

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

**I.A. No. 3698 of 2022
IN
C.P. No. 246 of 2017**

In the matter of an Application under Section 30(6) and Section 31 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

**Culross Oppuortunies SP Peter
Beck and Partners**

... Financial Creditor

v/s

Sharon Bio-Medicine Limited

... Corporate Debtor

I.A. No. 3698/2022

Mr. Pulkit Gupta

...Applicant/Resolution Professional

Reserved for orders on: **12.04.2023**

Order pronounced on: **17.05.2023**

Coram:

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

Hon'ble Smt. Anu Jagmohan Singh, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Sr. Counsel Gopal Jain a/w Mr Bishwajit Dubey, Mr. Madhav Kanoria, Ms. Srideepa Bhattacharyya, Ms. Surbhi Pareek, Ms. Neha Shivhare, Ms. Jeta Shree, and Mr. Jayesh Karnawat Advocates i/b Cyril Amarchand Mangaldas for the Resolution Professional

For the Resolution Applicant: Mr. Nausher Kohli, Advocate

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

1. This is an Application filed under Section 30(6) and Section 31 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 Innova Captab Limited, which was approved by 79.28% 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 28.02.2018 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Dinkar T. Venkatasubramanian was appointed as the Interim Resolution Professional (hereinafter referred to as 'IRP'). In an affidavit Mr. Pulkit Gupta was to be appointed as the Interim Resolution Professional (hereinafter referred to as 'IRP'), who was subsequently confirmed by this Tribunal on 03.06.2022 in I.A. 1062/2022.

- b. During the CIRP, the resolution plan submitted by Peter Beck und Partner Vermoegensverwaltung Ltd. (“Earlier Resolution Applicant” and such plan is referred to as the “Previous Resolution Plan”) was approved by the COC by requisite majority. The Previous Resolution Plan was further approved by this Tribunal vide order dated 28.02.2018.
- c. However, despite several opportunities, the Earlier Resolution Applicant did not comply with the terms of the Previous Resolution Plan. Pursuant thereto, certain applications were filed before this Tribunal inter alia seeking appropriate reliefs on account of delay and non-implementation of the Previous Resolution Plan before this Tribunal and thereafter before the Hon’ble National Company Law Appellate Tribunal (“NCLAT”). Eventually, the Hon’ble NCLAT by its order dated 05.01.2022 (C.A. No. 169 of 2021 and C.A. No. 161 of 2020) inter alia directed the Earlier Resolution Applicant to submit an enforceable Bank Guarantee within 30 (thirty) days of the said order in accordance with the Resolution Plan. Further, the Hon’ble NCLAT directed that the payments overdue in the Previous Resolution Plan shall be completed by the Earlier Resolution Applicant within 2 (two) months of the said order.
- d. The Earlier Resolution Applicant filed an appeal before Hon’ble Supreme Court on 02.02.2022 seeking modification of the NCLAT order dated 05.01.2022. During the hearing held before the Hon’ble Supreme Court on 28.02.2022, the Earlier Resolution Applicant submitted that it would not be possible for it to comply with the NCLAT order dated 05.01.2022.
- e. Pursuant thereto, the Hon’ble Supreme Court vide its order dated 28.02.2022 (“Supreme Court Order”) (in Civil Appeal No. 1305-1306 of 2022) recorded that the Hon’ble Court was not inclined to interfere in the impugned order passed by the Hon’ble NCLAT

dated 05.01.2022. Further, the Hon'ble Supreme Court granted liberty to initiate a fresh CIRP and take all consequential actions in furtherance thereof, in accordance with law.

