

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Physical/Video – Conferencing/Hybrid Mode)

I.A No. 591/2023

in

CP (IB) No.156/BB/2020

U/s. 30 (6) r/w 31 and 60(5) of the IBC, 2016

IN THE MATTER OF:

Mr. Rakesh Bothra,

Resolution Professional of
Gokul Super Speciality Hospital Private Limited
Having Office at: 119-A, 1st Floor,
Vinay Bhavya Complex, 159, CST Road,
Kalina, Santacruz East,
Mumbai – 400098

...Applicant

In the matter of:

M/s Punjab National Bank (International) Limited
Creditor

...Financial

Versus

Gokul Super Speciality Hospital Private Limited

...Corporate Debtor

Order delivered on: 30.04.2024

Coram: Hon'ble Shri. K. Biswal, Member (Judicial)

Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the RP : Shri Harish Srivasta

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. This Application is filed by Mr. Rakesh Bothra (hereinafter referred to as 'Applicant/Resolution Professional') under Section 30 (6) read with Section 31 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules,

2016 seeking approval of the Resolution Plan as approved by the CoC Members.

2. Brief facts pertaining to the instant application are perused hereunder:
 - i. The main Company Petition bearing CP(IB) No. 156/BB/2020 filed by Financial Creditor i.e. M/s Punjab National Bank (International) Limited u/s 7 of the IBC for initiation of Corporate Insolvency Resolution Process (“CIRP”) against M/s Gokul Super Speciality Hospital Private Limited (‘GSSHPL’) (CIN No: U85110KA2005PTC036163 having its registered office at Amma Temple Road, Ambalpady NH-17, Udupi, KA 576103). The Corporate Debtor was registered under MSME on 04.02.2022. The CIRP of the corporate debtor was admitted by this Tribunal vide order dt.16.11.2022 and the applicant was appointed as the Interim Resolution Professional (IRP); and he was directed to carry out activities in fulfilment of his duties as per the Code and Regulations made there under.
 - ii. It is stated that on 08.12.2022, the IRP issued a public announcement for admission of claims in Form A as per the provisions of Regulation 6 of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons, Regulation, 2016. After taking charge of the CD, the IRP in compliance of Section 21 of the IBC, 2016 constituted the Committee of Creditors (“CoC”) which only comprised the Petitioner namely Punjab National Bank (International) Limited, London holding 100% of the voting share.
 - iii. It is submitted that in the first meeting was held on 24.01.2023, the CoC resolved that the RP may engage such other person including professionals as may be required by him to perform his role as a Resolution Professional.
 - iv. It is submitted that in the second meeting was held on 24.01.2023, the CoC approved the replacement of IRP with Mr. Anshul Mehta as the RP for the CD. However, the appointment of RP was not confirmed within T+40 days i.e. 16.01.2023 and so the IRP

- continued with performing the duties of RP as per CIRP Regulation 17(3).
- v. It is submitted that the IRP appointed two registered valuers on 23.01.2023 as per Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to determine the fair value and the liquidation value of the CD. As per the valuation report, the average Liquidation value of the assets of the CD is Rs. 23.38Crore and the average Fair Market value of the same is Rs.35.26Crore.
 - vi. Moreover, in the third meeting that took place on 10.02.2023, the CoC approved publication of Form G for invitation of expression of interest (“EOI”) for Resolution Plan which was published on 11.02.2023 and the last date for submission of EOI was fixed at 26.02.2023. The IRP/Applicant received the EOI from the Prospective Resolution Applicant namely Dr. Taali Jahnvi Rao (“PRA”) on 05.04.2023 who was one of the Suspended Board of Directors Member and shareholder of the CD.
 - vii. It is submitted that during the 4th COC meeting held on 06.03.2023, the Evaluation Matrix, with both qualitative and quantitative parameters, was unanimously approved by the COC. Further during 5th meeting held on 24.04.2023 and 7th COC meeting held on 31.05.2023 wherein the COC discussed and asked the PRA to enhance his financial offer and IRP has observed some technical shortcomings which were informed to the PRA. Thereafter, on 01.06.2023 Prospective Resolution Applicant has enhanced financial offer and submitted the revised Resolution Plan. Further, the PRA has enclosed an affidavit marked as Annexure -1 stating that she is not barred under Section 29A of the Code.
 - viii. It is submitted that in 6th CoC meeting held on 11.05.2023 it was resolved to consider for extension of CIRP by a period of 90 days and also seek for exclusion of 22 days from November, 16 2022 to December 07, 2022. Accordingly, two separate Interim Applications were filed before this Hon’ble Tribunal, which were allowed by this Tribunal. Further, it is submitted that Resolution Plan dated

