

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - I**

**IA 1271 of 2021
IN
CP (IB) 920/MB/C-I/2020**

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”) for approval of the resolution plan under the provisions of Section 31(1) of the code.

In the Application of

**Mr. Milind Kasodekar,
Resolution Professional of Uttam Galva Steels
Limited**

Office: Satyagiri Apartments, 3rd Floor, 77,
Vijayanagar Colony, 2147, Sadashiv Peth, Pune
411030.

...Applicant/Resolution Professional

In the matter of

State Bank of India

Corporate Office: State Bank Bhavan,
Madame Cama Road, Nariman Point,
Mumbai Maharashtra - 400021

and

Branch Office at Stressed Assets Management Branch,
Raheja Chambers, Wing-B, Free Press Journal Marg,
Nariman Point, Mumbai - 400021

...Financial Creditor

Versus

Uttam Galva Steels Limited

[CIN: L27104MH1985PLC035806]

Uttam House, 69, P D' Mello Mumbai, Maharashtra –
400009.

...Corporate Debtor

Order Delivered on :- 14.10.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant : Mr. Janak Dwarkadas, Sr. Advocate
For the Resolution Applicant : Mr. Ravi Kadam, Sr. Advocate
For the CoC : Mr. Soli Cooper, Advocate

ORDER

Per Coram:

1. The present application is moved by Resolution Professional **Mr. Milind Kasodekar** (hereinafter called as “the Applicant”) **under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”)** for approval of the resolution plan under the provisions of **Section 31(1) of the code**, for the Corporate Debtor **Uttam Galva Steels Limited** (hereinafter called as the “Corporate Debtor”) as approved by 100% voting share of the Committee of Creditors of the Corporate Debtor (hereinafter called as the “CoC”) pursuant to the ninth meeting of the CoC held on 14.05.2021 followed by electronic voting which concluded on 02.06.2021.

2. That State Bank of India, a Financial Creditor of the Corporate Debtor, had filed an application under section 7 of the Code, read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of the corporate insolvency resolution process (**CIRP**) against Uttam Galva Steels Limited (**Corporate Debtor**).
3. That the said application was admitted by this Tribunal, by its order dated 1 October 2020 (**Admission Order**), in terms of which, Mr. Milind Kasodekar (Registration No. IBBI/IPA-002/IPN00116/2017-18/10285), the Applicant herein, was appointed as the Interim Resolution Professional (**IRP**). A copy of the Admission Order is annexed with application as Annexure A.

The brief facts leading to the Application are as under:

4. The IRP upon receipt of the Admission Order on 06.10.2020 published a public announcement for initiation of CIRP and invited claims from creditors in Form A on 08.10.2020 in the Free Press Journal (Mumbai edition) (English) and Navshakti (Mumbai edition) (Marathi), along with uploading it on the website of the Corporate Debtor '<https://www.uttamgalva.com>' in terms of regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**). The last date for submission of claims was 20.10.2020.
5. On receiving the claims from the creditors of the Corporate Debtor, the IRP constituted the CoC on the basis of the claims received till

20.10.2020. The report certifying the constitution of the CoC was filed on 29.10.2020 with this Tribunal and the first meeting of the CoC was convened on 04.11.2020. In the first meeting of the CoC it was resolved that IRP be appointed as the Resolution Professional of the Corporate Debtor (**RP/Applicant**).

6. Further, the CoC deliberated and approved *inter-alia* the appointment of BSRR & Co. as the supporting Insolvency Professional Entity; appointment of Trilegal as the IRP/RP's legal advisor; appointment of 2 (Two) independent valuers – RBSA Valuation Advisors LLP and RNC Valuecon Advisors LLP for determining the fair value and liquidation value of the Corporate Debtor in terms of regulations 27 and 35 of the CIRP Regulations; appointment of transaction auditor – BDO India LLP (**BDO**) to review and assess transactions undertaken by the Corporate Debtor under sections 43, 45, 50 and 66 of the Code. The aforementioned resolutions were passed in the first meeting of the CoC and were finalised by the requisite voting share received pursuant to the e-voting which concluded on 10.11.2020.
7. The second meeting of the CoC was convened on 21.11.2020 *via* video conferencing in compliance with the CIRP Regulations. In the second CoC meeting, the CoC members discussed and voted upon the draft of the Form G and detailed expression of interest (**EoI**), finalised by e-voting which concluded on 28.11.2020 with 97.15% voting share of the CoC.
8. Further, in compliance with regulation 36A of the CIRP Regulations, on 30 November 2020, the Applicant issued the

invitation for EoI in Form G in Business Standard (English) and Navshakti (Marathi) wherein the last date for receipt of EoI was 15 December 2020.

