

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III**

**IA/124/2024
In
C.P.(IB)/566(MB)/C-III-2022**

(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016.)

1. Sandeep Jayantilal Vadodaria,

Residing at “Sandeep”, 12-Yoginagar, Opp. Akshar Mandir, Gondal, Rajkot- 360311.

2. Vishal Prakashchandra Modha,

Residing at “Shiv Krupa”, 10, Indra Prasthanagar Society, Rajkot, Bhaktinagar, Gujarat-360002.

3. Rakesh Chhaganlal Patel,

Residing at A-801, Rukshmani Height, B/H, Balaji Hall, 150 Foot Ring Road, Rajkot-360004.

.....Applicants

Vs.

1. Ramchandra Dallaram Choudhary, RP

Resolution Professional of Adico Forge Private Limited, Having Office at- 9B, Vardan Tower, Near Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad, Gujarat-380014.

.....Respondent No. 1

2. Committee of Creditors,

CoC of Adico Forge Private Limited, Represented through HDFC Bank Limited, Having office at 3rd Floor, Shivalik-3, above ICICI Bank, opp. Reliance Fresh, Drive-in-Cinema, Thaltej, Ahmedabad-380054.

.....Respondent No. 2

In the matter of

Sunflag Iron and Steel Co. Limited

.....Operational Creditor

Vs.

Adico Forge Private Limited

.....Corporate Debtor

Order Pronounced on: 02.05.2024

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Applicant : Adv. Vinaya Saigaonkar (on record)

For the RP/Respondent 1 : Adv. Kunal Kanungo i/b Adv. Dipti Mundra

For the CoC/Respondent 2: Adv. Arpit Singh a/w Adv. Vivek Singh Panwar

ORDER

Per- Charanjeet Singh Gulati, Member Technical

1. The present application is filed by Sandeep Jayantilal Vadodaria & Ors. ("Applicants") under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("IBC, 2016") read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking directions against Ramchandra Dallaram Choudhary ("RP") and the CoC of Adico Forge Private Limited ("Corporate Debtor") seeking directions to consider the revised Resolution Plan in the matter of Corporate Debtor.

Relevant Brief Facts as per the Application:

2. A Petition being CP(IB)-566/MB/2022 was filed by Sunflag Iron and Steel Co. Limited under Section 9 of the IBC for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, same was

admitted by this Tribunal vide Order dated 23.06.2023 and Mr. Vakati Balasubramanyam Reddy was appointed as Interim Resolution Professional (“IRP”).

3. The IRP made a Public announcement in Form-G on 21.09.2023 calling for Expression of Interest (“EoI”) from the prospective Resolution Applicants on the basis of which the Applicants had submitted EoI on 29.09.2023 and 05.10.2023 along with EMD of Rs. 2 Crores. The last date for submission of resolution plan was 13.11.2023 which was extended to 17.11.2023.
4. Only 2 Resolution Plans were received in the CIRP process of the Corporate Debtor i.e. one from the joint Applicants herein and other from M/s. Trinity India Forgetech Private Limited. Pursuant to the suggestions given by the members of CoC, the both the prospective resolution applicants were directed to submit the Revised Resolution Plan on or before 15.12.2023.
5. Mr. Sandeep Jayantilal Vadodaria was suffering from lumbago which resulted into sever backache on account of which the applicants could not submit the revised resolution plan in the CIRP process of the Corporate Debtor and thus, the Applicants have preferred the present application seeking for appropriate directions against the Respondents to allow the Applicants herein to submit its Revised Resolution Plan.
6. In the written submission, the Applicants have submitted that it was decided in the CoC meeting to revise the offers made by PRAs and was intimated to submit revised resolution plans on or before 15.12.2023. The present Applicant could not submit the revised resolution plan on account of ill-health of one of the Applicant. Thereafter, the Applicant followed up with the RP to submit revised resolution plan with delay of one week but the Applicant was communicated about the decision taken for the approval of resolution plan of one, M/s. Trinity India Forgetech

Pvt. Ltd. in the CoC meeting held on 15.12.2023. The Applicant had asked for refund of EMD on 18.12.2023 which was preliminary refunded by RP; however, the said amount was again re-deposited by the Applicant as EMD on 04.01.2024 alongwith the revised resolution plan submitted on 03.01.2024 with RP based on the oral direction of this Hon'ble AA on 01.01.2024 while considering the present application for submission of revised resolution plan by the Applicant.