05.04.2023 submitted by the resolution applicant was placed before the COC and deliberated in its 5th and 7th meeting held on 24.04.2023 and 31.05.2023 respectively. The resolution applicant submitted a revised Resolution Plan on 01.06.2023. The revised Resolution Plan dated 01.06.2023 was placed before the COC for voting during the 8th meeting held on 05.06.2023 and it was unanimously resolved under section 30(4) of IBC to approve the Resolution Plan dated 01.06.2023 submitted by Dr Taali Jahnavi Rao. The COC members requested for e-voting by electronic e-mail Ballot form. The e-voting was kept open from 07/06/2023 till 19/06/2023. IRP received the voting ballot and voting results were announced on 19/06/2023. The plan is approved by 100% of CoC members unanimously which exceeds the minimum threshold of 66% for approval of the Resolution plan as per Section 30(4). Further, the CoC meeting has approved the IRP to act as the Resolution Professional.

- ix. Further, the IRP issued a Letter of Intent (“LOI”) on 21.06.2023 to the PRA which was unconditionally accepted. Accordingly, the RP filed the instant application on 13.07.2023 for approval of Resolution Plan approved on 05.06.2023 along with Form H, being the compliance certificate as provided under Regulation 39(4) of the IBBI (CIRP) Regulations, 2016.
- x. It is submitted that on intimation of approval of the Resolution Plan to the SRA, the necessary performance security amount of Rs.56,00,000/- has been deposited into the account of the Corporate Debtor on 22.06.2023 with a confirmation to retain Rs. 35,00,000/- deposited towards EMD from the Resolution Applicant. So the total performance security deposit received is as follows:

Received in	Date	Amount
Punjab National Bank A/c.No. 4514002100001048	24.02.2023	10,00,000.00
	05.04.2023	25,00,000.00
	22.03.2023	46,00,000.00
	22.06.2023	10,00,000.00
	Total	91,00,000.00

- xi. It is submitted that the Resolution Plan (Chapter 2) provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan through appointment of a new Board of Directors by the Resolution Applicant as follows:
 “On and from the Effective Date, all suspended directors/promoters of the CD shall be deemed to have resigned and vacated their office, and the board of directors of the CD shall be re-constituted by the Resolution Applicant in accordance with applicable laws. The resolution applicant proposes to appoint Dr. Umesh Prabhu (DIN – 05341220) and Dr. Taali Jhanhavi Rao (DIN – 05341226) as directors of the CD whose appointment shall be effective from the date of approval of Resolution Plan. The Resolution Applicant reserves the right to change the proposed nominee director subject to compliance of Section 29A of the Code.”
- xii. Further, in accordance with Regulation 37 of the CIRP Regulations, the Resolution Plan provides for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets by inter-alia providing for the restructuring of the share capital of the corporate debtor.
- xiii. It is submitted that all requirements under the Code and CIRP Regulations have been duly complied with, and that the Resolution Plan may be approved in accordance with law.
3. Further, as per the Resolution Plan submitted
- a. the total payout towards settlement of CIRP costs and claims of creditors is enunciated below:

PARTICULARS	AMOUNT ADMITTED (IN RS.)	AMOUNT IN (RS.)	TREATMENT IN THE RESOLUTION PLAN

Due towards unpaid CIRP Cost (CoC approved)	Estimated Rs.25,00,000.00	Rs.25,00,000/- (Estimated cost)	The Resolution Applicant proposes to pay the same from the initial fund it will bring after approval of resolution plan
A.FINANCIAL CREDITORS			
SECURED FINANCIAL CREDITORS			
Punjab National Bank (International) Limited, London	Rs. 38,36,43,899.00	USD 3.11 million Equivalent to Rs. 25,73,45,347.00 (USD 3.11 million X Rs 82.7477 (RBI exchange rate 25/05/2023)	Proposed payout: USD 3.11 million Payment Schedule: USD 0.11 million will be paid within 05 days of receipt of letter of approval/Intend of resolution plan by the CoC and an amount of USD 3.00 million within 6 months of effective date
Payment Schedule: USD Equivalent of 0.11 million will be paid with in 05 days of receipt of letter of approval of Resolution Plan by the CoC/LOI and an amount of USD 3.00 million within 6 months of effective date i.e. after approval of Resolution Plan by the Adjudicating Authority (NCLT). The Financial Creditor will have the right to sale the land mortgaged after 6 months of NCLT approval date. Its being noted that the settlement of the Financial Creditor is proposed in USD only as the loan was disbursed in USD. The Resolution Applicant (RA) would like to clarify that the INR plan value for Settlement of Financial creditor may increase / decrease on actual settlement date and such fluctuation will be on the account of the Resolution Applicant (RA).			
UN-SECURED FINANCIAL CREDITORS	NIL	NIL	NIL