9. On 14.12.2020, pursuant to requests from certain interested parties, the Applicant sought approval from the CoC to extend the timeline for submission of EoI. The CoC duly approved the issuance of an addendum to Form G in order to extend the timeline for submission of EoI by way of email dated 15.12. 2020. The Applicant On 15.12. 2020, issued an addendum to the invitation for EoI in Form G whereby the deadline for submission of EoI was extended to 22 December 2020.
10. In response to the invitation for EoI, a total of 6 (six) Prospective Resolution Applicants (**PRA(s)**) submitted their EoI, as set out below:
 - (a) AM Mining India Private Limited;
 - (b) Kotak Investment Advisors Limited;
 - (c) JSW Steel Coated Products Limited;
 - (d) Jindal Steel and Power Limited;
 - (e) International Asset Reconstruction Company Private Limited; and
 - (f) ESL Steels Limited.
11. The third meeting of the CoC was convened on 29.12.2020 *via* video conferencing in compliance with the CIRP Regulations during which, the CoC deliberated and voted on the approval of the draft Request for Resolution Plan (**RFRP**) and the approval of the draft Evaluation Matrix (**Evaluation Matrix**). The CoC also ratified and

approved the cost of the data room. In the course of the third meeting of the CoC, the terms of the RFRP were discussed in detail including but not limited to the earnest money deposit, the performance security and the right of rejection of resolution plans by the CoC for non-compliance with RFRP.

12. Pursuant to regulation 36A of the CIRP Regulations, on 01.01.2021, the provisional list of eligible PRAs comprising of 5 (Five) out of the 6 (Six) PRAs which submitted EoIs was issued to the CoC, *i.e.*, within 10 (Ten) days of the last date for submission of EoIs, which was 22.12.2020. The only PRA screened out at this stage was International Asset Reconstruction Company Private Limited on grounds of non-submission of the bank guarantee/refundable deposit. Objections to inclusion or exclusion of any applicant(s) in the provisional list of PRAs were also invited, which were to be submitted on or before 06.01.2021, however, no objections were received.
13. The final list of PRAs comprising of 5 (Five) PRAs was issued to the CoC on 16.01.2021. On the same day, access to the virtual data room was also provided to the PRAs.
14. The fourth meeting of the CoC was convened on 30.01.2021, *via* video conferencing in compliance with the CIRP Regulations, wherein the CoC members discussed and approved the RFRP and the Evaluation Matrix, which was finalised by the requisite voting share received pursuant to the e-voting which concluded on 03.02.2021 with 95.76% voting share of the CoC. Thereafter, on

03.02.2021, the Evaluation Matrix and RFRP were issued as per regulation 36B of CIRP Regulations.

15. That the last date of submission of resolution plans under the RFRP was 05.03.2021. However, certain PRAs requested the extension of timeline for submission of plans for a period of 2 (Two) to 3 (Three) weeks. Pursuant to the aforementioned requests, the Applicant convened the fifth meeting of the CoC on 02.03.2021 *via* video conferencing in compliance with the CIRP Regulations. The CoC deliberated and approved the the extension of the last date of submission of resolution plans and the extension of the CIRP timeline by 90 (ninety) days which was finalised by the requisite voting share received pursuant to the e-voting which concluded on 04.03.2021.
16. The Applicant filed an Interlocutory Application before this Tribunal seeking extension of the timeline for completion of the CIRP by 90 (Ninety) days (*I.A. No. 564 of 2021*) (**Extension Application**). Pursuant to this, vide order dated 16.03.2021, this Tribunal granted the extension of the timeline for completion of the CIRP by an additional 90 (Ninety) days starting from 01.04.2021, since the period of 180 (One Hundred and Eighty) days was expiring on 31.03.2021.
17. The RFRP, 1 (One) draft resolution plan was received, from AM Mining India Private Limited (**Resolution Applicant**) accompanied by the eligibility affidavit under section 29A of the Code and undertaking in hard copy as well as soft copy on 19.03.2021.