Submission of the Resolution Professional/ Respondent no.1:

7. In relation to this, the RP while arguing the matter submitted that-
 - i. The applicant's consortium consists of three members. A medical certificate for one of the consortium partners submitted suggests advise for the bed rest due to lower back pain. However, the other two members could have filed the revised resolution plan in consultation with Applicant 1, who may be physically unwell but available for consultation and suggestions.
 - ii. Further submitted that even if one partner of the consortium was unwell, the other two could have requested for an extension for the submission of the resolution plan via email or through formal communication. However, there is no record of such communication from them.
 - iii. There is no illegality or in-conformity with the regulations, rules or provisions cited or pleaded by the Applicant.
 - iv. Furthermore, it is submitted that this application has been filed on 30.12.2023 which is beyond the deadline for submitting the revised resolution plan and after the 9th meeting of the CoC held on 15.12.2023, during which the resolution plan was approved, and it also exceeds the deadline for submitting the revised resolution plan.

Reply/submission on behalf of the Respondent no. 2 (“HDFC”):

8. In response to the present application, the HDFC have filed a reply and submitted that the present application is not maintainable as the Applicants have no locus standi to file the present application. Further, the resolution plan as submitted by Trinity India Forge Tech Private Limited has been approved by the CoC during its 9th meeting held on 15.12.2023.
9. Further submitted that the Applicants has suppressed the email dated 18.12.2023, wherein the Applicant had itself admitted and acknowledged that it could not submit the plan on time and further requested for refund of EMD. By requesting a refund of the EMD, the Applicant has waived its right to submit a resolution plan.
10. Further submitted that it is settled position of law that once a Resolution Plan is approved by the CoC and is pending approval of the sanction under Section 30(6) of the Code, no fresh plan can be invited.

Observations & Findings

11. Heard the Ld. Counsel for the Parties, perused the pleadings. It is noted that a plea not taken in the application or at the time of oral hearing, but even if contained in the written submission, is not considered being irrelevant.
12. On 06.12.2023, a certificate was issued by Dr. Kalpesh Bajania (M.S. Ortho) relating to the ill health of the Applicant no.1, Mr. Sandeep Vadodaria, and owing to the same, the Applicant was unable to file the revised resolution plan till 15.12.2023 (last date).
13. We agree with the oral arguments presented by the Resolution professional. It is pertinent to note that the applicant’s consortium comprises of three members. While one member’s medical condition

warranted bed rest due to lower back pain, it is reasonable to assume that the other two members could have filed the revised resolution plan in consultation with the third member. Further, no member of the consortium requested for an extension for the submission of the resolution plan as there is no record of such communication from them. Furthermore, there is no illegality or non-conformity with the regulations, rules or provisions cited or pleaded by the Applicant.

