

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

**I.A. No. 1435 of 2021
IN
C.P. (IB) No. 1798 of 2018**

In the matter of an Application under Section 30(6) and Section 31(1) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

In the matter of

Samarth Lifters Private Limited

...Operational Creditor

v/s

**DBM Geotechnics & Construction
Private Limited**

...Corporate Debtor

I.A. No. 1435/2021

Mr. Naren Seth

...Applicant/Resolution Professional

Reserved for orders on: **02.01.2023**

Order pronounced on: **25.01.2023**

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Pulkit Sharma, Advocate a/w Mr. Amol



Bavare, Advocate and Ms. Vrushali P.; Advocate i/b
Pragnya Legal for Resolution Professional Naren
Sheth

Per: H. V. Subba Rao, Member (Judicial)

1. This is an Application filed under Section 30(6) and Section 31(1) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the 'Code') filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant M/s. Next Orbit Ventures Fund (hereinafter referred to as the 'NOVF') which was approved by 79.78% voting share of the members of the Committee of Creditors (hereinafter referred to as 'COC').
2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') of the Corporate Debtor was initiated by this Bench by an order dated 30.08.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') (Admission Order). Subsequently the Operational Creditor on 11.09.2019 submitted a withdrawal application. The said application was rejected by this Tribunal vide order dated 09.01.2020 and Mr. Naren Sheth, was appointed as Interim Resolution Professional (hereinafter referred to as 'IRP').
 - b. The IRP published a public announcement in Form A in accordance with Section 15 of the Code, on 23.01.2020, in English Newspaper Free Press Journal and one in Marathi Newspaper



- Navshakti, inviting claims from the creditors of the Corporate Debtor on or before 03.02.2020.
- c. The IRP constituted the Committee of Creditors. The COC in its 1st meeting held on 20.02.2020 appointed Mr. Naren Sheth as the Resolution Professional (hereinafter referred to as 'RP').
- d. On 20.03.2020, the Applicant published Form G in as per the CIRP Regulations in "Navshakti" (Marathi) and "Free Press Journal" (English) newspapers. The same was approved by the CoC in its 2nd Meeting held on 26.03.2020.
- e. Thereafter nationwide lockdown was imposed due to the outbreak of COVID-19 pandemic on 23.03.2020. Due to the constraints imposed thereafter the CIRP was adversely affected. In the 3rd CoC Meeting dated 10.09.2020 the CoC decided to re-publish the Form-G which was duly published on 22.09.2020 by the applicant in "Navshakti" (Marathi) and "Free Press Journal" (English) newspaper. In response to the same only one applicant, namely M/s. Next Orbit ventures Fund ("NOVF") submitted its Expression of Interest ("EOI") within the due date i.e. 08.10.2020.
- f. **Effective Date** - 'Effective Date' shall be the later date of either –
- (i) The date of receipt of the order of the Adjudicating Authority approving the Resolution Plan; or
- (ii) As the case may be the date of receipt of last such applicable orders/approvals as per the extant laws as prescribed under the Resolution plan.
- g. The Applicant submits the claims received by Resolution Professional (including the Outstanding Statutory Dues) is as under:

Summary of Claims (Amount in Crores.)		
Sr. No.	Class of Creditor	Amount Claimed



1.	Financial Creditors	
A	State Bank of India	223.69
B	Kotak Mahindra Bank	20.08
C	HDFC Bank	36.61
2.	Unsecured Financial Creditors	NIL
3.	Employees and Workmen Claims	6.88
4.	Exclusive Liability towards the Employees	1.53
5.	Statutory Authorities	21.17
6.	Operational Creditors	84.75
Total		394.71

h. The CoC decided to appoint a Valuer. The Resolution Professional accordingly appointed registered valuers M/s Kanti Karamsey & Co. on 02.07.2020 and M/s Adroit Appraisers & Research Pvt. Ltd. on 09.07.2020 for valuation of financial assets of the Corporate Debtor to determine the fair value and liquidation value, as required under Regulation 27 of the CIRP Regulations. These valuers had submitted their reports. The Liquidation and fair value of the Corporate Debtor is as follows:

Comparative Valuation Report of Corporate Debtor				
Sr. No.	Name of Valuer	Particular	Fair Value (Rs.)	Liquidation Value (Rs.)
1.	M/s Adroit Appraisers & Research Pvt. Ltd. Valuers			
		Fixed Asset	112,748,589	80,207,549



		Current Asset	202,281,245	191,681,730
	Total (A)		315,029,834	271,889,279
2.	Kanti Karamsey & Co.			
		Fixed Asset	109,583,968	74,335,455
		Current Asset	210,321,391	200,449,833
	Total (B)		319,905,359	274,785,288
	Average (A & B)		317,467,596	273,337,283

3. The Applicant as per the Regulation 36A of CIRP Regulations issued final list of prospective resolution applicants on 11.10.2020, as no objections were received in response to the provisional list. The only Resolution Applicant has submitted the executed Non-Disclosure Agreement. Thereafter, the Request for Resolution Plan ('RFRP') documents including Information Memorandum ('IM') evaluation matrix were issued to the only resolution applicant on 22.10.2020. The due date for submission of the Resolution Plan was 22.11.2020. The single resolution applicant submitted the resolution plan on 22.11.2020. The prescribed EMD of Rs. 50,00,000/- (Rupees Fifty Lakh only) was also submitted by the single Resolution Applicant on 23.11.2020.
4. On 18.12.2020 in the 6th CoC Meeting, the Applicant was instructed to issue fresh Form-G which was published in Navshakti (Marathi) and Free Press Journal (English) newspapers on 21.12.2020 with a response time of 15 (fifteen) days but no response was received for the same.