18. The Applicant convened the sixth meeting of the CoC on 20.03.2021 *via* video conferencing in compliance with CIRP Regulations. During the sixth meeting of the CoC, the resolution plan dated 19.03.2021 was opened in front of members of the CoC and the Resolution Professional and its advisors. The Resolution Applicant was also present at the time of the opening of the said resolution plan. The CoC also approved the budget for appointment of advisor to verify compliance with section 29A, finalised by e-voting which concluded on 24 March 2021 with 91.34% voting share of the CoC.
19. The CoC convened seventh meeting on 01.04.2021 *via* video conferencing in compliance with the CIRP Regulations. During the seventh meeting the CoC *inter alia*, discussed and deliberated on the findings of the valuation reports prepared by valuation agencies as presented by the respective agencies; the terms of the resolution plan dated 19.03.2021; the appointment of Grant Thornton Bharat as the agency to evaluate compliance with section 29A of the Code; and an update on the operations of the Corporate Debtor.
20. That the eighth meeting of the CoC was convened on 07.04.2021 *via* video conferencing in compliance with the CIRP Regulations. At this meeting, the Resolution Applicant was called to discuss the broad contours of the resolution plan dated 19.03.2021 with the CoC. The representative of the Resolution Applicant covered *inter alia* the overview of the Resolution Applicant brief background of the Corporate Debtor, and the business plan for the Corporate Debtor. The CoC discussed the resolution plan dated 19.03.2021 with the Resolution Applicant and suggested certain points that may be

considered by the Resolution Applicant. The following resolutions in relation to the CIRP were discussed at the eighth meeting of the CoC:

- (a) Summary of the terms of the resolution plan dated 19.03.2021 as presented by the Resolution Applicant; and
 - (b) Summary of findings on the draft resolution plan as presented by the bid evaluation advisor, BDO India LLP, to the CoC.
21. Pursuant to the comments received from the legal advisors of the CoC and the Applicant, the Resolution Applicant submitted the revised resolution plan on 20.04.2021. Further comments from the legal advisors of the CoC and the Applicant on the terms of the resolution plan dated 20 April 2021.
22. In response to the comments received from the CoC and the Applicant the Resolution Applicant submitted a further revised resolution plan dated 09.05.2021 (**Resolution Plan**) addressing the comments from the legal advisors of the CoC and Applicant.
23. The ninth meeting of the CoC was convened on 14.05.2021 *via* video conferencing in compliance with the CIRP Regulations to discuss the following agenda items:
- (a) The estimated liquidation cost, in the event of liquidation, as required under Regulation 39B of the CIRP Regulations;
 - (b) The recommendation of the CoC, in the event of liquidation, as required under Regulation 39C of the CIRP Regulations;

- (c) The fee of the liquidator, in the event of liquidation, as required under Regulation 39D of the CIRP Regulations;
 - (d) The report prepared on section 29A of the Code prepared by Grant Thornton [Bharat], the agency appointed in the seventh CoC meeting to evaluate compliance with section 29A of the Code; and
 - (e) The transaction audit report dated 12 May 2021 (**TAR**) prepared by BDO.
24. During the ninth meeting of the CoC, the Applicant informed the CoC that the Resolution Plan is legally compliant with the provisions of the Code, and the regulations thereunder, and the RFRP and the Resolution Applicant is eligible under Section 29A of the Code. Further, BDO India LLP, the bid evaluation advisor appointed by the CoC, informed the CoC that,
- (i) the Resolution Plan meets the qualitative and quantitative criteria as indicated in the Evaluation Matrix approved by the CoC during the third meeting of the CoC;
 - (ii) the Resolution Plan is feasible and viable and that the revenue and EBITDA projections under the Resolution Plan are achievable and reasonable; and
 - (iii) the Letter of Commitment provided by the Resolution Applicant confirms the eventuality of the Resolution Applicant honouring the proposed commitment under the Resolution Plan.

25. Thereafter, the Resolution Plan was put to e-voting by the Applicant in terms of regulation 25 of the CIRP Regulations, from 2:00 PM on 17.05.2021 till 12:00 PM on 29.05.2021, which was further extended up to 6:00 PM on 02.06.2021.
26. The Resolution Plan was approved by 100% voting share of the CoC through e-voting which concluded on 2 June 2021 after considering the feasibility, viability and manner of distribution of the Resolution Plan. An extract of the resolution passed in this regard by the CoC is set forth hereinbelow:

“RESOLVED THAT the resolution plan dated May 9, 2021 submitted by AM Mining India Private Limited be approved by the Committee of Creditors of Uttam Galva Steels Limited pursuant to Section 30(4) of the Insolvency and Bankruptcy Code, 2016, and the rules and regulations thereunder, each, as amended.”

A copy of the voting results in relation to the ninth meeting of the CoC is annexed with application as Annexure M.