B. OPERATIONAL CREDITORS			
Operational Creditors (Other than Workmen and Employees and Govt. Dues)	NIL	NIL	NIL
Operational Creditors – Govt Dues	NIL	NIL	NIL
Operational Creditors – Employees	NIL	NIL	NIL
C. OTHER CREDITORS (Other Than Financial Creditors and Operational Creditors)	NIL	NIL	NIL
Total (A+B+C)	Rs. 38,36,43,899.00	USD 3.11 MILLION Equivalent to Rs. 25,73,45,347.00	USD 3.11 MILLION
Total Resolution Amount proposed including CIRP Expenses		Rs.25,00,000/- + USD 3.11 MILLION Equivalent to Rs. 25,73,45,347.00 = Rs. 25,98,45,347.00	

- b. It is submitted that in accordance with Section 30(1) of the Code the SRA has submitted an affidavit, dated 05.04.2023 declaring that they are eligible under Section 29A of the Code to the Resolution Plan.
- c. The Resolution Applicant has considered various aspects and time require for the approval of Resolution Plan by the Hon'ble Adjudicating Authority. Therefore, the Resolution Applicant has considered estimated CIRP cost to be Rs. 25,00,000/-. The Unpaid CIRP Cost shall be paid in full and in priority over all other debts by the Corporate Debtor after the approval of Resolution Plan by Hon'ble Adjudicating Authority, on the submission of original invoices by/to the Resolution Applicant. Further to clarify that the unpaid CIRP Cost to be paid in full and in priority to the payment of other debts of the Corporate Debtor.
- d. Based on the information memorandum and other documents made available by the Resolution Professional and based on the information

gathered and assessment of the industry experience, the Resolution Applicant understands that the liquidation value of the corporate debtor is much less than the financial payment considered for the Financial Creditors under present Resolution Plan. It has been assumed that the liquidation value of the Corporate Debtor is not sufficient to pay outstanding debt of secured financial creditors in full after payment of CIRP Cost in line with the provision of Section 53(1) of the Code. Hence, liquidation value for Operational Creditors(OC) as well as other creditors of the Corporate Debtor has been assumed to be **NIL**. Further, the Resolution Applicant proposes to pay to the dissenting Financial Creditors, if any, in accordance with the provisions of section 30 of the code read with regulation 38 (1)(b) of the CIRP Regulations. The Resolution Applicant shall pay **NIL**, towards the verified claims of the operational creditors of the Company (Workmen & employees), which is in compliance with amended Section 30(2)(b) of IBC.

- e. It is further clarified that the resolution plan does not envisage any claims put forth by the dissenting financial creditor and hence there is no payment made to that effect under the provisions of Section 30(4) Code.
- f. The Resolution Applicant proposes to revive the development of the project by raising funds from own sources as well as by sale of land parcel admeasuring 4.46 Acres situated at Udupi in Putter Village, Gopalpura Ward of Udupi municipality, Udupi District comprised in S.No. 163/1P26 extent 2.15cents, S.No.n 150-1AP3 extent 0.52 cents, S.No. 1-2AP3 extent 1.14 cents and S.No.1-1P22 extent 0.60 cents (Registered Agreement No.1427/2004-5) belonging to Dr.T.Srinivasa Rao. This land parcel is proposed to be mortgaged to the COC/financial creditor within 15 days post approval of the resolution plan until the same is sold. The Anticipated that the property will be sold at Rs. 35 cr. + which will be utilized in the following manner:

For Payment of Creditors as proposed in the plan

For completion of pending work of Hospital

- g. It is submitted that the Resolution Applicant Upon the payment of 100% of the committed amount to the secured financial creditors as per this resolution plan:
- a. Creditors shall not have any rights or claim against the Company.
 - b. The Company will have no Liability towards any Creditor relating to the period prior to the Closing Date (including in respect of any guarantees given by the Financial Creditors on behalf of the Company).
- h. It is submitted that the Resolution Plan provides for the management of the affairs of the CD after approval of the Resolution Plan in accordance with Section 30(2)(d) as follows:
- 1) The Resolution Applicant shall be in the control and management of the affairs of the company and the business of the company shall be carried on by the new management as appointed by the Resolution Applicant. The Resolution Applicant shall appoint the director's post plan approval.
 - 2) The Resolution Applicant shall appoint a statutory and internal auditor of his choice subject to applicable law.
 - 3) In order to successfully derive the operation of the corporate debtor, the team of experts of relevant field will work under the direct supervision and control of new management.
 - 4) Resolution Applicant shall be one of the promoters of the company and relevant application shall be made to MCA and other departments and authorities for declassification of existing promoters as promoters of the company.
 - 5) The subsidiaries, if any, shall be under the control and management of the company. The company may post evaluation of the business potential of the wholly owned and partly owned subsidiaries, decide to liquidate/wind up/sell the shares of such subsidiaries and may change existing management of the subsidiaries (exercising its shareholder rights over subsidiaries) subject to applicable law.