5. The Applicant submits that, during the 8th Meeting of COC held on 15.02.2021, the proposed Resolution Plans were evaluated on the basis of the evaluation matrix. The resolution passed with 79.78% voting share, and it was declared that the plan submitted by the M/s Next Orbit Ventures Fund ('NOVF') was approved.
6. The Letter of Intent ('LOI') has been issued to the Resolution Applicant on 17.05.2021 and the same was accepted by the Resolution Applicant on 21.05.2021. As per the LOI the Resolution Applicant submitted the Performance Security amounting to Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh only) in form of the Bank Guarantee in favour of the State Bank of India on 29.05.2021.
7. Thereafter, the Applicant issued compliance certificate in Form "H" was issued by the Resolution professional.

8. The Salient Features of the Resolution Plan are as under:

- a. M/s Next Orbit Ventures Fund (Successful Resolution Applicant 'SRA') registered with SEBI as a domestic venture capital fund under the VCF Regulations vide Registration No. IN/VCF/11-12/0232 (hereinafter referred to as the "Resolution Applicant", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its/his successors), are engaged in generating long term capital appreciation for investors from a portfolio consisting of diversified equity instruments. It has successfully funded for investment purposes from time to time with lot of successful and profitable exits. The fund has invested in various companies in diversified sectors such as Thyrocare, Bharat Wire Ropes Limited, Nath Seeds, FemtoDX, InfiBeam etc. The Resolution Applicant's director, Mr. Ajay Jalan, has more than 24 years of experience in the fields of finance,



operations and investment management and has served in senior executive positions in various Fortune 500 and Indian Companies. Mr. Ajay Jalan also has played a key role in the formulation of the Special Incentive Package Scheme ('SIPS'), a semiconductor policy of India. He is triple qualified with an MBA, FCA and ACS, besides being a certified director from IOD-UK.

- b. DBM Geotechnics & Construction Private Limited was incorporated in 1993 as a private limited company by Mr. Dnyaneshwar Bhagwan Mahajan. The Company is classified as Non-government Company and is registered at Registrar of Companies, Mumbai. Its authorized share capital is Rs. 50,00,00,000 and its paid-up capital is Rs. 32,77,53,900. The Company is engaged in foundation engineering, geo technical service, marine construction, mineral exploration, topographical survey and hydrographic survey service. The Company also provides services for construction of jetties, construction of breakwater, development of backup area, dredging, pile foundation, construction of diaphragm wall, micro pile, pressed rock anchoring, geotechnical investigation land and marine, mineral exploration, hydrographic survey, ground improvement, and soil mechanics laboratory. Company undertakes work on Contract Basis, out of which it also issues the work to sub-contractors for some part of the work. The Company had successfully completed more than 3900 projects at various locations across India.
- c. The Resolution Applicant has proposed to takeover the management and ownership control of the Corporate Debtor by acquiring up to 100% shareholding of the Company.
- d. **Cancellation of existing shareholding and issue of fresh**



equity shares: Immediately after Effective Date, all the existing shares of Corporate Debtor shall stand cancelled without any payment to existing shareholders. Corporate Debtor shall issue to the Resolution Applicant such number of equity shares as may be suitable on the basis of capital structure requirement of the Corporate Debtor. In terms of the circular (ref IBC/01/2017) dated 25th October, 2017, issued by the Ministry of Corporate Affairs, India, approval of the erstwhile shareholders of the Corporate Debtor to the transaction contemplated under the instant Resolution Plan, including the transfer/extinguishment of the entire existing share capital, shall deemed to have been given without any further act and deed immediately upon sanction of the Resolution Plan by the Adjudicating Authority.

- e. The Resolution Plan proposes a total Consideration of **Rs. 33,56,98,062/- (Indian Rupees Thirty Three Crores Fifty Six Lakhs Ninety Eight Thousand Sixty Two only)** for the settlement of claims.

9. **The details of the proposed payments are as follows:**

A) CORPORATE INSOLVENCY RESOLUTION PROCESS

COSTS:

- i. The CIRP Costs, including the payments to be made to the Resolution Professional, are being made on an on-going basis from time to time and no dues are pending to be paid to the Resolution Professional as on 31.12.2020.
- ii. The Resolution Applicant proposes that CIRP Costs pending to be paid as on the date of Order to be issued by the tribunal, if any, shall be paid upfront within 30 (thirty) days from Effective Date. This amount will be paid in



priority to the repayment of any other debt amount as prescribed under IBC.