14. The Respondent no.2 relied on the email dated 18.12.2023, in which the applicant sought a refund of EMD. The content of the mail dated 18.12.2023 are as follows:

“dear sir

we got to know that COC has proceed with the other party for adico forge cirp matter as we were unable to submit resolution plan on time,

I am sending you our bank details for a refund of EMD and Earnest money. Money has been debited from the same account only. Please find attached photo details of cheque”

15. It is evident from the above-cited email that the Applicant itself acknowledged its inability to submit the plan on time and requested for refund of the EMD money. Also, the Applicants did not mention anything regarding the medical condition of the Applicant and instead proceeded to request a refund of the EMD.
16. Once the applicants have requested for refund of EMD and it was refunded, there is locus standi on the part of the applicant to be in fray under the CIRP process. Curiously, the fact regarding the above email 18.12.2023, which after the due date of filing revised plan or 9th CoC meeting i.e. 15.12.2023 has been not disclosed in application.
17. However, in the written submissions, the applicant has acknowledged that he himself asked for the refund of the EMD amount, and the same was refunded. Therefore, it is clear from the applicant’s own submission

that the refund of EMD amount was requested by him and was subsequently refunded.

18. The Applicant in his written submission has mentioned that they have re-deposited the EMD on 04.01.2024, based on the oral order of this Adjudicating Authority. However, it is curiously noted that on that day this IA was not even on board and therefore, question of passing any order does not arise. It is also noted that this IA came up on board in the supplementary list on 11.01.2024 only.
19. Moreover, the Committee of Creditors (CoC) have approved the Resolution Plan submitted by Trinity India Forge Tech Private Limited during its 9th meeting held on 15.12.2023 and the same is pending before this Tribunal for Approval. Therefore, at this belated stage, the applicant cannot seek any direction to allow him to submit a revised plan that too after the refund of its EMD and to direct the CoC to consider their resolution plan more specifically when the application for the approval of resolution plan has also been heard and reserved for order.
20. In the written submission, the applicants have cited the following judgements:
 - a. *K. Sashidhar Vs. Indian Overseas Bank & Ors., Civil Appeal No. 10673 of 2018.* (Hon'ble Supreme Court)
 - b. *Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd. & Anr., Civil Appeal Nos. 2943-2944 of 2020.* (Hon'ble Supreme Court)
 - c. *M.K. Rajagopalan Vs. Dr. Periasamy Palani Gounder & Anr., Civil Appeal Nos. 1682-1683 of 2022.* (Hon'ble Supreme Court)
 - d. Hon'ble NCLAT in the matter of *Binani Industries Ltd. Vs. Bank of Baroda & Anr., Company Appeal (AT) (Insolvency) No. 82, 123, 188, 216 and 234 of 2018.* Upheld by Hon'ble Supreme Court in

Rajputana Properties Private Limited Vs. Ultratech Cement Limited & Ors., Civil Appeal No. 10998 of 2018.

- e. *Noble Marine Metals Co WLL Vs. Kotak Mahindra Bank Limited & Ors., Company Appeal (AT) (Insolvency) No. 653 of 2022. (Hon'ble NCLAT)*
- f. *Bank of Maharashtra Vs. Videocon Industries Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 503, 505, 529, 545 & 650 of 2021. (Hon'ble NCLAT)*
- g. *Hari Vittal Mission vs. Ravi Sethia, IA(IB) No. 187/KB/2023, IA(IB) No. 1563/KB/2022, IA(IB) No. 1567/KB/2022, IA(IB) No. 1381/KB/2022 in CP (IB) No. 204/KB/2021. (NCLT, Kolkata)*
- h. *Shailen Shah, Resolution Professional for Wind World (India) Ltd., IA/476(AHM)2018 along with IA/491(AHM)2018 and IA/22(AHM)2019 and IA/551(AHM)2019 and IA15(AHM)2020 and IA/86(AHM)2020 in CP(IB)No. 14/NCLT/AHM/2018. (NCLT, Ahmedabad)*

The case laws cited by the applicants in the written submission were not argued, and further no specific justification for the reliance placed has been submitted. In none of the above cases relied upon by the Applicant, any legal principle is culled out to consider such request of the Applicant at a belated stage when CoC has already approved the Resolution Plan and the same is pending approval before this Court.

21. Further, in the judgement of ***M/s. RPS Infrastructure Ltd. Vs Mukul Kumar & Anr. CIVIL APPEAL NO. 5590 OF 2021***, the Hon'ble Supreme Court has held that the IBC is a time bound process and the mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon.