27. The Applicant has issued a letter of intent (on the basis of instructions from the CoC) on 02.06.2021 (the “LoI”) to the Resolution Applicant pursuant to the result of e-voting approving the Resolution Plan. The Resolution Applicant being the Successful Resolution Applicant in terms of the RFRP has accepted the LoI unconditionally and provided a Performance Bank Guarantee in favour of State Bank of India. A copy of the LoI accepted by the

Resolution Applicant, and an acknowledgment of receipt of the Performance Bank Guarantee by State Bank of India are annexed with application as Annexure N and Annexure O, respectively.

28. The Applicant has hereinbelow provided details of the claims filed and admitted till date:

Details	Claim filed (in INR)	Claim admitted (in INR)
Secured Financial Creditors	87,40,24,07,462	86,57,51,59,942
Unsecured Financial Creditors	5,88,99,46,452	5,74,42,08,221
Operational Creditors (workmen and employees)	144,72,54,65,262	21,94,41,77,873

A detailed list of creditors of the Corporate Debtor as on 11 May 2021 is annexed with application as **Annexure P**.

29. The TAR prepared by BDO was submitted as a part of agenda of the ninth meeting of the CoC held on 14.05.2021, following which BDO presented its observations and findings as recorded in the TAR to the CoC at the ninth meeting of the CoC. The TAR did not identify any transactions falling under Sections 43, 45, 49 and 50 of the Code. Further, basis the information presented in the TAR and the management responses incorporated therein, the Applicant concluded that the material presented in the TAR is not sufficient to initiate proceedings under section 66 of the Code.
30. The Applicant further submits that the Resolution Plan submitted is in compliance with **Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations**. The RP has provided a compliance

certificate in “FORM H” as mandated under the Code for seeking approval of the Resolution Plan.

31. The Applicant has also filed the Form H, as per Regulation 39(4) of the CIRP Regulations, 2016 with the Insolvency and Bankruptcy Board of India (IBBI).

I. SALIENT ASPECTS OF THE APPROVED RESOLUTION PLAN

32. That the Applicant has set out below, the key terms and conditions of the Resolution Plan:

Term of the Resolution Plan

33. The Resolution Plan contemplates that it shall be valid from the date of submission of the Resolution Plan until the Effective Date. The Total Cash Payment shall be made within 60 days from the date on which the Resolution Plan is approved by the Adjudicating Authority.

Identification of cause of default and projected business plan

34. The Resolution Plan identifies the possible causes of default and sets out a detailed business plan for turning around the Corporate Debtor in Section V of the Resolution Plan. The Resolution Applicant proposes to work on a sustainable business model, which focuses on productivity improvement and higher capacity utilization, resulting

in higher market share. The key areas of the business plan include, *inter alia*, infusion of working capital, sourcing of HRC and key consumables, customer development and re-entry in the market, new product development, and asset reconditioning and de-bottlenecking.

Summary of Financial Proposal

35. That the Applicant has set out below, the summary of financial proposal provided in the Resolution Plan:

A. The Resolution Plan contemplates a total resolution amount of

INR 4020 crores (**Total Cash Payment**) bifurcated as follows:

Particulars	Payout (INR)	% of Admitted Debt**
FINANCIAL CREDITORS		
Secured Financial Creditors who vote in favour of the Resolution Plan	3,357.1 crores	38.41%
Unsecured Financial Creditors who vote in favour of the Resolution Plan	114.9 crores	19.51%
SUB-TOTAL	3472 crores	37.61%
OPERATIONAL CREDITORS		
Operational Creditors with admitted claim of less than INR 1 crore	92,873,298	100%
Operational Creditors with admitted claim of more than INR 1 crore	2,187,126,702	10%

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SUB-TOTAL	228 crores	10.38%
EQUITY INFUSION		
Equity infusion/quasi equity infusion for improvement of business operations (Equity Infusion)	320 crores	N.A.
TOTAL	4020 crores	35.18%

Further, in compliance with the Code, the Resolution Plan contemplates that the Financial Creditors who do not vote in favor of the Resolution Plan shall be paid an amount equivalent to the amount that would have been payable to such class of creditors under section 53(1) of the Code.

B. The Resolution Applicant proposes to pay an amount of INR 228 crores to Operational Creditors in the following manner:

- (i) pay 100% (One hundred percent) of Admitted Claims (as defined in the Resolution Plan) of the workmen.;
- (ii) pay 100% (One hundred percent) of Admitted Claims of the Operational Creditors who have an Admitted Claim amount of less than or equal to INR 1 crore (excluding any workmen covered under (i) above and any Operational Creditors covered under (iii) below); and
- (iii) following the payments contemplated in (i) and (ii) above, the remaining amount shall be paid to other Operational Creditors who have Admitted Claims of more than INR 1 crore in proportion to their Admitted Claim amounts.