- f. In light of the observations made by the Hon'ble Supreme Court, the lenders of the Corporate Debtor at their meeting held on 05.03.2022 unanimously decided to file an application for inter alia seeking directions from this Hon'ble Tribunal to allow fresh invitation of expressions of interest / resolution plans and to be allowed to make efforts to conclude the CIRP expeditiously within 105 days from the date of this Tribunal's order for resolving the Corporate Debtor in terms of the Supreme Court Order.
- g. Further, the lenders of the Corporate Debtor at their meeting held on 02.05.2022 unanimously decided to appoint the Applicant herein, i.e., Mr. Pulkit Gupta (IBBI IP Registration No. IBBI/IPA-001/IP-P-02364/2021-2022/13697) as the Resolution Professional and to take all necessary actions for completion of CIRP of the Corporate Debtor.
- h. Pursuant to the decisions in the lenders' meetings dated 05.03.2022 and 02.05.2022, State Bank of India (acting on behalf of the lenders of the Corporate Debtor) filed an application (being IA No. 1062 of 2022 in the Company Petition) and subsequently an additional affidavit (collectively "Lenders' Application") inter alia seeking directions for granting 105 days for completion of CIRP; and appointment of Mr. Pulkit Gupta as the Resolution Professional and to take all necessary actions for completion of CIRP of the Corporate Debtor.
- i. This Tribunal vide order dated 03.06.2022 ("June 3 Order") was pleased to allow the aforesaid Lenders' Application for initiating fresh CIRP and appointed the Applicant as the Interim Resolution Professional.

- j. Pursuant to the June 3 Order of this Tribunal, the Applicant took over the management and business affairs of the Corporate Debtor on a going concern basis to carry out the functions as mentioned in the Code and the rules and regulations made thereunder. The appointment of the Applicant as the Resolution Professional was confirmed by the COC during the meeting held on June 18, 2022.
- k. The key decisions and matters discussed in the COC meetings and steps taken by the Applicant since the June 3 Order reflecting, inter alia, the progress towards the insolvency resolution of the Corporate Debtor are set out below.
 - 1. The eleventh meeting of the COC was convened on 06.06.2022 (“Eleventh COC Meeting”) wherein, inter alia, the Applicant deliberated with the COC in relation to the proposed steps for resolution process. The members were apprised that as per Section 25(2)(h) of the Code read with the Regulation 36A of CIRP Regulations, Form G and the invitation of Expression of Interest (drafts of which were placed for the consideration of the COC) were proposed to be issued for inviting expression of interest (“EOI”) from interested and eligible prospective resolution applicants (“PRAs”) to submit resolution plans for the Corporate Debtor. During the Eleventh COC Meeting, it was further deliberated that since the present process was in continuation of the CIRP initiated vide order of this Tribunal dated 11.07.2017, fresh claims were not sought to be invited and it was proposed to proceed with the resolution process inter alia comprising of invitation, submission, evaluation and approval of the resolution plan in relation to the Corporate Debtor.
- m. Publication of Advertisement of inviting Expression of Interest. Pursuant to section 25(2)(h) of the Code, basis approval of the COC, the Applicant published an invitation for Expression of

Interest (“Invitation”) as per Form–G specified in the CIRP Regulations on June 10, 2022, in Free Press Journal (English, Mumbai Edition), Navakal (Marathi, Mumbai Edition), Financial Express (English, Delhi Edition) and Jansatta (Hindi, Delhi Edition). In addition to the above, Form G alongwith the Invitation was also uploaded on the website of the Corporate Debtor. The last date of the submission of the EOI was 04.07.2022.

- n. The thirteenth meeting of the COC was convened on July 6, 2022 (“Thirteenth COC Meeting”). The Applicant updated the COC that in response to the Invitation published for inviting EOIs, 31 (thirty-one) EOIs were received from various PRAs, comprising of a mix of strategic and financial investors. The members were further informed that few interested buyers have also reached out to the Applicant for seeking extension of timeline for submission of EOI. In view of the above, and after detailed deliberations, the COC members agreed to extend the last date for submission of EOIs from 04.07.2022 to 08.07.2022.
- o. Basis such extension, the Applicant received a total of 34 EOIs. Following the receipt of the EOI, the Applicant conducted due diligence based on the materials on record in accordance with Regulation 36A (8)-(9) of the CIRP Regulations. The Applicant further published a provisional list of the PRAs on 10.07.2022 in accordance with Regulation 36A (10) of the CIRP Regulations.
- p. It is submitted that during the 13th COC Meeting, the members of the COC also deliberated on the key terms of the draft Request for Resolution Plans (“RFRP”). Thereafter, approval was sought from the COC members in respect of the RFRP along with the evaluation matrix to be issued in accordance with Regulation 36B of the CIRP Regulations. The resolution was approved by a majority of 68.33% of the voting share.