- 6) The resolution professional shall be relieved of his duties and responsibilities as per the Insolvency & Bankruptcy Code, 2016.
 - 7) The company shall continue as a Going Concern and operate in the normal course of business upon implementation of the resolution plan. With effect from cut-off date, the management of affairs of the company would be done through the restored board in its new structure.
 - 8) The company shall continue its operation in the normal course of business.
 - 9) The company shall take appropriate corporate actions necessary for implementation of all the provision of the resolution plan which includes filing of appropriate documents or forms amongst others, with the Registrar of Companies and Ministry of Corporate Affairs and other compliances as per the Governing law.
- i. The term of the Resolution Plan will be 18 months for completion of project and will commence from the effective date.
- 1) After payment to creditors within 6 months, the construction will be completed in phased manner and the first phase of the hospital will be operational within another 12 months i.e., within 18 months of approval of plan by Adjudicating Authority.
 - 2) On and from the Approval Date and until the Closing Date, a monitoring committee shall consist of:
 - a) One member to be appointed as the representative of Financial Creditors (Secured)
 - b) Two members to be appointed as the representative of Resolution Applicant
 - c) One Insolvency Professional.
 - 3) The Monitoring Committee shall supervise the implementation of the Plan and shall be required and entitled to all such acts, deeds, matters and things as may be necessary, desirable or expedient in order to implement and give effect to this Plan in accordance with its terms. The Monitoring Committee shall have the same functions, powers and protections as ascribed to the Resolution Professional under the Code. The First Meeting of the Monitoring

Committee will be called by the Resolution Applicant within 15 days of the Approval of the Resolution Plan. During this 15 days period the Resolution Professional shall hand over all the documents, records, login id's and passwords, control etc of the corporate debtor to the Resolution Applicant for smooth transition of the process.

4) The Chairmen of the Monitoring Committee shall be decided by the Resolution Applicant in the first meeting of Monitoring Committee.

5) The fee of the Insolvency Professional and any other Professionals shall be decided by the Resolution Applicant upon mutual consent. Moreover, no fee shall be paid to any of the members from the Financial Creditor.

6) The Monitoring Committee is entitled to make an application to the Adjudicating Authority to ensure that the CD and all its facilities shall continue to receive supply of essential supplies, goods and services (as defined under the IBC and the CIRP Regulations) on an uninterrupted basis till the Closing Date, and the Monitoring Committee shall endeavour to ensure that CD is not required to shut down its operations or restrict its activities, in any manner or for any reason. The Monitoring Committee shall be entitled to make an application to the Adjudicating Authority directing local law enforcement authorities and local district administration authorities to maintain law and order with regard to the various premises owned and/or used by GGSSHPL, and to assist in the implementation of the Plan. The CoC, the Monitoring Committee, GSSHPL, its existing management, employees, shareholders and creditors shall provide all the necessary cooperation as shall be required for obtaining the regulatory approvals. The Existing Promoter Group and the current management team of GSSHPL will undertake all such actions and shall do all such acts, deeds, and things required by the Monitoring Committee, including executing any and all such documents as may be required for the purposes of implementation of the Plan.

7) The shares and/or assets of the CD shall be acquired, pursuant to the Resolution Plan approved by the SRA on an “as is where is” and “no-recourse” basis.

8) On the Closing Date, the Resolution Applicant shall acquire control over GSSHPL and on the same date the monitoring committee shall be dissolved. The monitoring committee will dissolve on sooner of closing date or completion of payment to creditors including CIRP cost whichever is earlier.

- j. It is submitted that in accordance with Section 30(2)(e) of the Code the Resolution Plan does not contravene any of the provisions of the law for the time being in force.
- k. Resolution Applicant confirms that it has considered interests of all stakeholders and has provided for payment/settlement/repayment schedule described above keeping in view the objective of keeping the company as a Going concern and adhering to the requirements and provisions set out in accordance with Regulation 38(1A)(a) of the CIRP Regulations. The Resolution Applicant confirms that neither the Resolution Applicant nor any of his related parties have either failed or ever contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past in accordance with Regulation 38(1B) of the CIRP Regulations.
- l. It is submitted that the Resolution Plan provides that the term of plan shall be 18 months for completion of project and will commence from the effective date and further the Resolution Plan provides for the implementation schedule in accordance with Regulation 38(2)(a) of the CIRP Regulations.
- m. The Resolution Plan provides for the management and control of the business of the CD during its term in accordance with Regulation 38(2)(b) of the CIRP Regulations. Further, the Resolution Plan provides for adequate means for supervising its implementation through appointing of an insolvency professional as a member of the monitoring committee which is in accordance with Regulation 38(2)(c) of the CIRP Regulations.