The Resolution Plan also provides that the amount payable to Operational Creditors shall not be less than the amount payable to the Operational Creditors (as per their class) in the event of liquidation under section 53 of the Code, or the amount that would have been paid to such Operational Creditor, if the amount under the Resolution Plan had been distributed in accordance with priority under section 53(1) of the Code (whichever is higher).

C. The Insolvency Resolution Process Costs (as quantified, to the extent possible, and approved by the CoC) and Standstill Period Costs (as quantified, to the extent possible, and approved by the Monitoring Agency) shall be funded from the internal accruals and cashflows in priority over other debts of the Corporate Debtor. If the internal accruals or cashflows of the Corporate Debtor are insufficient to meet the Insolvency Resolution Process Costs and/or the Standstill Period Costs, such costs shall be paid by the Resolution Applicant up to an amount of INR 5 crores (subject to such Insolvency Resolution Process Costs and/or the Standstill Period Costs have being actually and validly incurred by the Corporate Debtor for goods and/or services actually utilized).

D. No payment is proposed to be made to the existing shareholders of the Corporate Debtor in light of the Capital Reduction more particularly detailed in the forthcoming paragraphs.

E. Other than the Stakeholders to whom payments have been proposed under the Resolution Plan, no other persons shall be made any payments.

Re-constitution of Share Capital of the Corporate Debtor

36. The existing paid up share capital of the Corporate Debtor, whether as equity or preference share shall stand cancelled, extinguished and permanently discharged for 'nil' consideration (**Capital Reduction**). Further, any other equity linked securities convertible into or exchangeable with equity shares of the Corporate Debtor and all other Securities (as defined in the Resolution Plan) of the Corporate Debtor, if any, shall also stand cancelled and extinguished without any payment.
37. The Resolution Applicant (along with its nominees (provided such nominee is eligible under section 29A of the Code to be a resolution applicant) shall hold 100% (One hundred per cent) of the share capital of the Corporate Debtor and acquire control of the Corporate Debtor. The Resolution Plan contemplates that the order of this Tribunal approving the Resolution Plan shall be deemed to have approved the Capital Reduction and shall not require any other procedure as required under the Companies Act, 2013 including under section 66 of the Companies Act, 2013 or regulations issued by the Securities and Exchange Board of India (**SEBI**), other than any corporate authorisations to be approved by the Monitoring Committee (which shall comprise of the representatives of the CoC and the Resolution Applicant) and filings required to be made with

the Ministry of Corporate Affairs. Further, the Resolution Plan provides that nothing in the SEBI (Delisting of Equity Shares) Regulations, 2009 (**Delisting Regulations**) shall be applicable to the delisting of equity shares of the Corporate Debtor and that SEBI and the relevant stock exchanges shall take all necessary actions to delist the Corporate Debtor with effect from the Effective Date.

Implementation and supervision of the Resolution Plan

38. The Resolution Plan provides for a Standstill Period which commences from the date on which this Tribunal would approve the Resolution Plan and ends on the Effective Date. During the Standstill Period, a Monitoring Committee and a Monitoring Agency would be constituted for effective implementation of the Resolution Plan and to assist in the day-to-day operations of the Corporate Debtor, respectively.
39. The Resolution Plan provides a list of activities along with timelines to be undertaken thereafter, for implementation of the Resolution Plan.
40. The schedule for implementation of the Resolution Plan is as follows:

Actions	Timeline
Date on which the last of the necessary regulatory approvals are received for implementation of the Resolution Plan	T

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Actions	Timeline
Effective Date	At the sole discretion of the Resolution Applicant but within T + 60
Actions specified in Section IX(B) to be undertaken in relation of implementation of acquisition structure as determined by the Resolution Applicant for transfer of Control and ownership over business of the Corporate Debtor (Acquisition Structure)	At the sole discretion of the Resolution Applicant but within T + 60

41. The key steps involved for implementation of the Resolution Plan approval by this Tribunal are as follows:

A. Constitution of Monitoring Committee and appointment of Monitoring Agency (as defined in the Resolution Plan):

- (i) The Monitoring Committee, comprising of 3 (Three) representatives of the Resolution Applicant and 3 (Three) representatives of the Financial Creditors, shall be responsible for the management of the affairs of the Corporate Debtor during the Standstill Period and shall be duty-bound to oversee the implementation of the Resolution Plan. All powers of the Board of Directors shall be exercised by the Monitoring Committee.
- (ii) A Monitoring Agency shall be engaged for providing assistance to the Monitoring Committee in relation to the day-to-day operations of the Corporate Debtor and shall do the same under the supervision of the Monitoring Committee.