B) PAYMENT TO WORKMEN

- i. The Applicant states that as per the Information Memorandum to the claims from the Workmen, no dues are unpaid for the period of 2 (two) years prior to the commencement of the Insolvency Date.
- ii. The dues claims received from the Employees are as follows:

Sr. No.	Name of Authorised Representative of Workmen and Employees	Claim Amount (Rs.)	Amount Payable as per books of accounts (Rs.)	Amount to be paid by Resolution Applicant (Rs.)
1	Shri. Jimmy Sydney Dey (General Secretary), Representative of Bhartiya Shramik Shakti Sangh.	41,977,631	1,459,439	NIL
Total		41,977,631	1,459,439	NIL

- iii. The Resolution Applicant proposes to make a payment of Rs. NIL ("Workmen Payment") to resolve the aforesaid debt of the Workmen, within a period of 30 (thirty) days from the Effective Date.
- iv. All dues shall stand extinguished in full pursuant to the NCLT Approval Order, without any further action or step on the part of any Person. All the litigations/ proceedings initiated by workmen before any labour department or any governmental authority or otherwise for non-payment of any dues/ contribution shall stand quashed and the Corporate Debtor shall no longer be required to make any payments in relation to such litigations/ proceedings.



- v. All the litigation / proceedings against the workmen or before any labour department or any governmental authority or otherwise for non-payment of any dues/ contribution shall stand good and the Corporate Debtor shall accept such payments as determined to be recovered from such workman.
- vi. In case any stock options or warrants or rights to Equity Shares have been granted to workmen pursuant to any employee stock option plan/ policy of the Company, if any, then such options/ warrants/ rights, whether vested or unvested, exercised or un-exercised shall stand revoked/ cancelled with no claims or liabilities against the Corporate Debtor or the Resolution Applicant.

C) PAYMENT TO FINANCIAL CREDITORS:

- i. The Applicant submits that as on Insolvency Commencement Date, the claims received from Financial Creditors is Rs. 280.37 Crores.
- ii. The Resolution Applicant proposes to make a payment of Rs. 27.00 Crores ('Banks/ FIs Payment') to resolve the aforesaid debt of the Financial Creditors in the following manner:

Claims of Financial Creditors

(Rs. In Crores)

Financial Creditor	Claims Received	Percentage to Total Claim	Total Payment	Upfront Payment	Balance Payment
State Bank of India	223.69	79.78%	21.51	15.75	5.76
Kotak Mahindra Bank	20.08	7.16%	1.94	1.42	0.52
HDFC Bank	36.61	13.06%	3.55	2.59	0.96
Total	280.37	100.00%	27.00	19.76	7.24



- iii. The payment schedule proposed by the Resolution Applicant is as follows:

Schedule of payments to Financial Creditors

(Rs. In Crores)

Financial Creditor	Upfront	1st Instalment	2nd Instalment	3rd Instalment	4th Instalment	Total Payment
State Bank of India	15.75	1.44	1.44	1.44	1.44	21.51
Kotak Mahindra Bank	1.42	0.13	0.13	0.13	0.13	1.94
HDFC Bank	2.59	0.24	0.24	0.24	0.24	3.55
Total	19.76	1.81	1.81	1.81	1.81	27.00

- iv. Upon making payment to Financial Creditors, as stated above, the entire previous liability of DBM towards Banks/ FIs (including in respect of payment of principal, interest, delayed interest, default interest, penal interest, damages and charges or any similar amounts charged) shall stand extinguished pursuant to the NCLT Approval Order, without any further action on part of any Person, and neither the Corporate Debtor, nor the Resolution Applicant shall be liable or responsible for making any payments to the Banks/FIs.
- v. The Resolution plan is prepared on the assumption that after payment of claims for the financial creditors as per the approved resolution plan, all the debt claimed from the Corporate Debtor shall stand written off and extinguished and the Corporate Debtor shall stand relieved from all liabilities related to the said debt and all the corporate securities and the guarantees shall stand



released. Any mortgages, lien assigned to the financial creditors by the Corporate Debtor including but not limited corporate securities and guarantees against the said debt shall stand released and relieved and handed over to the Resolution Applicant without any legal or financial encumbrances.

- vi. The Resolution Applicant shall pay the liquidation value due to dissenting financial creditors in priority over the financial creditors accepting this Resolution Plan. This amount shall be equivalent to amount of claim of the dissenting financial creditor in proportion to the Total amount claim of the financial creditors (i.e. Liquidation Value as determined by the Resolution applicant x (amount claimed by dissenting FC / Total amount claimed by all the financial creditors)).

D) PAYMENT TO EMPLOYEES (NOT CLASSIFIED AS WORKMEN)

- i. The continuing employees are being paid on a regular basis. There are certain employees ("**Ex-Employees**") who have left the Corporate Debtor in past few years. The dues to such Ex-employees amounts to Rs. 0.28 crores which are within 1 (one) year of 09.01.2020.
- ii. The Resolution Applicant proposes to make a payment of Rs. 0.04 crores ("**Employee Payment**") to resolve the aforesaid debt of the Ex-Employees, within a period of 30 (thirty) days from the Effective Date. We also understand that as a regular business cycle, there may be certain employees who may have not submitted their claims. They shall be endeavoured to be paid as a part of regular cash flow of the Corporate Debtor.



iii. The summary of payments of Ex-Employees are as follows:

(Rs. In Crores)

