. IA No.444/2022 and IA No.445/2022, where the amount involved is about Rs.39,05,05,697/-. As per the Resolution Plan, these PUFÉ applications are proposed to be followed up by the Resolution Applicant.

31. We are however of the opinion that the said PUFÉ applications be pursued by the Financial Creditor, namely M/s Anjali Capfin Private Limited and the proceeds, if any, would also be distributed in accordance with the provisions of Section 53 of the Code. The cost of litigation in pursuing the said PUFÉ applications would be jointly borne by the aforesaid Financial Creditor as well as the Successful Resolution Applicant, and if they succeed in the PUFÉ applications finally, they would be entitled to the payment of the said cost from such proceeds and

after adjusting this cost, the remaining amount shall be distributed in accordance with the provisions of Section 53 of the Code as stated above.

Waivers, Reliefs and Exemptions

- 32.** The SRA has sought/ prayed for the reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC, that from the Plan approval date all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn, satisfied and discharged.
- 33.** From the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorized to seek appropriate orders from respective authorities/ courts/ tribunals for renewal of licenses/ withdrawal/ dismissal or abetment of the proceedings as the case may be.

Analysis & Findings

- 34.** It is alleged by the Financial Creditor, namely M/s Anjali Capfin Private Limited, who has not voted in favour of the Resolution Plan, has also raised one of the issues concerning the amount of Rs.10 Crore likely to be received in compensation for a parcel of land, for which the acquisition proceedings are stated to be underway by the National Highway Authority of India (N.H.A.I.). According to him, the said parcel of land has already been covered within the notification issued by the N.H.A.I. for acquisition of the land, however, in view of the continuance of the moratorium U/s 14 of the Code, according to him, the N.H.A.I. has not been able to proceed with the final acquisition.
- 35.** It is stated that this acquisition when completed, is likely to result into compensation for an amount of above Rs.10 Crore, which as per the Plan is to be retained by the Resolution Applicant only.
- 36.** It is also pointed out that the total value of the Plan does not envisage taking care of this amount of Rs.10 Crore likely to be awarded as compensation. Though, we have dealt with the objections filed by the aforesaid Financial Creditor separately

while passing order in IA No.30 of 2024, however, while hearing this application for approval of the Resolution Plan, we have enquired from the Ld. Counsel representing the RP as to how this amount if received in compensation, is to be dealt with.

37. After hearing, we therefore observe that this amount of Rs.10 crore is to be distributed amongst all the Creditors in accordance with the provisions of Section 53 of the Code, subject to the satisfaction of the claim lodged and admitted by the RP/COC.

38. On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC with 79.10% of the members voting in favour of the Resolution Plan. As per the CoC, the Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

39. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 37, 38 and 39 of

the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- 40.** The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws.
- 41.** It may be clarified that litigations wherever pending against the Corporate Debtor, would be governed by Section 32A of the Code.
- 42.** As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
- 43.** In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, CoC shall forfeit the Performance Bank Guarantee of Rs.3,60,00,000/-.
- 44.** On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that

the Resolution Plan has been approved by the CoC with 79.10% of the members voting in favour of the Resolution Plan. As per the CoC, the Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

- 45.** On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC, and also complies with Regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 46.** The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws.
- 47.** It may be clarified that litigations wherever pending against the corporate debtor would be governed by Section 32A of the Code.
- 48.** As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4)

of the Code.

- 49.** In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, CoC shall forfeit the Performance Bank Guarantee of Rs.3,60,00,000/-.

ORDERS

- 50.** Subject to the observations made in this Order, the Resolution Plan of Rs.18 Crore (Rupees Eighteen Crore only), is hereby approved as per Section 30(2) and the mandatory contents of Resolution Plan in terms of Regulation 38(1). The Resolution Plan shall form part of this Order.
- 51.** The reliefs, concessions and waivers sought/prayed by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws including Companies Act, 2013 and Income Tax Act, 1961, etc.
- 52.** The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 53.** The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency

& Bankruptcy Board of India for their record.

- 54. IA No.568/2023** shall stand disposed off accordingly.
- 55.** Liberty is hereby granted for moving appropriate application, if required, in connection with implementation of this Resolution Plan.
- 56.** A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies
- 57.** The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- 58.** The Resolution Professional is further directed to hand over all records, premises/ factories/documents available with it to the Resolution Applicant to finalize the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalize the further course of action required for starting of operations of the Corporate Debtor.
- 59.** The Registry is directed to send copies of the order forthwith to

all the parties and their Ld. Counsel for information and for taking necessary steps.

60. The registry is further directed to send the copy of the order to the IBBI also for their record.
61. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
62. File be consigned to the record.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Dated- 4th June, 2024