- q. Thereafter, the IRP issued the RFRP, information memorandum and granted access to the virtual data room to eligible PRAs on 14.07.2022.
- r. In terms of Regulation 36A (11) of the CIRP Regulations, the last date for submission of any objections to inclusion or exclusion of a PRA in the provisional list was 14.07.2022. However, no objections were received by the Resolution Professional to the provisional list. The Applicant thereafter released the final list of eligible PRAs on 24.07.2022 in accordance with Regulation 36A (12) of the CIRP Regulations. Since certain PRAs did not meet the eligibility criteria and the final list of PRAs comprised of 31 PRAs.
- s. The 14th meeting of the COC was convened on 06.08.2022 (“Fourteenth COC Meeting”). During the Fourteenth COC Meeting, the Applicant informed the members a total of 32 EOIs were shortlisted in the final list of the PRAs comprising a mix of strategic and financial investors.
- t. The Applicant further apprised the members of the COC that as per the RFRP, the last date for submission of the Resolution Plans was 13.08.2022. However, certain PRAs have requested for extension in the deadline for submission of the Resolution Plans owing to the ongoing due diligence being conducted by their teams and upcoming public holidays. In view of this, the high level of interest shown by the PRAs and in the interest of successful resolution and maximisation of value of the assets of the Corporate Debtor, the COC members were agreeable to consider extension the timeline for submission of the resolution plans by the PRAs from 13.08.2022 to 22.08.2022. The agenda was accordingly put to vote and approved by a majority of 66.16% of voting share.
- u. It was further discussed in the Fourteenth COC Meeting that the original valuation report dated 11.04.2017 was more than 5 (five)

years old, and the same did not provide the fair value of the Corporate Debtor as the valuation of the Corporate Debtor ought to have been impacted over a period of time (5 years), including on account of the COVID- 19 pandemic, non-implementation of the Previous Resolution Plan and numerous and protracted litigations. After detailed discussion and deliberation, the members of the COC unanimously decided that the valuation process is required to be conducted again and directed the Applicant to appoint GAA Advisory LLP (“GAA”) & Crest Valuation Services Private Limited (“Crest”) as the registered valuers in accordance with Regulation 35 of the CIRP Regulations for the valuation of the Corporate Debtor, to be done as on 30.06.2022 and suggested that valuation of working capital (current assets & liabilities) should also be carried out as on 31.03.2022.

v. The fifteenth meeting of the COC was convened on 23.08.2022 (“Fifteenth COC Meeting”). During the Fifteenth COC Meeting, the Applicant apprised the COC members, pursuant to the timelines specified in the RFRP (as amended), 6 (six) resolution plans were received from the following resolution applicants (“Resolution Applicants” and individually referred to as “Resolution Applicant”) in relation to the Corporate Debtor as on 22.08.2022:

- Innova Captab Limited (Successful Resolution Applicant);
- Tirupati Medicare Limited (“Tirupati”);
- Sherisha Technologies Private Limited (“Sherisha”);
- Mr. Sanjay Jain (“Sanjay Jain”);
- KLJ Resources Limited (“KLJ”); and
- Consortium of Topnotch Chemicals Private Limited & Swastik Infraclog Private Limited (“Topnotch Consortium”)

w. Amongst others, the members of the COC were informed that as per RFRP a resolution applicant was required to submit earnest

money of INR 5 crore along with the resolution plan in the prescribed format. However, one of the resolution applicants, i.e., Sherisha was not able to submit the earnest money due to extraneous circumstances and had requested for extension for submitting the earnest money. It was deliberated that the resolution plan will remain non-compliant with the terms of the RFRP unless earnest money is submitted, and the review of the resolution plan shall remain subject to compliance with the RFRP requirement.