Sr. No.	Name of Employees	Amount Due	Proposed Repayment Amount
1 to 26	Ex-Employees (other than workmen) falling under the period between 09.01.2019 till 09.01.2020 (within 12 months of the date of commencement of CIRP) (Only 2 claims received)	0.28	0.04
27 to 347	Ex-Employees (other than workmen) falling under the period before 09.01.2019 (prior to 12 months of the date of commencement of CIRP) (Only 46 claims received)	2.46	0.00

*List of Employees attached to the Interim Application 1435 of 2021

- iv. All balance dues shall stand extinguished in full pursuant to the NCLT Approval Order, without any further action or step on the part of any Person. All the litigations/ proceedings initiated by employees before any labour department or any governmental authority or otherwise for non-payment of any dues/ contribution shall stand quashed and the Corporate Debtor shall no longer be required to make any payments in relation to such litigations/ proceedings.
- v. All the litigation / proceedings against the employees or before any labour department or any governmental authority or otherwise for non-payment of any dues/ contribution shall stand good and the Corporate Debtor shall accept such payments as determined to be recovered from such employee.
- vi. In case any stock options or warrants or rights to Equity Shares have been granted to employees pursuant to any employee stock option plan/ policy of the Company, if any, then such options/ warrants/ rights, whether vested or



unvested, exercised or un-exercised shall stand revoked / cancelled with no claims or liabilities against the Corporate Debtor or the Resolution Applicant.

E) PAYMENT TO OPERATIONAL CREDITORS

- i. The Applicant submits that as per the Information Memorandum and information received from Resolution Professional till date, the claims of Operational Creditors are Rs. 84.75 crores. We propose to make Rs. NIL payment to the Operational Creditors whose claims are received by the Resolution Professional.
- ii. The Applicant further states that as a regular business cycle, there are certain Operational Creditors in the form of vendors who may have supplied goods and materials to the Corporate Debtor during the CIRP period. They shall be endeavoured to be paid as a part of regular working capital cycle from the receivables and sale of goods of the Corporate Debtor. It is presumed that no such claims shall be payable by the Resolution applicant. Even in case there is any increase in liability to Operational Creditors (other than those during CIRP period) then such liability shall be included in the agreed amount of Rs. NIL as stated above.

F) PAYMENT TO STATUTORY DUES AS ON 09.01.2020:

- i. The Applicant through additional affidavit dated 02.01.2023 submits that Interlocutory Application No. 1435 of 2021 submitted by M/S Next Orbit Ventures Fund ('NOVF') the pending application for approval of the Resolution Plan submitted on 15.02.2021 was approved by the Committee of Creditors on 15.05.2021, the Resolution Applicant vide its email dated 26.03.2022



- conveyed proposed amendment to the said Approved Plan (First Amendment dated 24.03.2022) thereby agreed payment of the amounts derived from the fate of the pending claims under Section 44 and 48 of the Insolvency and Bankruptcy Code, 2016, under I.A. No. 1029 of 2021 to the Financial Creditors.
- ii. The Applicant submits that, the Resolution Applicant vide its letter dated 22.11.2022 submitted the Second Amendment to the Resolution Plan ("Second Amendment") thereby proposing additional upfront payment of Rs. 1.564 crores towards payment to the Statutory Creditors considering the judgment passed by the Hon'ble Court in the matter of *"State Tax Officer Vs. Rainbow Papers Limited"* in Civil Appeal No. 1661 of 2020 (*"Rainbow Judgement"*).
- iii. Thereafter considering the order dated 21.10.2022 passed by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in Company Appeal (AT) (Insolvency) No. 752 of 2021 between *"Jet Aircraft Maintenance Engineers Welfare Association and Ashish Chhawchharia, the Resolution Professional of Jet Airways (India) Ltd. And others"* (*"Jet Airways Judgement"*), the Resolution Professional vide its letter dated 27.12.2022 sought opinion of Resolution Applicant on inclusion of such amounts due to the statutory creditors for payment under the Resolution Plan proposed by the Resolution Applicant for compliance of the requirements of the above stated orders of the Hon'ble Supreme Court of India and Hon'ble NCLAT.
- iv. The Applicant submits that in reply to the aforesaid letter dated 27.12.2022, the Resolution Applicant vide its letter



dated 31.12.2022 has inter alia communicated to the Resolution Professional that in supersession and in replacement to the proposal under Second Amendment dated 21.11.2022 to the Resolution Plan, Resolution Applicant is agreeable to upfront full payment of Rs. 1,53,09,913/- (Rupees One Crore Fifty Three Lakh Nine Thousand Nine Hundred Thirteen Only) towards the payment for employees due, namely, profession Tax, Provident Fund and Gratuity, without any haircut and against the same total dues of Rs 1,53,09,913/- (Rupees One Crore Fifty Three Lakh Nine Thousand Nine Hundred Thirteen Only) as per the book of accounts. The Resolution Applicant vide letter dated 31.12.2022 has further stated that in further supersession and in replacement to the proposal under Second Amendment dated 21.11.2022 to the Resolution Plan, the Resolution Applicant has further proposed to make payment of Rs. 2,03,88,149/- (Rupees Two Crore Three Lakh Eighty Eight Thousand One Hundred Forty Nine Only) towards the payment to the other Statutory Creditors, with haircut of 90.37% (as proposed for financial lenders under Resolution Plan dated 15.02.2021) against the total dues of Rs. 21,17,14,944/- (Rupees Twenty One Crore Seventeen Lakh Fourteen Thousand Nine Hundred Forty Four Only) partially as per the claims received by the Resolution Professional and partially as per the book of accounts where no claims are received from the corresponding statutory Creditors, in 4 (four) equal yearly instalments, without any interest or penalty for delayed payments. The proposal to pay these other statutory creditors in 4 (four)