22. In view of the above and the IBC being a time bound process, the CoC cannot be directed to consider some other resolution plan at this belated stage. Such directions, if issued, would delay the plan approved by the majority member of CoC (HDFC) with 92.87% voting and which is vehemently objecting to the present IA.
23. Moreover, in ***K Sashidhar v. Indian Overseas Bank & Others (2019) 12 SCC 150***, the Hon'ble Apex Court held that if CoC had approved the resolution plan with requisite percentage of voting share then the Adjudicating Authority is required to satisfy the resolution plan as approved by CoC meets the requirements specified in section 30(2). The role of Adjudicating Authority is 'no more and no less'. Even the grounds on which the Adjudicating Authority can reject the plan is in reference to matters specified in section 30(2) only when the plan does not conform to the stated requirements.
24. In the present case, no case has been made out by the applicants that the plan approved by the CoC is not in compliance with the code and regulations. The commercial wisdom of the CoC is to be given paramount importance for approval/rejection of the resolution plan. Therefore, at this belated stage, this bench cannot direct the CoC to reconsider the other plan, considering that the IBC is a time bound process and one of the resolution plan has already been approved by the CoC.
25. Further, we rely in the matter of ***Indian Overseas Bank Vs. M/s. Rathi TMT Saria Pvt. Ltd & Ors. Comp. App. (AT) (Ins) No. 1134 of 2023***, wherein the Hon'ble NCLAT has held that-

"4.the CoC has already approved the Resolution Plan of the Successful Resolution Applicant on 07.02.2020 and the Application being IA 1159/2020 for approval of Resolution Plan is pending consideration before the Adjudicating Authority. The Appellant, CoC member wanted to convene CoC meeting which has not been allowed

by the Adjudicating Authority rightly so. When the plan is approved by the CoC and is pending consideration before the Adjudicating Authority, CoC cannot be allowed to hold the meeting for the purpose of considering other plans and no error has been committed by the Adjudicating Authority in rejecting such prayer.”

26. In the aforementioned judgement, the Appellant, holding 98% CoC membership, sought to convene the CoC meeting to address pending issues between the constituent members of SRAs for due implementation of resolution plan or, in the alternatively, to cancel the approved resolution plan and call for fresh bids for the value realization of the corporate debtor. The Hon’ble NCLAT has strictly held that CoC cannot be allowed to hold the meeting for the purpose of considering other plans.
27. The Hon’ble NCLAT has rejected such a prayer, even when majority CoC member was seeking to reconsider other plan. Whereas, in the present case, HDFC, holding 92.75% member of CoC is objecting to reconsider the Applicants plan, as the CoC has already approved the resolution plan. Therefore, in present case when majority of the CoC, 92.87%, is objecting to reconsidering the other resolution plan, this bench cannot allow such a prayer.
28. Accordingly, the Application is dismissed and disposed of.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan, LRA

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III**

IA/5826/2023 In C.P.(IB)/566(MB)/C-III/2022

(Under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.)

Ramchandra Dallaram Choudhary, Resolution Professional for M/s. Adico Forge Private Limited

.....Applicant

In the matter of

M/s. Sunflag Iron & Steel Company Limited

.....Financial Creditor

Vs

M/s. Adico Forge Private Limited

.....Corporate Debtor

Order delivered on: 02.05.2024

CORAM:

SHRI CHARANJEET SINGH GULATI

HON'BLE MEMBER (T)

SMT LAKSHMI GURUNG

HON'BLE MEMBER (J)

Appearances:

For the Resolution Professional : Adv. Kunal Kanungo i/b Adv. Dipti Mundra

For the Resolution Applicant : Adv. Shyam Kapadia a/w Rohan Agarwal

ORDER***Per- Charanjeet Singh Gulati, Member Technical***

1. It is an application filed by the Resolution Professional of the Corporate Debtor (**“RP/Applicant”**) under Section 30(6) and Section 31 of the Insolvency & Bankruptcy Code, 2016 (**“the Code”**) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process Corporate Persons) Regulations, 2016 for approval of the Resolution Plan by Adjudicating Authority based on the approval already given by the Committee of Creditors (**“CoC”**) in its 9th Meeting with majority of 92.87% under section 30(4) of the Code.
2. An application under section 9 of IB Code, 2016 was filed against the Corporate Debtor i.e., Adico Forge Private Limited by the Operational Creditor M/s. Sunflag Iron & Steel Company Limited and the said application was admitted by this Bench, vide Order dated 23.06.2022 in CP(IB) No. 566/MB/ 2022. By the said order Mr. Valkati Balasubramanyam Reddy was appointed as Interim Resolution Professional (**“IRP”**).
3. Public Announcement in Form A was published inviting claims from all the creditors on or before 29.07.2023.
4. The 1st CoC meeting was held on 17.08.2023, wherein the sole member of CoC unanimously resolved to appoint applicant as RP. Further, this bench vide order dated 08.11.2023 approved the replacement of the IRP and appointed the Applicant as RP of the Corporate Debtor.
5. The 2nd CoC meeting was held on 18.09.2023, wherein the members of the CoC approved the invitation for Expression of Interest/ Form G, same was published in the newspaper viz. Financial Express- Pune Ed. (English Newspaper) and Navrashtra- Marathi Ed. (Marathi Newspaper) on 21.09.2023 for the purpose of invitation of Resolution Plans.

6. Pursuant to the Publication for Invitation of Expression of Interest, the RP had received EoI from the following six (6) prospective Resolution Applicants:
- i. M/s. Saverni Neutech
 - ii. Western India Forgings Pvt. Ltd.
 - iii. Trinity India Forgetech Pvt. Ltd.
 - iv. L K Sons Alloy Pvt. Ltd.
 - v. Yeshshree Press Comps Pvt. Ltd.
 - vi. Suresh Santoki (Suspended Board of Directors of the CD)
7. One of the PRA i.e. Yeshshree Press Coms Pvt. Ltd. withdrew from the process of submission of Resolution Plan. Further, on non-receipt of any objection on the said list of eligible Prospective Resolution Applicants under Regulation 36A (11) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the RP issued the Request for Resolution Plan (**"RFRP"**), Information Memorandum and the Evaluation Matrix to all the five Prospective Resolution Applicants. Further, the last day for submission of Resolution Plan was extended from 13.11.2023 to 17.11.2023 due to festival holidays.
8. Pursuant to Section 30 of the Code read with Regulation 37 and 38 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Resolution Plans were received from two Prospective Resolution Applicants namely M/s. Trinity India Forgetech Private Limited and M/s. Saverni Neutech Private Limited. However, no resolution plan was received from the other Prospective Resolution Applicants.
9. In the 6th CoC meeting held on 28.11.2023, the CoC discussed about feasibility and viability of Resolution Plans and suggested certain modification to Resolution Plans submitted by both the PRAs. Both the PRAs submitted their revised Plans.

10. Further, in the 7th CoC meeting held on 02.12.2023, the CoC requested with both the PRAs to provide an enhanced revised offer.

Exclusion/Extension granted by the Adjudicating Authority:

11. On an Interlocutory Application No. 236/2024 by RP, this Bench by its order dated 25.04.2024, allowed exclusion of 31 days i.e. from the order of commencement of CIRP dated 23.06.2023 till the receipt of order i.e. 15.07.2023 (22 days) and from the order of replacement of IRP dated 08.11.2023 till receipt of order of replacement of IRP i.e. 17.11.2023 (9 days).