- x. The Applicant also presented the CIRP timelines to the members of the COC and, amongst others, apprised that as on the said date the resolution process was on 81st day (from the June 3 Order) and the 105 days granted by this Tribunal were expiring on 16.09.2022. The COC members deliberated on the timelines and agreed that in case if any additional time is required, appropriate directions may be sought from this Hon'ble Tribunal at such stage.
- y. The sixteenth meeting of the COC was convened on 01.09.2022 ("Sixteenth COC Meeting"). The Applicant apprised the COC that 105 days granted by this Tribunal by virtue of June 3 Order were set to expire on 16.09.2022. The COC deliberated on the timelines and inter alia, agreed additional time will be required to evaluate, negotiate and seek necessary approvals on the compliant resolution plans and also conduct diligence on the Resolution Applicants to check their eligibility under Section 29A of the Code. The COC agreed that an application should be made to this Tribunal to seek an extension of the CIRP period by 60 (sixty) days.
- z. The seventeenth meeting of the COC was convened on 08.09.2022 ("Seventeenth COC Meeting"). The members were informed that the resolution plans were examined by the advisors and responses were received from all the Resolution Applicants on

the comments shared by legal team and the Applicant. Furthermore, discussions were being scheduled with the Resolution Applicants and their advisors to ensure compliance of the resolution plans with the Code, the CIRP Regulations and the RFRP. In addition to the legal points, certain commercial points (such as source of funds, proposed distribution mechanism, modalities for closing adjustment audit, composition of monitoring committee, etc.) were discussed with the COC members and appropriate instructions were sought to be further communicated to the resolution applicants.

- aa. The members of the COC were also apprised that basis instructions from the COC, Bagchi & Gupta, Chartered Accountant were appointed for Section 29A eligibility check of all the Resolution Applicants who have submitted the resolution plan and that a detailed Section 29A check of all Resolution Applicants has been completed and no ineligibility has been found.
- bb. The members were also informed that despite repeated requests, Sherisha had failed to submit the earnest money as is mandatorily required to be provided in the RFRP. Accordingly, it was decided that the resolution plan submitted by Sherisha became non-responsive and non-compliant to the RFRP and the same will not be considered for further participation in the resolution process.
- cc. The COC members also discussed and deliberated the modalities for negotiation process proposed to be undertaken with the resolution applicants in the interest of maximizing the value of assets of Corporate Debtor and to ensure the balancing of the interest of all the stakeholders of the Corporate Debtor.
- dd. The Applicant further apprised the members of the COC that as was agreed in the Sixteenth COC Meeting, the application seeking extension of CIRP period for 60 days (i.e., beyond of 105 days

- provided in the order dated June 3, 2022) is in the process of being finalized and filed by the Applicant shortly before this Tribunal.
- ee. The eighteenth meeting of the COC was convened on 15.09.2022 (“Eighteenth COC Meeting”). During the Eighteenth COC Meeting, the COC members were informed that basis discussion in the Seventeenth COC Meeting, the process note for negotiation dated 12.09.2022 (“Process Note”) was circulated to all the Resolution Applicants participating in the process in terms of the provisions of the RFRP read with the CIRP Regulations. The members were apprised that out of 6 resolution plans received, only three resolution applicants, i.e., Innova Captab Limited (being the Successful Resolution Applicant), Tirupati and Sanjay Jain had submitted an undertaking to participate in the negotiation process (“Participating Resolution Applicants”) scheduled for 15.09.2022.
- ff. Further, the members were informed that Sherisha’s plan was considered as non-responsive and hence the Process Note was not shared with them. Further, the Topnotch Consortium vide email dated 11.09.2022, had sought to withdraw from the resolution process of the Corporate Debtor. Further, no response was provided by KLJ.
- gg. Thereafter, the Applicant apprised the COC that as per the timelines provided in the Process Note, the Participating Resolution Applicants submitted their password protected proposal as per the Process Note. The COC member conducted 4 rounds of negotiation as per the Process Note. Thereafter, the Resolution Applicants were asked to submit their last version of the financial proposal submitted during the negotiation process as part of the revised compliant resolution plan, when called for.
- hh. The members of the COC were also informed that as discussed in the Seventeenth COC Meeting, the Applicant filed an application

being I.A. 2659 of 2022 on 08.09.2022, seeking extension of the CIRP period by a further 60 (sixty) days (“Extension Application”).