- n. It is submitted that the Resolution Plan is in accordance with Regulation 38(3) of the CIRP Regulations, and it demonstrates that it (a) 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; and (e) the resolution applicant has the capability to implement the Resolution Plan.
- o. Further, all requirements under the Code and CIRP Regulations have been duly complied with, and that the Resolution Plan may be approved in accordance with law. Moreover, in accordance with Regulation 36(B)(4A) of the CIRP Regulations, the Resolution Applicant, states that he has deposited performance security of Rs.91,00,000/- being 3.50% of the amount proposed to be paid under the Resolution Plan as approved by the CoC on 22.06.2023 in Punjab National Bank bearing A/c no. 4514002100001048. The performance security amount by way of bank transfers were received as follows: (Page4 of Revised Form-H filed on 30.01.2024 vide diary no.635)

Received in	Date	Amount
Punjab National Bank	24.02.2023	10,00,000.00
A/c no. 4514002100001048	05.04.2023	25,00,000.00
	22.03.2023	46,00,000.00
	22.06.2023	10,00,000.00
	Total	91,00,000.00

4. This Tribunal vide order dt.21.09.2023 directed the Resolution Professional to comply with the following requirements:
- Brief Note regarding satisfaction of all the conditions under Regulation 38(2) and (3) of the IBBI (CIRP) Regulations, 2016
 - Due Diligence Certificate from an independent Professional is to be filed in respect of the SRA covering his background and capability and the mandatory contents under Regulations 38 (3) (b) & (e) of the IBBI (CIRP) Regulations, 2016 along with the Audited Balance Sheet for FY 31.03.2022 and 31.03.2023 for the SRA.
 - Affidavit with regard to undertaking by the PRA (Reg. 39(1)(c) of IBBI (IRP for Corporate Persons) Regulations, 2016.

- d) Affidavit regarding avoidance transaction IAs pending before the Bench stating the manner in which it will be dealt with and the realised sums, if any, will be distributed;
 - e) An Affidavit as per Regulation 31A for paying the applicable Regulatory Fee to the IBBI.
 - f) An Affidavit regarding pending litigations, if any, in respect of the Corporate Debtor.
 - g) A perusal of page no.81 of the Resolution Plan shows that Resolution Applicant proposes to raise funds from own sources as well as by sale of land parcel situated at Udupi which is anticipated to be sold at Rs.35crores. In this regard the RP is directed to give justification with necessary details with regard to the source of funds as claimed in Resolution Plan. This is relevant for the purpose of Regulations 38 (3) (b) & (e) of the IBBI (CIRP) Regulations. 2016 as well.
5. Pursuant to above order, the Counsel for the applicant filed a memo, vide Diary No. 5468 dt.30.10.2023 which was taken on record vide order dt.31.10.2023. The RP filed the valuation report of the CD which stated that the valuation of property i.e., Converted Vacant Land of 4.41 acres situated at Udupi in Putter Village, Gopalpura Ward of Udupi Municipality, Udupi District is Rs.56.84 crores. However, in the same memo the valuation of the sale property given by an independent professional along with due diligence certificate stated that valuation amount is Rs.25,87,00,000 crores.
6. Vide order dt.6.12.2023, this Tribunal observed that as per the 'Source of Funds' explained in the Resolution Plan, the realisable value from the sale of land was Rs.35 crores however, the memo filed vide diary no.5468 the valuation of the same land amounted to Rs.25Crores along with the fact that the Land belonged to a Third Party and was not of the SRA. Therefore, vide order dt.6.12.2023 the RP was directed to file an affidavit of the owner of the Land stating his willingness to transfer the ownership in favour of the SRA for realisation of funds by selling the Land for the Resolution Plan along with mode of such transfer and the timeline of the same within one week. The RP was also directed to file an explanation

regarding the market value of this Land and the discrepancy in the valuation of the said Land.