12. The IRP received some claims till 10.11.2023 which were pending for verification by IRP. Subsequently, the applicant verified all the pending claims and Re-constituted the CoC on 08.12.2023 and filed the report for reconstitution of CoC on 11.12.2023 and same was taken on record by this bench vide order dated 09.01.2023.

13. During 8th CoC meeting held on 12.12.2023, the CoC approved the Cost and expenses incurred by the applicant during the CIRP process. Further, on the request of the PRAs, the CoC granted an extension of time for submission of Resolution Plan with revised bid.

14. In 9th CoC meeting held on 15.12.2023, the applicant informed the members of CoC that only one PRA i.e. Trinity India Forgetech Pvt. Ltd. has provided the Resolution Plan along with addendum to the Resolution Plan with revised bid on 15.12.2023 and no revised Resolution Plan was submitted by M/s. Saveri Neutech Pvt. Ltd. Therefore, the members of CoC considered the Resolution Plan of M/s. Saverni Neutech Pvt. Ltd. which was submitted earlier.

15. Further, the members of the CoC discussed the feasibility and viability of the Resolution Plan submitted by both the PRAs and also discussed

on the appointment of Liquidator in case if any resolution plan is not approved by the Adjudicating Authority and Discuss on the regulation 39A, 39B, 39C & 39D and ratification of the CIRP Cost.

16. On 15.12.2023, the CoC resolved to approve the revised resolution plan along with the addendum submitted by the M/s. Trinity India Forgetech Pvt. Ltd. ("Resolution Applicant") with 92.87% of voting.

17. The list of Financial Creditors of the Corporate Debtor being members of the CoC and distribution of voting share among them is as under:

Sr. No.	Name of Creditor	Voting Share %	Voting for Resolution Plan Voted for /Dissented/Abstained
1.	HDFC Creditor	92.87%	Voted for (Assented)
2.	Prem Trading Company	2.48%	The CoC member being Co-Applicant with RA cannot vote due to conflict of interest
3.	Parulben Rakeshbhai Patel	4.65%	The CoC member being Co-Applicant with RA cannot vote due to conflict of interest
		100%	

18. The Resolution Applicant has provided Earnest Money Deposit of Rs. 2 Crore on 05.10.2023 and Rs. 5 Crore on 17.11.2023 The Applicant submits that the Resolution Plan submitted by M/s. Trinity India Forgetech Private Limited meets all the requirements prescribed under the IBC and the regulations thereunder.

19. The Resolution Applicant confirms that the Resolution Applicant is eligible under Section 29A of the IBC to submit the Resolution Plan and will continue to be compliant with the said Section 29A for the CIRP period until the Closure Date. Further, the Resolution Applicant confirms that

under the Regulation 38 (3)(e) of the CIRP Regulations, the Resolution Applicant has financial capability and creditworthiness to implement the resolution plan.

20. The Resolution Applicant has provided a consolidated amount of Rs. 26,86,00,000/- in the resolution plan payable within 15 days from the date of Approval of Resolution Plan and have left the distribution of the amount as per section 30 read with section 54 of the IBC, 2016 at the discretion of CoC and RP. Thereafter, the distribution is decided and approved by the CoC as under:

Distribution u/s. 53 in Resolution Plan	Amt. Rs.	Amt. Rs.
Liquidation Value		26,83,47,938
Resolution Plan Amount		26,86,00,000
Estimated CIRP Cost	85,00,000	
EPFO dues as per Books of Accounts	1,57,73,000	
Amount of PF claimed by workers to be treated separately	28,30,300	
Total of PF dues	1,86,03,300	
Secured Financial Creditor	15,54,88,958	
Workers	8,19,47,918	26,45,40,176
Balance Amount remaining to be distributed as per section 53 of IBC, 2016		40,59,824
Less: To be distributed to Employees		40,59,824
Balance		NIL