instalments is in line with the proposal under the Resolution Plan dated 15.02.2021, whereby the Resolution Applicant has proposed part payment to the financial lenders in 4 (four) equal yearly instalments. The Resolution Applicant has clarified that the above proposal of payment to the Statutory Creditor is without diluting the amounts payable to the Financial Creditors in any manner.

- v. The Applicant has submitted that the total claim received as Statutory dues Excluding liabilities towards the Employees is Rs. 21,17,14,944/- (Rupees Twenty One Crores Seventeen Lakhs Nine Hundred Forty Four only) where as Exclusive liability towards the Employees are Rs. 1,53,09,913/- (Rupees One Crore Fifty Three Lakhs Nine Thousand Nine Hundred Thirteen only) was verified and admitted by the Applicant towards the claim of Statutory Dues. The revised proposal from the Resolution Professional is as follows:

Revised proposal from the Resolution Professional				
DBM Geotechnics & Constructions Pvt. Ltd.				
Outstanding Statutory Dues as on 09.01.2020				
Sr. No.	Description of Statutory Claims	Claims Received (Rs.)	Liability as per Books of Accounts (Rs.)	Exclusive liability towards the Employees (Rs.)
1	ESIC Payable (B/s)	24,92,142	21,12,440	
2	GST Payable (BS)			
2A	Maharashtra State's Claims			
	July 2017 to March 2018	67,31,593	67,31,593	
	April 2018 to March 2019	99,11,138	99,11,138	
	September' 2019	21,67,167	22,29,108	
	October' 2019	10,32,898	10,02,773	
	November' 2019	29,23,961	6,43,640	
	December' 2019	31,66,752	19,10,465	
2B	Gujarat State's Claims	21,45,639	4,64,089	



2C	Other State's Claims		61,46,418	
4	Provident Fund Payable (B/s)		58,50,966	58,50,966
5	TDS Payable (B/s)		1,82,54,432	
6	VAT Payable (B/s)	13,78,62,182	1,48,80,080	
	1) Appeal Order Period 2010-11, Assessment Order 2012-13, 2013-14 and 2014-15 and Demand Notice for the respective period. 2) Form GST-ASMT-13 for the month of August 2019 and Demand Notice-DRC-07			
7	Income Tax Payable FY: 09-10		3,07,330	
8	Professional Tax Payable (Employees)		2,43,906	2,43,906
9	Tax Collected at Source Payable		3,532	
10	Service Tax Payable (B/s)		1,85,69,760	
11	Gratuity		92,15,041	92,15,041
12	Sub Total	16,84,33,472	9,84,77,431	1,53,09,913
13	Statutory dues as per books of accounts for which claims have not received, namely, Sr. No. 2C, 4, 5, 7, 8, 9, 10 and 11.		5,85,91,385	
14	Total statutory dues now proposed to be considered = Dues for which claims are received + Dues as per books of accounts for which claims are not are received	22,70,24,857		
15	Statutory dues excluding the Exclusive liability towards the Employees	21,17,14,944		
16	Exclusive liability towards the Employees			1,53,09,913
17	Applicable percentage of haircut applied for determining the proposed payment to Financial Creditors as per the Financial Plan	90.37%		
18	Proposed payment towards the Statutory Dues excluding the Exclusive liability towards the Employees. It is proposed to pay	2,03,88,149		



	this amount in 4 (four) annual instalments.			
19	Applicable percentage of haircut to be applied to the Exclusive liability towards the Employees as per the order dated 21.10.2022 by the Hon'ble NCLAT.			0.00%
20	Proposed payment towards Exclusive liability towards the Employees. It is proposed to pay this amount upfront.			1,53,09,913
21	Proposed additional payment towards the Statutory Dues including exclusive liability towards the Employees			3,59,98,062

G) ORDER OF PRIORITY OF PAYMENT

i. The Applicant submits that the Resolution Plan is prepared with the presumption that the payments towards the liabilities shall be made in the priority as envisaged under the provisions of Section 30 read with Section 53 of IBC and other such relevant applicable laws.