ii. The Nineteenth meeting of the COC was convened on 23.09.2022 (“Nineteenth COC Meeting”). The Applicant informed the COC members that after the closure of the negotiation process, pursuant to discussion with the COC members, the Applicant requested the Participating Resolution Applicants to submit their drafts of unsigned updated resolution plans after incorporating the revised financial proposal submitted by them during the negotiation process, so that the same can be reviewed by the legal counsels from a compliance perspective before submission of final signed resolution plans. The Applicant apprised the members regarding the following subsequent developments:

- No further communication or revised draft was received from Mr. Sanjay Jain till the time of the meeting.
- Innova Captab Limited (i.e., the Successful Resolution Applicant) submitted its unsigned draft updated resolution plan including the revised financial proposal (as last submitted on September 15, 2022) on September 19, 2022. The discussions with respect to implementation and compliance perspective are ongoing between the legal counsels of the Successful Resolution Applicant and the Applicant.
- Tirupati vide its email dated September 20, 2022 has submitted unsolicited bid and increased the financial proposal from INR 166.26 crores submitted during the negotiation process to INR 196.26 crores, which is marginally better than the highest value received during the negotiation process of INR 195.40 crores.

- jj. The COC members after taking into consideration the provisions of the Process Note unanimously decided that they will comply with the terms of the Process Note as the CIRP of the Corporate Debtor is at an advanced stage and limited time is available with the members of the COC to consider and approve a resolution plan. Hence, it was decided that it was not prudent to consider Tirupati's revised bid and the revised offer by Tirupati submitted on 20.09.2022, needs to be disregarded as Tirupati *suo moto* increased the financial value which is a deviation from the terms of the Process Note. It was further decided that the Applicant should inform Tirupati to submit the unsigned updated resolution plan (draft) basis its financial proposal submitted on 15.09.2022, during the negotiation process, which was duly communicated to Tirupati.
- kk. Thereafter, pursuant to some discussions on feasibility and viability of last version of the 4 (four) resolution plans of the Resolution Applicants including the Successful Resolution Applicant, the members of the COC conveyed to the Applicant that any resolution plan with conditionalities, assumptions or implementation issues will not be considered for voting. The Applicant was requested to communicate the above said views of the COC to all the Resolution Applicants.
- ll. Further, the Applicant and the COC members also deliberated on the potential impact of the recent judgement dated 06.09.2022, passed by the Hon'ble Supreme Court in the matter of '*State Tax Officer v. Rainbow Papers Limited*' ("**Rainbow Papers Judgment**") keeping in view the statutory liabilities of the Corporate Debtor. The members were informed that in the present instance, the Maharashtra Value Added Tax Act, 2002, Finance Act, 1994 (Chapter 5 – Service Tax) and Central Sales Tax Act have similar

clauses in their statutes as that of Gujarat VAT Act which was referred by the Hon'ble Supreme Court in Rainbow Judgment. The members were informed that while a review petition has been filed before the Hon'ble Supreme Court in relation to the said judgment, basis the law that exists, Maharashtra VAT and Sales Tax as well as Service Tax authorities will be treated as secured operational creditors of the Corporate Debtor and the amount payable to such secured operational creditors under section 30(2)(b) read with section 53 will have to be determined accordingly since as per the distribution waterfall such secured operational creditors will rank pari passu with other secured creditors. It was deliberated that this is a compliance issue and will be suitably addressed in the resolution plans.

mm. The Applicant informed the members that the Extension Application which was filed seeking extension of the CIRP period by a further 60 (sixty) days was allowed by this Tribunal vide its order dated 22.09.2022, granting an additional period of 60 (sixty) days for completion of the CIRP from the date of the order.