21. **Final Settlement of Claims along with Time Line:**

Particulars	Claim Admitted	Proposed Amt	Timeline
Estimated CIRP Cost		85,00,000 (Taken on estimated basis and actual cost must be taken at the time of distribution)	15 days from plan approval by this Authority
Secured Financial Creditor	15,54,88,957.46	15,54,88,957.46	
Unsecured Financial Creditor			
• Not having a right to vote	1,13,08,998	NIL	
• Not voted in favour of Resolution Plan	1,19,44,000	NIL	
Operational Creditors			
• Govt. Dues	2,60,89,788	NIL	
• Workmen	8,19,47,918	8,19,47,918	
• Employees	2,18,29,035	40,59,824	
• Operational Creditors (other than above dues)	9,54,85,539	NIL	
Provident Fund (As per the books)	1,86,03,300	1,86,03,300	
Shareholders	NIL	-	
TOTAL		26,86,00,000	

22. The Resolution Applicant proposes Rs. 26,86,00,000/- (Rupees Eighteen Crores only) towards settlement of Insolvency Resolution Cost and all claims of Financial Creditors, Operational Creditors, Workmen & Employees and any other Claimants, under this Resolution Plan. The manner in which the interests of all the stakeholders is being considered in this resolution plan out of the said total consideration as contained in Resolution Plan. Detail of distribution are as follows:

- i. In terms of the provisions of the Code the **CIRP cost** would be paid in priority out of the total consideration.

- ii. **Secured Financial Creditors:** Total admitted claim of Financial creditors is amounting to Rs. 15,54,88,957/-, same is to be paid in full.

- iii. **EPFO Dues:**

EPFO dues as per Books of Accounts	1,57,73,000
Amount of PF claimed by workers to be treated separately	28,30,300
Total of PF dues	1,86,03,300

EPFO Dues is to be paid in full.

- iv. **Government Dues:** The Resolution professional has admitted the Government dues to the tune of Rs. 2,60,89,788/-. In relation to this, the resolution plan states that other than the amount proposed for settlement as stated in the chapter below, the liquidation value of such claims of departments is assumed as zero and their dues shall stand extinguished.
- v. Operational Creditors other than Government, workmen and employee dues are getting nil.
- vi. **Workmen and Employees:** Workmen are getting 100% of their claims and employees are getting 18.59% of their admitted claim.

23. The Resolution Applicant shall pay the entire mount proposed under this Resolution Plan within a period of 15 (fifteen) days from the date of approval of this Resolution Plan by the Adjudicating Authority.

24. The company shall continue as a going concern and operate in its normal course of business only upon implementation of this resolution Plan. The management of affairs of the Company after approval of the plan would be done by monitoring committee.

25. Monitoring Committee shall comprise of three persons i.e. one nominee of Secured Financial Creditors, one nominee of RA and one Insolvency

Professional nominated by secured financial creditors. The Insolvency Professional shall act as monitoring Agent.

26. The role of Monitoring Committee will start immediately after approval date and shall have the following powers:

- i. A monitoring committee shall supervise implementation of the Resolution Plan by Resolution Applicant during implementation period;
- ii. The monitoring Committee shall hand over all control, passwords, bank account, cheques, documents/ERP system access etc. to the Resolution Applicant on full payment under the Resolution Plan;
- iii. The monitoring committee through Monitoring Agent, shall supervise the day to day operations of the Corporate Debtor, to keep it as a going concern during implementation period.

27. It is proposed that the Company shall be a Board managed company. On full payment, Resolution Applicant will reconstitute the Board of Directors by appointing his nominees in the Board. The new Board shall be responsible to manage day to day operations of the Company and shall be bound as per applicable law to protect and preserve the value in the Company.

28. From the approval date and till full payment is made, day to day affairs shall be managed by monitoring agent under the overall supervision of monitoring committee and from the date of full payment, corporate debtor will be managed by newly constituted Board of Directors.

29. After the implementation of resolution plan, tenure of monitoring committee shall end and Board of Directors shall independently manage affairs of the Company.