H) TRANSACTION STRUCTURE

a. Current Share Capital and Shareholding Pattern

- i. As per the provisional Financial Statements as of FY January 09, 2020, the Company has an authorized share capital of Rs. 50 Crores divided into Rs. 5 Crores Equity shares of Rs. 10 each.
- ii. As on January 09, 2020, the Company has an issued, subscribed and paid-up share capital of Rs. 32,77,53,900 Crores (Thirty-Two Crores Seventy-Seven Lakh Fifty-Three Thousand and Nine Hundred Rupees Only) divided into. 3,27,75,390 (Three Crores



Twenty-Seven Lakh Seventy-Five Thousand Three Hundred and Ninety) Equity shares of Rs. 10 each.

b. Reduction of Share Capital

- i. As the net worth of Corporate Debtor is already negative, Resolution Applicant proposes to cancel all shares allotted to existing shareholder, equivalent amount shall be transferred to capital reserves. No Amount shall be payable towards the extinguishment of all the equity shared of such existing shareholders.
- ii. The Resolution Applicant proposes to infuse the funds by way of Equity Share Capital and debt. Accordingly, existing authorized share capital of the Corporate Debtor shall be increased, if necessary.
- iii. The Corporate Debtor shall not be required to make any separate application before the Tribunal under the provisions of the IBC and that the approval of this Resolution Plan by the Tribunal shall be treated as if the necessary approvals required to have been obtained under the Companies Act, including consent of shareholders or creditors of the Corporate Debtor and applications to any other appropriate authority, as required under the Companies Act, together with the process laid down under the Companies Act, have been obtained and duly complied with.
- iv. No future approval of the Tribunal will be required to give effect to the Capital Reduction under the Companies Act and there shall be no requirement to add "and reduced" in name of the Corporate Debtor as the approval of the Resolution Plan by' the Tribunal shall be deemed to be an order under Section 66 of the



Companies Act along with other applicable provisions of the Companies Act, sanctioning and approving the Capital Reduction and all matters hereto.

- v. The Capital Reduction will be approved and implemented pursuant to the provisions of the IBC specifically Regulation 37 of the CIRP Regulations read with Section 31 of the IBC. The Compliance with the provisions of the Resolution Plan and the Capital reduction shall be deemed to be in accordance with and constitute compliance with any and all provisions of Applicable Law that would have otherwise applied to a similar reduction of capital under the Companies Act, the Income Tax Act 1961 and/ or under rules/ circulars/ regulations issued thereunder.
- vi. The Resolution Applicant upon the approval of the Resolution Plan shall infuse an amount of Rs. 14.90 crores (Rupees Fourteen Crores Ninety Lakhs Only), of which Rs. 4.70 crores would be classified as equity capital and balance amount in the form of debt towards repayment of balance outstanding to Financial Creditors and towards working capital. Accordingly, the Resolution Applicant shall be allotted 47,00,000 equity shares of Rs.10/- each.
- vii. The Resolution Applicant upon the approval of the Resolution Plan shall be granted full control of the assets and the management of the Corporate Debtor, under the supervision of the Resolution Professional. Further, the proposed infusion along with the existing bank balances and future accruals (on account of whatsoever reason) an amount of Rs. 30.00 crores



(Rupees Thirty Crores Only) shall be utilised for the repayment of the existing debts of the Corporate Debtor as well as funding the future working capital requirements of the Corporate Debtor.

viii. The indicative shareholding pattern post the Reduction of existing capital and issue of fresh equity shares to the Resolution Applicant, shall be as follows:

Sr. No.	Category of Shareholder	No. of Shares	% Holding
1	Next Orbit Ventures Fund	47,00,000	100%
	Total	47,00,000	100%

I) DISBURSEMENT OF AMOUNT SHALL BE CARRIED OUT IN ACCORDANCE WITH AND IN THE ORDER OF PRIORITY SET OUT IN THE TABLE BELOW:

(Amount in Crores)

Sr. No.	Stakeholder	Claim Received (as per IM)	Total Payment (in Crores)	Haircut (%)	Upfront Payment (in Crores)	Balance Payment (in Crores)
A	Fees & Costs Payable to Resolution Professional					
	CIRP Costs	All outstanding as on the date of AA Order will be paid in priority	All outstanding as on the date of AA Order will be paid in priority	NIL	All outstanding as on the date of AA Order will be paid in priority	All outstanding as on the date of AA Order will be paid in priority
B	Financial Creditors					
1.	Banks/ FIs/Body Corporates	280.37	27.00	90.37%	19.76	Balance Rs. 7.24 crores



						shall be paid in instalments as stated in Note 1 to this table.
C	Operational Creditors					
1.	Workmen & Employees (not considered)	6.88	0.04	99.99%	0.04	Nil
2.	Statutory Authorities and Other Operational Creditors	84.75	0.00	100.00%	0.00	Nil
3.	Statutory Authorities	22.70	3.56	90.37%	1.53	2.03
	TOTAL	385.78	30.60		21.33	9.27

Note 1: Balance Rs. 7.24 crores shall be paid in instalments as follows:

- 1st Instalment: Rs. 1.81 crores shall be paid by the Resolution applicant at the end of 1(one) year from the date of passing of Order by the AA accepting this Resolution Plan; and
- 2nd Instalment: Rs. 1.81 crores shall be paid by the Resolution applicant at the end of 2(two) years from the date of passing of Order by the AA accepting this Resolution Plan.
- 3rd Instalment: Rs. 1.81 crores shall be paid by the Resolution applicant at the end of 3(three) years from the date of passing of Order by the AA accepting this Resolution Plan.
- 4th Instalment: Rs. 1.81 crores shall be paid by the Resolution applicant at the end of 4(four) years from the date of passing of Order by the AA accepting this Resolution Plan.

Balance Rs. 2.96 Crores (Rupees Two Crores Ninety Six Lakhs Only) towards working capital will be brought in by the Resolution Applicant time to time on need basis.