The Monitoring Agency shall be responsible for *inter alia* ensuring filing of relevant e-forms with the Registrar of Companies (**RoC**), payments of dues of the Corporate Debtor in accordance with the applicable law, prepare financial statements of the Corporate Debtor and take steps to delist, obtain approvals from relevant regulatory authorities. In addition to the foregoing, the Monitoring Agency shall renew and maintain in force, all Business Permits (as defined in the Resolution Plan) of the Corporate Debtor and take steps to rectify non-compliances of the Corporate Debtor as per the applicable law.

42. The key steps for implementation of the Acquisition Structure are set out hereunder:

A. Effective Date Actions

- (i) On the Effective Date, the Resolution Applicant and/or its nominees shall infuse the Total Cash Payment and shall be issued Securities in the Corporate Debtor such that they hold 100% (One hundred percent) of the share capital and voting rights of the Corporate Debtor, and simultaneously with the Capital Reduction, acquire control of the Corporate Debtor.
- (ii) The steps involved in the implementation of the Resolution Plan which shall occur simultaneously on the Effective Date are as follows:
 - Delisting of the Corporate Debtor immediately upon the cancellation of the existing share capital;

- Increasing the authorised share capital of the Corporate Debtor to such amounts as may be required for undertaking the Total Cash Payment amount;
- Capital Reduction;
- The Resolution Applicant and/or its nominees may invest the Equity Infusion by subscribing to the equity shares, preference shares and/or any other Securities of the Corporate Debtor at its discretion;
- Pursuant to the above, the Resolution Applicant shall hold 100% (One hundred per cent) of the share capital of the Corporate Debtor and acquire control of the Corporate Debtor;
- Dissolution of the existing suspended Board of the Corporate Debtor;
- Reconstitution of the Board of the Corporate Debtor by the Resolution Applicant shall reconstitute the Board of the Corporate Debtor on the aforesaid date of dissolution in accordance with Applicable Law;

All actions set out in this sub-section (ii) above shall be deemed to take effect simultaneously and the Effective Date shall not occur unless all such actions are consummated.

- (iii) Pursuant to sub-regulation (3) of regulation 3 of Delisting Regulations, nothing in the Delisting Regulations shall be applicable to the delisting of equity shares of the Corporate Debtor since the Resolution Plan lays down a specific

procedure to complete the delisting of the shares of the Corporate Debtor.

B. Approvals and Applications

The Corporate Debtor, Monitoring Agency, any relevant creditors and the Monitoring Committee shall ensure that the Corporate Debtor, will submit applications with the relevant government authorities related to implementation of the Resolution Plan and/or to give effect to the Resolution Plan (including approval from the authorized dealer and/or the RBI in relation to remittances to be made to Financial Creditors in connection with the external commercial borrowings of the Corporate Debtor).

C. Equity Infusion

At any time on or after the Effective Date but within a period of 60 (Sixty) days from the Effective Date, the Resolution Applicant and/or its nominees shall infuse the Equity Amount (which may be infused in one or more tranches) and shall be issued Securities (if applicable) in the Corporate Debtor.

II. COMPLIANCE WITH THE CODE

43. Section VIII of the Resolution Plan sets out the mandatory requirements specified under section 30 of the Code and regulation 38 of the CIRP Regulations. Compliance of the Resolution Plan under section 30(2) of the IBC and regulations 38 and 39 of the CIRP Regulations has also been independently examined by the

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Resolution Professional and was confirmed to the CoC at the ninth meeting of the CoC held on 14 May 2021. In terms of regulation 39(4) of the CIRP Regulations, the Applicant is in the process of filing the compliance certificate in Form H with the IBBI. Details of the compliances in terms of the applicable provisions of the Code are reproduced below with requisite explanations:

Requirement	Description	Resolution Plan Reference	RP's Comments
Section 25(2)(h) of the Code Resolution Applicant's eligibility as set per the RFRP			
Section 25(2)(h) of the Code	The Resolution Applicant fulfils the criteria set out in the RFRP, having regard to the complexity and scale of operations of the business of the Corporate Debtor and such other conditions as specified by the IBBI, to submit a Resolution Plan	<i>Section (Evaluation Criteria)</i> ✓	Complied
Section 29A of the Code Resolution Applicant's eligibility as per the Code			
Section 29A read with Section 30(1) of the Code	In terms of Section 30(1) of the Code, the Resolution Applicant has furnished an affidavit confirming its eligibility under section 29A of the Code	Section I (Introduction and Background) An affidavit confirming its eligibility under section 29A of the Code is provided as Annexure 3 of the Resolution Plan, and the	Compliance of the Resolution Plan under section 29A of the Code has also been independently examined by the Applicant and confirmed to the CoC.