30. The Applicant has filed Form – H in accordance with the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016

along with this Application. Form-H states that average Fair Value of the Corporate Debtor is INR 33,36,52,258 and the Liquidation Value is INR 26,83,47,938. It is also observed that admitted claims against the Corporate Debtor is more than the liquidation value of the company.

31. Further it can be seen from the Form-H that the no Application under PUFÉ transactions is filed or pending.
32. As per the provision of the Code, the Bench is duty bound to examine the Resolution Plan as to whether it satisfies the conditions as laid down in Section 30(2) of the Code. A comparison of the mandatory compliance under the Code *vis-à-vis* the same made under the Resolution Plan is tabulated hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
S.30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	Yes, Affidavit/Undertaking is filed by Resolution Applicant about its eligibility under section 29A.
S. 30(2)(a) -Payment of Insolvency and Resolution cost in the manner specified by the Board	Yes, Chapter 6 and 7 of the Resolution Plan provides for payment of CIRP cost.
S. 30(2)(b) - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Yes, Chapter 6 and 7 of the Resolution Plan provides for payment of CIRP cost.
Reg. 38(1A) - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and	Clause 23.7 enumerates how the interest of all the stakeholders including operational and financial creditors has been dealt with under the Resolution Plan.

operational creditors of the Corporate Debtor	
S.30(2)(d) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Yes, Clause 8.3 of the Resolution Plan.
S.30(2)(e) -Implementation and Supervision of the Resolution Plan and Reg. 38(2) – Resolution Plan shall provide: a) term of plan and its implementation schedule b) management and control of the business of the Corporate Debtor during its term; c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same; and e) the Resolution applicant has the capability to implement the Resolution Plan.	Yes, clause 8.3.1 and 8.3.13 of the Resolution Plan.
S. 30(2)(f) - Does not contravene any of the provisions of the law for the time being in force.	The Resolution Professional in Form H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law. Clause 11 of the Resolution plan.
S. 30(4) - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board.	The CoC, in its 9 th meeting held on 15.12.2023, approved the Resolution Plan by 92.87% voting.

33. In ***K Sashidhar v. Indian Overseas Bank &Others (2019) 12 SCC 150***, the Hon'ble Apex Court held that if CoC had approved the resolution plan with requisite percentage of voting share then the Adjudicating

Authority is required to satisfy the resolution plan as approved by CoC meets the requirements specified in section 30(2). The role of Adjudicating Authority is 'no more and no less'. Even the grounds on which the Adjudicating Authority can reject the plan is in reference to matters specified in section 30(2) only when the plan does not conform to the stated requirements.

34. In view of the law laid down by Hon'ble Apex Court, the commercial wisdom of the CoC is to be given paramount importance for approval/rejection of the resolution plan. As the resolution plan meets the requirements under the Code and the Regulations, the same needs to be approved.

35. Reliefs and Concessions:

- i. Approval of the Resolution Plan shall not be a ground for termination of any existing consents, approvals, licenses, concessions, authorizations, permits or the like that has been granted to the Corporate debtor or for which the Corporate Debtor has made an application for renewal, grant permissions, sanctions, consents, approvals, allowances, exemptions etc.
- ii. Any Exemption as sought for in relation to the payment of **registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted** but the Resolution Applicant is at liberty to approach Competent Authorities for the exemptions if permitted under the law.
- iii. With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is

hereby clarified that such exemptions shall be construed as not granted.

- iv. For past non-compliances of the Corporate debtor under applicable laws the Resolution Applicant shall not be liable for any liabilities and offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016.
- v. It is hereby clarified that in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. 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 of a claim which is not a part of the Resolution Plan. In above terms, this plan is hereby **approved**.
36. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise further line of action required for starting of the operations. Accordingly, the Resolution Plan in **IA/5826/2023** is hereby **allowed and approved**.

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)

Arpan, LRA