10. MANAGEMENT OF COMPANY AFTER RESOLUTION

- i. On and from Effective Date, the Resolution Applicant shall take over the management control of the Corporate Debtor, including its business activities. While the implementation of the Resolution Plan and settlement of



- the creditors shall happen in parallel, the Resolution Applicant shall take over the board and management of the Company as of the Effective Date.
- ii. The erstwhile promoters will neither be in control nor continue as promoters in the Corporate Debtor with effect from the Effective Date. Appropriate filings will be made of erstwhile promoters as promoters of the Company, and classification of the Resolution Applicant as the new promoter of the Corporate Debtor.
 - iii. The Resolution Applicant shall appoint new directors on the Board of the Company on the Effective Date so as to constitute the Board in compliance with applicable provisions of Companies Act, 2013. The newly appointed Board shall take up the responsibilities of the day to day affairs of the Company and manage it in its regular course. The new Board will be professionally managed by experienced persons. The whole-time key managerial personnel will be appointed as per the requirements of the Companies Act, 2013.
 - iv. The Resolution Applicant shall appoint the statutory and internal auditor of their choice, subject to applicable laws and regulations. The existing statutory and internal auditors of the Corporate Debtor shall resign from the Corporate Debtor.
 - v. Extension of Resolution Professional's role as the monitoring agency from the Effective Date till the completion of payments to the Creditors and Implementation of the Resolution Plan shall be at such mutually agreed commercial terms between the Resolution Professional and the Resolution Applicant.



- vi. From the approval date and until the transfer date, an Independent monitoring committee, consisting of RP, 1 (one) representatives from COC and 1 (one) representative from Resolution Applicant, shall be appointed for Corporate Debtor. The Monitoring committee shall supervise the implementation of the Resolution Plan, and shall be required and entitled to do all the acts, deeds, matter and things as may be necessary, desirable or expedient in order to implements and give effect to this Resolution Plan, and shall act under supervision of NCLT. The monitoring committee shall have the same functions, powers and protections as assigned to Resolution Professional under the IBC. Until the transfer date, the COC shall continue with its roles and responsibilities, and have protections, as set out in the IBC. All the decisions of the monitoring committee shall be taken by the unanimous consent of the members of monitoring agency. Members of monitoring committee can be the employees of Resolution Applicant. Monitoring committee will arrange meetings on time to time basis with notice in advance to understand current stage of implementation of resolution plan and future course of action with respect to resolution plan. The fees and other cost relating to monitoring committee and meetings arranged by monitoring committee will be incurred and paid out of the cash flows of the Corporate Debtor.
- vii. The RA intends to seek assistance of suitable persons from the presently associated team of the Company so as to assist the RA in better understanding of the business



- operations of the Company and ensure an effective and clear transitioning to complete ongoing contracts.
- viii. The Resolution Applicant proposes to continue using the current corporate office for administrative purpose on mutually agreed terms & conditions with the owner of the office premises.
- ix. All intellectual property rights, including but not limiting to, trademark and copyrights shall remain with the Corporate Debtor and no further action would be required by the Resolution Applicant for the same.

Existing Employees During CIRP Period

- i. The Resolution Applicant appreciates the fact that the Corporate Debtor currently employs over 330 people including Casual Staff. Livelihood of many people is directly or indirectly dependent on the successful operations of the manufacturing and processing units of the Corporate Debtor. The Resolution Applicant will endeavour to largely retain the existing employees however efficiencies and cost controls are also important for sustainability of the Corporate Debtor and the Resolution Applicant may accordingly rationalize the employee strength, if necessary.

11. IMPLEMENTATION AND SUPERVISION:-

i. Term of the Plan

- a. In the terms of Section 31 (1) of the IBC, this Resolution Plan shall become binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders including the Tax Authorities, Stamp Duty Authorities and other Government Authority involved in



this Resolution Plan on the date of which this Resolution Plan is approved by the NCLT.

- b. For the effective implementation of Resolution Plan and management of the corporate debtor, the authorized share capital of the corporate debtor will stand increased to such extent as may be required to enable restructuring of the paid-up share capital of the corporate debtor. The said increase shall take effect by virtue of the sanction of Resolution Plan.
- c. The effectiveness and implementation of the Resolution Plan shall be subject to and conditional on the fulfillment of the Conditions Precedent and grant of reliefs & concessions as set out in this Resolution Plan. It is clarified that if all the conditions precedent and all the reliefs and concessions as set out in this resolution plan are not fulfilled and /or granted then the Resolution Plan shall be deemed not approved by the NCLT. Further, the approved Resolution Plan shall remain valid unless rejected by the NCLAT or any Higher Court having the jurisdiction to reject the said Resolution Plan.
- d. Without prejudice to the foregoing, the obligations of the Resolution Applicant to implement the Resolution Plan shall become effective from the Effective Date. If the conditions / approvals required for the Resolution Plan are not fulfilled / obtained to the satisfaction of the Resolution Applicant, then this Resolution Plan and the obligations of the Resolution Applicant under this Resolution Plan shall terminate without requiring any further actions on the part of the Resolution Applicant. In such case, no Person shall have a right to institute any



proceedings, legal or otherwise or make any claims against the Resolution Applicant, and the Resolution Applicant or any member of its organization shall not be liable for any damages, costs or claims by any and all stakeholders and / or any governmental authority.