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Requirement	Description	Resolution Plan Reference	RP's Comments
		relevant undertakings and disclosures is provided as Annexure 1 and Annexure 4A of the Resolution Plan.	
Section 30 of the Code Mandatory Contents of the Resolution Plan			
Section 30(2)(a) of the Code	Payment of the Insolvency Resolution Process Cost in priority to the repayment of any other debts of the Corporate Debtor	Section IV (Summary Proposal of the Resolution Applicant)	Complied
Section 30(2)(b) of the Code	Details for payment of debts of Operational Creditors that shall not be less than: (i) The amount paid to such creditors in the event of liquidation of the Corporate Debtor (under Section 53 of the Code), (ii) The amount that would have been paid to such creditors, if the amount under the Resolution Plan had been distributed in accordance with the order of priority under Section 53(1) of the Code, whichever is higher and provides for payment of debts of the Financial Creditors,	Section IV (Summary Proposal of the Resolution Applicant) and Section IX (Implementation Schedule, Supervision of Implementation Plan and Management)	Complied

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Requirement	Description	Resolution Plan Reference	RP's Comments
	who do not vote in favour of the Resolution Plan, in such manner as may be specified under the Code, which will not be less than the amount to be paid to such creditors in accordance with Section 53(1) in the event of a liquidation of the Corporate Debtor.		
Section 30(2)(c) of the Code	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Section IX (Implementation Schedule, Supervision of Implementation Plan and Management)	Complied
Section 30(2)(d) of the Code	Term, implementation and supervision of the Resolution Plan.	Section IX (Implementation Schedule, Supervision of Implementation Plan and Management)	Complied
Section 30(2)(e) of the Code	A declaration that the Resolution Plan is not in contravention of any provisions of the applicable Law.	Section III.F. (General Information and Information about the Resolution Applicant – Declarations as required by the RFRP)	Complied

Requirement	Description	Resolution Plan Reference	RP's Comments
Section 30(2)(f) of the Code	Resolution Plan conforms to the requirements as specified under the Code and CIRP Regulations.	Annexure 1 of the Resolution Plan	Complied
Section 30(2) of the Code	Distribution of Consideration as per Section 30 (2) of the Code.	Section IV (Summary Proposal of the Resolution Applicant)	Complied

III. COMPLIANCE WITH CIRP REGULATIONS

44. That the compliance of the Resolution Plan as per the mandatory provisions of the CIRP Regulations is detailed in the table below:

Requirement	Description	Resolution Plan Reference	Status of Compliance
Regulation 37 of the CIRP Regulations Measures for maximization of value of the Corporate Debtor			
Regulation 37 of the CIRP Regulations	Measures for insolvency resolution of the Corporate Debtor for maximization of value of the assets of the Corporate Debtor	Section V (Evaluation Criteria)	Complied
Regulation 38 of the CIRP Regulations Mandatory Contents of the Resolution Plan			
Regulation 38(1) of the CIRP Regulations	Payment of amounts due to Operational Creditors in the Resolution Plan in priority to payments to Financial Creditors; and payment of the Financial Creditors that	Section IV (Summary Proposal of the Resolution Applicant) and Section IX (Implementation Schedule, Supervision of Implementation	Complied

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Requirement	Description	Resolution Plan Reference	Status of Compliance
	did not vote in favour of the Resolution Plan in priority over Financial Creditors who voted in favour of the Resolution Plan.	Plan and Management)	
Regulation 38(1A) of the CIRP Regulations	Statement as to how the Resolution Plan proposes to deal with the interests of all Stakeholders, including Financial Creditors and Operational Creditors, of the Corporate Debtor.	Section VII (Treatment of Various Stakeholders)	Complied
Regulation 38(1B) of the CIRP Regulations	Statement as to whether the Resolution Applicant or any of its Related Parties has failed to implement or contributed to the failure of implementation of any other approved resolution plan at any time in the past.	Section III.F. (General Information and Information about the Resolution Applicant – Declarations as required by the RFRP)	Complied
Regulation 38(2)(a) of the CIRP Regulations	Term of the Resolution Plan and schedule for implementation.	Section VI (Term of the Resolution Plan) and Section IX (Implementation Schedule, Supervision of Implementation Plan and Management)	Complied
Regulation 38(2)(b) of the CIRP Regulations	Management and control of the business of the Corporate Debtor after approval of the Resolution Plan of the	Section IX (Implementation Schedule, Supervision of Implementation	Complied