7. The Applicant/RP in compliance with the above directions have filed memo of compliance in diary no 6278 and 6302 dt.14.12.2023 and 15.12.2023 respectively whereby the affidavit of the owner of the land Dr. T. Srinivasa Rao is taken on record. In his affidavit, he unconditionally undertakes and agrees to transfer the ownership by way of a gift deed within 90 days either on or before 31.03.2024 in favour of the SRA Dr. Taali Jhanhavi Rao and authorize her to realise the funds by selling the scheduled property for the resolution plan. Moreover, he states that the valuation of the scheduled property is Rs.56.84 crores but the same is revised as per the notification issued by the Karnataka Government dt.29.09.2023 which states that the properties adjacent to the highway road in Gopalpura ward property has been valued at Rs.15,000 per Sq. meter. Thus the revised government valuation of the scheduled property will be Rs.26.76 crores.
8. On perusal of records, it was observed that in the Form-H filed along with the application, as regards Regulation 38(1B), that 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, the answer given was 'Yes'. Further, with regards to whether the Resolution Plan contravenes with any of the provisions of the law for the time being in force, the answer given was 'yes' in Form-H. Thus, the matter was directed to be clarified on 24.01.2024. The Learned Counsel for the RP/applicant has filed compliance to the above direction vide diary no. 635 on 30.01.2024 and has filed revised Form-H and the same is taken on record.
9. Heard learned counsel for the RP and carefully perused the pleadings on record.
10. The Corporate Debtor herein, namely, M/s Gokul Super Speciality Hospital Private Limited incorporated in 2005 is an MSME with registration number: UDYAM-KR-0008804 on 04.02.2022. The CIRP proceedings were initiated against the Corporate Debtor by this Tribunal vide order dt.16.11.2022 passed in CP (IB) 156/BB/2020. The present

application is filed for approval of the Resolution Plan submitted by Dr. Taali Jhanhavi Rao. The approval has been sought under the provisions of Section 31(1) of the Code.

11. It is submitted that a certificate by the IRP in Form H of the CIRP Regulations to certify that the resolution plan as approved by the CoC meets all the requirements of the IBC and its Regulations has been filed wherein the details of the payment to the secured financial creditor and the distribution of voting share for the Resolution Plan is provided as under:

S. no	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for/Dissented/Abstained)
1.	Punjab National Bank (International) Ltd., London	100%	Voted for in favour

12. The details of stakeholders and the amount provided for them under the Resolution Plan as per Regulation 38(1A) of the CIRP Regulations is given in Para No. 7 of revised Form H (Amount in Rs. Lakh) filed on 30.01.2024 is herein under:

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)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 2	-	-	-	-

		(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	3836.44	3836.44	2573.45	67.08%
		Total[(a) + (b)]	3836.44	3836.44	2573.45	67.08%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	-	-	-	-
		(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				

		Total[(a) + (b)]	-	-	-	-
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above: (i) Government (ii) Workmen (iii) Employees (iv)	-	-	-	-
		Total[(a) + (b)]	-	-	-	-
4	Other debts and dues		-	-	-	-
5	CIRP Cost		25.00	25.00	25.00	100%
Grand Total			3861.44	3861.44	2598.45	67.29%

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

13. The compliance of the Resolution Plan has been given in Para No.9 of revised Form H which is as follow

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?	5	Yes

Section 29A	Whether the Resolution Applicant is eligible to submit a resolution plan as per the final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	5.2	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	5.2	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? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?	Yes-clause 4.3 & 5 NA N.A clause 4.5 Yes clause 5 & 7 Yes-clause 8 No- Clause 5	Yes NA N.A Yes Yes N.A
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Yes Passed with 100%	

Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	8	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	NA	NA
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	9	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?	No – Clause 5.2 NA	N.A
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?	8	Yes Yes Yes

38(3)	Whether the resolution plan demonstrates that – (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?	3.3 & 3.4 16 8 12.5 1	Yes Yes Yes Yes Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No	NA
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Performance Security Amount of Rs. 91 lacs received - Evidence as per Annexure 1 (Note)	Yes

14. It is submitted by the Resolution Professional that the CoC in its 8th CoC meeting held on 05.06.2023 has approved the Resolution Plan with 100% voting share and the conditions provided for Section 30(4) of the Code are satisfied.

15. At this juncture, it is necessary to refer to Section 30(2). The Provisions of Section 30(2) of the I&B Code, 2016 are as follows:

“The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –

- a) *provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the 3 [payment] of other debts of the corporate debtor;*
- b) *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.
- Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*
- Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-*
- (i) *where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;*
 - (ii) *where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*
 - (iii) *where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;*
- c) *provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;*
- d) *The implementation and supervision of the Resolution Plan;*
- e) *does not contravene any of the provisions of the law for the time being in force*
- f) *Conforms to such other requirements as may be specified by the Board.”*

16. The compliance of Section 30(2) of the Code is given in Para no.9 of the revised Form-H (supra). The same is being further examined as under:

- a) **Section 30(2)(a):** The Resolution Plan in Point No.4.3 provides for the payment of Insolvency resolution process costs. An amount of Rs.25, 00, 000 is admitted as the CIRP Cost (CIRP Cost till the completion of CIRP period). The unpaid CIRP Cost shall be paid in full and in priority over all other debts by the Corporate Debtor after the approval of the Resolution Plan by the Hon'ble Adjudicating Authority on the submission of original invoices to the Resolution Applicant. Further to clarify that the unpaid CIRP Cost to be paid in full and in priority to the payment of other debts of the Corporate Debtor.
- b) **Section 30(2)(b):** The Resolution Plan in Point No. 4.3 at Page 27 of the Resolution Plan provides for the payment of debt.
- c) **Section 30(2)(c):** Chapter 7 of the Resolution Plan deals with the management and control of the CD during the term of the Resolution Plan and it states that, from the date of Insolvency commencement date, the Moratorium is declared by the Adjudicating Authority under Section 14 of the Code and the powers of the Board of Directors get suspended. On approval of the resolution plan by the Adjudicating Authority under Section 31(3) of the Code, the Moratorium declared ceases to have effect as provided under section 31(3) of IBC. Consequently, the powers of the Board of Directors will get restored and shall vest upon the Resolution Applicant. The Resolution Applicant shall be in control and management of the affairs of the company and the business of the company shall be carried on by the new management as appointed by the Resolution Applicant. The Resolution Applicant shall appoint the directors post plan approval.
- d) **Section 30(2)(d):** The Resolution Plan in Chapter-8 at Page 59 of the Resolution Plan deals with implementation and supervision of the Resolution Plan. The Resolution Applicant shall form Monitoring Committee which shall supervise the implementation of the plan and shall hold its first meeting which will be called by the Resolution Applicant within 15 days of the approval of the Resolution Plan. On the Closing Date, the Resolution Applicant shall acquire control over

GSSHPL and on the same date the monitoring committee shall be dissolved. The monitoring committee will dissolve on sooner of closing date or completion of payment to creditors including CIRP Cost, whichever is earlier.

- e) **Section 30(2)(e):** The Resolution Plan does not contravene any of the provisions of the law for the time being in force, as has been declared in Chapter 5 of the Resolution Plan.
- f) **Section 30(2)(f):** It is submitted that the Resolution Plan complied with Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency process for Corporate Persons) Regulations, 2016, which are as follows:
- (1) Regulation 38(1):** As per Regulation 38(1) of the insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors. It is submitted by the Applicant that as per the terms of the resolution plan there are NIL operational creditors and therefore, the Resolution Applicant has not proposed any payment to operational creditors.
- (2) Regulation 38(1A):** It is submitted that the Resolution Applicant confirms that in Chapter 9 of the Resolution Plan it has considered interests of all stakeholders and has provided for payment / settlement/ repayment schedule described above keeping in view the objective of keeping the company as a Going Concern and adhering to the requirements and provisions set out under the code.
- (3) Regulation 38(1B):** As mandated under Regulation 38 (1B) of the CIRP Regulations, the Resolution Applicant confirms that neither the Resolution Applicant nor any of his related parties have either failed or ever contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- (4) Regulation 38(3)(a):** The Resolution Applicant submits that in clause 3.3 the cause of default has been from the delay in the project due to which a lot of cost overrun was caused in terms of construction cost which made the Project more of a burden than an asset resulting into liquidity

problem leading to non-completion of the hospital building. There has also been supplies of inferior quality of goods by one of the supplier, which resulted in unnecessary cost overrun and project delay as well. Second reason for default has been shortage of funds as the sanction of the financial creditor for the last trench of disbursement lapsed.

- (5) Regulation 38(3)(b):** The Resolution Applicant, through resolution plan shall demonstrate that the Resolution is feasible and viable as stated in Chapter 3 para 3.4 at Page No.24, and also at Chapter 16 at Page No.76.
- (6) Regulation 38(3)(c):** It is submitted that in Chapter 8 of the Resolution Plan states that term implementation of the Resolution Plan will be 18 months for completion of the project and will commence from the effective date.
- (7) Regulation 38(3)(d):** The time line for approval of Resolution Plan is as stated in chapter 12 of the Resolution Plan.
- (8) Regulation 38(3)(e):** with regard to the capability of the resolution applicant to implement the resolution plan, the SRA has submitted its Audited Financials for the year 2022-2023 and financials of GSSHPL for financial year ending on 31.03.2023. As set out in chapter 1 of the Resolution Plan the Net worth of INR 4.48 Cr as per latest net worth statement dated 20.02.2023 signed by Chartered Accountant which is enclosed and forms part of this resolution plan.
17. It is observed that in Para 4 of Form H, the resolution professional has certified that 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. Further, the resolution applicant Dr. Taali Jhanhavi Rao 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 content of the said affidavit are in order. The affidavits are attached as Annexure D to diary no.6278 dated 14.12.2023. It is observed that in compliance to the Regulation 38(3) and (e) the RP has submitted the DDR certificate dated 20.10.2023. It is further certified that the 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.