- e. Unless the Resolution Plan terminates on account of non-completion of conditions precedent / receipt of approvals, in all other cases, even if the term of the Resolution Plan stands terminated, the order of the Adjudicating Authority and the terms of the Resolution Plan in so far as they relate to the rights of the Resolution Applicant and the settlement of liabilities and claims of the Corporate Debtor as per the Resolution Plan is concerned, shall remain in force at all times.

ii. **Approvals Required for The Plan and Compliance with Law**

a. The Resolution Plan of the Applicant shall be required to be approved by the Committee of Creditors, and thereafter, by the Adjudicating Authority under Section 31 of the IBC.

b. The Resolution Applicant will cause amendment of the constitutional documents of the Corporate Debtor as may be necessary to give effect to the transactions contemplated in this Resolution Plan. No additional approval would be required for this alteration once the approval from Adjudicating Authority is obtained.

c. Competition Act 2002: The Resolution Plan does not have any anti-competitive covenants and does not support any abuse of dominant position. Further, considering the turnover and assets size of the Company (as per latest



available audited financials of the Company), no approval is required under the Competition Act, 2002, for the actions contemplated in this Resolution Plan.

iii. **Indicative Timeline for Implementation**

INDICATIVE ACTIVITY SCHEDULE		
S. No.	Activity	Timeline (days)
Phase I - Approval Process		
1	Approval of Resolution Plan by the Committee of Creditors	Prior to T
2	Application to Adjudicating Authority	Prior to T
3	Approval of Resolution Plan by Adjudicating Authority and receipt of Adjudicating Authority Order and all other approvals as per the extant laws as prescribed under the	T
Phase II - Implementation of Resolution Plan		
1	Effective Date	T
2	Increase in Authorized Share Capital of the Company and Reduction of Share Capital of the Company	T+5
3	Funding Infusion of Rs. 4,11,00,000/- Crores and allotment of 41,10,000 Equity Shares to Resolution	T+10
4	Take-over of the management and control by the Resolution Applicant	T+17
5	Reconstitution of Board, Appointment of CEO and other key employees, appointment of Auditors.	T+17
Phase III - Settlement/ Deal Closure of Creditors / Achievement of Completion		
1	Payment of CIRP Cost	T + 25
2	Payment to Banks/ FIs and Workmen/Employees/ Outstanding Statutory Dues	T + 30

The above schedule is only an estimate and the actual time of completion of approvals from authorities and regulators may be different. The implementation timelines indicated above may accordingly change and this Resolution Plan will be implemented in accordance with such approvals and changed timelines. The Resolution Applicant confirms that the 'Effective Date' shall be the later date of either - (a) the date of receipt of the order of the Adjudicating Authority approving the resolution plan; Or (b) as the case may be the date of receipt of last such applicable orders/ approvals



as per the extant laws as prescribed under the Resolution plan. The RA undertakes to take all requisite steps to obtain all other approvals immediately after the NCLT approval is achieved.

12. The Resolution Applicant is eligible to submit resolution plan. The Successful Resolution Applicant confirm that they and their connected persons are not disqualified under Section 29A of the Insolvency & Bankruptcy Code, 2016.

13. **OBSERVATIONS AND FINDINGS:-**

- i. As per IBC Code 30(2)(a) – A Resolution Plan 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.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay operational creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- iv. Provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d)& Regulation 38(2)(c).
- v. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- vi. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - please include a statement to this effect in the Resolution Plan



- as per Section 30(2)(e).
- vii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- viii. As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- ix. The resolution applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- x. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
- a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
- b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
- c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
- d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate



means for implementation and supervision of the Resolution Plan.

- e. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under subsection (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- h. Provides for the management and control of the business of the Corporate Debtor during its term.
- i. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- j. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.



- k. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).
14. The Resolution Plan has been approved in the 8th COC meeting held on 15.02.2021 with 79.78% voting in accordance with the provisions of the Code.
15. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** 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.
16. The Hon'ble Apex Court at para 42 in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.***



(2019) SCC Online, 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.

*“Para 42- 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).”*

17. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.
18. 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 Resolution Plan is feasible and viable. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.



ORDER

- i. The Interlocutory Application No. 1435 of 2021 is allowed. The Resolution Plan submitted by **M/s. Next Orbit Ventures Fund** is hereby approved. It shall become effective from this date and shall form part of this order. 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 payment of dues arising under any law for the time being in force is due.
- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of which are extracted herein below:

"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 part of the resolution plan."

"95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State



Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the 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 part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned 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 and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its 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 copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- viii. The Interlocutory Application No. 1435 of 2021 is accordingly allowed and disposed of.

Sd/-

MADHU SINHA
MEMBER (TECHNICAL)

Sd/-

H. V. SUBBA RAO
MEMBER (JUDICIAL)

Certified True Copy _____
Date of Application 08-02-2023
Number of Pages 37
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Copy Issued on 08-02-2023



[Signature]
Deputy Registrar 08.02.2023

National Company Law Tribunal, Mumbai Bench