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Requirement	Description	Resolution Plan Reference	Status of Compliance
	Resolution Applicant by the Adjudicating Authority.	Plan and Management)	
Regulation 38(2)(c) of the CIRP Regulations	Adequate means for supervising implementation of the Resolution Plan.	Section IX (Implementation Schedule, Supervision of Implementation Plan and Management)	Complied
Regulation 38(3)(a) of the CIRP Regulations	Details to the effect that the cause of default has been addressed.	Section V (Evaluation Criteria)	Complied
Regulation 38(3)(b) of the CIRP Regulations	Details to the effect that the Resolution Plan is feasible and viable.	Section V (Evaluation Criteria)	Complied
Regulation 38(3)(c) of the CIRP Regulations	Details of all provisions for the effective implementation of the Resolution Plan.	Section IX (Implementation Schedule, Supervision of Implementation Plan and Management)	Complied
Regulation 38(3)(d) of the CIRP Regulations	Details of any required approvals and the timeline within which such required approvals will be obtained.	Section IX (Implementation Schedule, Supervision of Implementation Plan and Management)	Complied
Regulation 38(3)(e) of the CIRP Regulations	Details demonstrating the capability of the Resolution Applicant to implement the Resolution Plan.	Section III (General Information and Information about the Resolution Applicant) and Section V (Evaluation Criteria)	Complied
Regulation 39(1)(a) of	Affidavit of the Resolution Applicant confirming that it is eligible under section	Annexure III of the Resolution Plan	Complied

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Requirement	Description	Resolution Plan Reference	Status of Compliance
the CIRP Regulations	29A of the Code to submit resolution plans		
Regulation 39 of the CIRP Regulations Other compliance requirements for submission of the Resolution Plan			
Regulation 39(1)(c) of the CIRP Regulations	An undertaking by the Resolution Applicant that every information and records provided in connection with or in the Resolution Plan is true and correct and discovery of false information and record at any time will render the Resolution Applicant ineligible to continue in the CIRP, forfeit any refundable deposit, and attract penal action under the Code.	Annexure 1 of the Resolution Plan	Complied
Regulation 39(2) of the CIRP Regulations	The Resolution Applicant shall submit resolution plans that are in compliance of the requirements under the Code and the CIRP Regulations along with details of the following transactions (if any): (a) Preferential transactions under section 43; (b) undervalued transactions under section 45; (c) extortionate credit transactions under section 50; and	Section III.F (General Information and Information about the Resolution Applicant) and Annexure I of the Resolution Plan	Complied

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Requirement	Description	Resolution Plan Reference	Status of Compliance
	(d)fraudulent transactions under section 66, and the orders, if any, of the adjudicating authority in respect of such transactions		
Regulation 39(4) of the CIRP Regulations	Evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.	Annexure 12 of the Resolution Plan	Complied

45. The Applicant submits that the Applicant has preferred this present application in furtherance of the Applicant's duties as the Resolution Professional of the Corporate Debtor and the Applicant submits that the Applicant has complied with all the applicable regulations towards discharge of his functions as the Resolution Professional of the Corporate Debtor. The Applicant further submits that the Resolution Plan of the Successful Resolution Applicant has been prepared in compliance of the Code and all the requisite Regulations which was been approved by the required majority of the CoC.
46. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.

- c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
47. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 37, 38, 39, 39B, 39C and 39D of the CIRP Regulations.
48. Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan,
- a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the 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 - For the purpose of this section –

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and
 - (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).
- 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) Confirms to such other requirements as may be specified by the Board.

49. Section 30 (4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.

50. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.
51. The RP has filed Compliance Certificate in Form-H in support of the Resolution Plan by way of additional affidavit. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38 (1A) of The Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.

52. The Resolution Plan has been approved by the CoC in the 9th meeting held on 14.05.2021, followed by electronic voting concluded on 02.06.2021 with 100% votes.
53. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
54. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

*“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar**(supra).”*

55. Further, the Creditors are at liberty to proceed against the Personal Guarantors. The approval of the Resolution Plan does not bar the Creditors to proceed against the Personal Guarantors.
56. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

ORDER

The Application IA No. 1271 of 2021 in CP 920 of 2020 be and the same is allowed. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

- i. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii. Further in terms of the Judgment of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited v/s Edelweiss Asset Reconstruction Company Limited*, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.
- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its

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implementation before this Authority from time to time, preferably every quarter.

- vi. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

14.10.2022

SAM

Sd/-

JUSTICE P. N. DESHMUKH

Member (Judicial)