18. It is further observed that in Chapter 5 of the Resolution Plan in accordance with regulation 36 B (4A) of the CIRP Regulations, the Resolution Applicant, in case its Resolution Plan is approved by the CoC under sub-section (4) of section 30 of the Code, shall provide Performance Security in the nature of Performance Bank Guarantee (PBG), issued by any scheduled commercial bank in India or by way of Demand Draft/Pay order/Bankers Cheque drawn in favour of "Gokul Super Speciality Hospital Private Limited" issued by any scheduled commercial bank in India, payable at par, for a sum of rupees equivalent to 3% of the Resolution Amount/Value proposed by the Selected Resolution Applicant in the Resolution Plan i.e. 3% of 3.11 million USD (Rs. 25.98 crores) within 5 (Five) business days from the date of intimation to the Selected Resolution Applicant by the Resolution Professional and the same shall be valid till the Term of Resolution Plan- The Resolution Applicant Proposes to pay USD 0.11 Million (Equivalent INR value of Rs. 9040812; Exchange rate of USD taken as 82.1892 - 05/04/2023) by way of bank transfer on receipt of approval of resolution plan by the COC.
19. The performance security amount of 56,00,000/- has been deposited into the account of Corporate Debtor on 22.06.2023 with confirmation to retain Rs.35,00,000 deposited towards EMD from the Resolution Applicant. In compliance the performance security amount of Rs. 91,00,000/- was received by way of bank transfer to the PNB A/c No. 4514002100001048.
20. It is noted from the plan that the Corporate Debtor shall continue as a going concern.
21. As regards the sources of funds for implementation of the plan as discussed above at para 6 and 7, it shall be the responsibility of the SRA and the land owner who gave this affidavit, that an affidavit of

- compliance to this undertaking is filed in this Tribunal along with necessary documents within 90 days of the date of approval of this Plan.
22. The Resolution Professional filed an affidavit dated 09.10.2023 (Annexure E to the Memo vide No. 5468 dated 30.10.2023) stating that there are no pending application before this Tribunal in respect of the Avoidance Transactions related to the Corporate Debtor and there are no ongoing pending cases before any court of law against the Corporate debtor except the section 7 application before this Tribunal. Further, the Resolution Applicant undertakes to make payment in accordance with Regulation 31A of the CIRP.
23. It is observed that the Corporate Debtor is an MSME unit registered on 04.02.2022. The SRA who is an individual and related to the Corporate Debtor as part of the Suspended Board submitted the Resolution Plan before the COC. In this regard, it is clarified that the affidavit under section 29A has been filed and the SRA is eligible in terms of the Section 240A of the IBC.
24. In respect of reliefs and concessions in Chapter XII of the Resolution Plan, it is stated that in case of default for payment of the resolution amount on due date as provided in the plan, the Resolution Applicant would get 180 days time to cure the default with interest @12% per annum on such amount in default. Once the default is cured within this period it will be deemed to be compliance of due date of plan without any action/contingency for fall of plan. Additionally, the relevant government authorities will provide a minimum of one year of time after the plan effective date in order for the Resolution Applicant to access the status of the licences and Government approval required by the company and to procure or renew the same.
25. In the circumstances and for the aforesaid reasons, the incumbent application bearing I.A. No.591 of 2023 is allowed and accordingly,
- (i) The Resolution Plan dt.26.05.2023 ('Revised Resolution Plan') (Annexure -2) submitted by Dr. Taali Jhanhavi Rao is hereby approved.
 - (ii) Moreover, it is clarified that this order should not be construed as an order granting exemption from payment of stamp duty, taxes or

any charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law for the time being in force.

(iii) The Resolution Plan so approved shall be binding on the Corporate Debtor and 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 such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan.

(iv) Under the provisions of section 31(3) of the Code, we also direct as under:

a. The moratorium imposed vide order dated 16.11.2022 in the main CP shall cease to have effect from the date of communication of this order.

b. The resolution professional shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Board to be recorded on its database.

(v) Further, the Resolution Professional is directed to handover the management, control and all the assets, documents/records in physical and/or digital form to the Resolution Applicant immediately and the resolution professional will cease to be resolution professional.

26. The approved Resolution Plan shall be effective from date of passing of this Order.

-Sd/-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd/-

(K. Biswal)
MEMBER (JUDICIAL)