nn. The Twentieth meeting of the COC was convened on 07.10.2022 ("Twentieth COC Meeting"). The Applicant apprised the members that revised signed resolution plans were submitted by two Resolution Applicants i.e., Innova Captab Limited and Tirupati Medicare Limited on 06.10.2022. The Applicant further informed the COC members that after review of the revised resolution plans, the Applicant was of the prima facie opinion that the said revised resolution plans are in compliance with the mandatory provisions of the Code and the CIRP Regulations and both Innova Captab Limited and Tirupati Medicare Limited are eligible under Section 29A of the Code. Thereafter, the members deliberated at length upon the feasibility and viability of both the resolution plans and

found both the plans as feasible and viable. The members then proceeded to score both the plans as per the evaluation matrix as outlined in the RFRP. The scores of both the Resolution Plans as per evaluation matrix are as given below:

Sr. No.	Resolution Applicant	Scores as per evaluation matrix
1.	Innova Captab Limited	95
2.	Tirupati Medicare Limited	87.8

oo. Subsequently, the resolution plans submitted by the Successful Resolution Applicant and Tirupati Medicare Limited were put to vote for COC's consideration from 4:00 P.M. on Monday, 10.10.2022, till 4:00 P.M. on Wednesday, 16.11.2022, and the resolution plan submitted by the Successful Resolution Applicant was approved by the COC with a majority of 79.28%. The terms of the Successful Resolution Plan also stipulates that the inter se distribution may be determined by the COC in its discretion. Pursuant thereto, the proposed manner of distribution was also put to vote and is approved by a majority of 79.28%. It is submitted that in compliance with the Rainbow Papers Judgment, the proposed manner of distribution takes into account Maharashtra VAT and Sales Tax as well as Service Tax authorities as secured operational creditors of the Corporate Debtor.

pp. On 17.11.2022, the Applicant (on behalf of the COC) issued a letter of intent to the Successful Resolution Applicant which was unconditionally accepted by the Successful Resolution Applicant on 17.11.2022. The Successful Resolution Applicant further submitted the performance bank guarantee on 21.11.2022, for an amount aggregating to INR 35,00,00,000 (Indian Rupees Thirty Five Crores Only) in accordance with the terms of the RFRP and the Successful Resolution Plan.

3. The Applicant submits the claims admitted by Resolution Professional as under as on 16.11.2022:

Summary of Claims (Amount in Crores)		
Sr. No.	Creditors	Amount Admitted
1.	Financial Creditors	891,77,02,779
2.	Employees and Workmen	NIL
3.	Operational Creditors including Statutory Creditors	28,73,77,417
4.	Other Creditors	NIL
Total		9,20,50,80,196

4. The CoC decided to appoint valuers to determine the fair value and liquidation value of the Corporate Debtor, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These valuers had submitted their reports. The Liquidation and Fair Value of the Corporate Debtor is as follows:

(In Crores)

Particulars	GAA		Crest		Average Fair Value	Average Liquidation Value
	FV	LV	FV	LV		
Land & Building	89.96	50.76	93.23	65.93	91.59	58.35
Plant & Machinery	58.93	36.21	55.97	32.93	57.45	34.57
Financial Assets	141.70	89.62	120.05	93.01	130.88	91.31
Total	290.59	176.59	269.26	191.86	279.92	184.23

Accordingly, the average liquidation value of the Corporate Debtor is Rs. 184.23 Crore and the average fair value is Rs. 279.92 Crores, as against the Resolution Plan value of Rs. 195.40 Crores.

5. The COC in its 20th meeting held on 07.10.2022 considered the final Resolution Plan of Innova Captab Limited and approved the Plan with a voting share of 79.28%. Thereafter, the Applicant issued compliance certificate in Form "H" was issued by the Resolution professional.

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

a. Innova Captab Limited (Resolution Applicant/ Company/ we/ our), a public limited company having its registered office at Office No. 606, Ratan Galaxie-6th Floor, J.N. Road, Plot No. 1, Mulund (W), Mumbai Maharashtra 400080 India and corporate office at SCO-301, 2nd floor, Sector-9, Panchkula, Haryana - 134 109, India bearing CIN U24246MH2005PLC150371.

b. The Corporate Debtor is a listed public limited company, listed on the Bombay Stock Exchange ("BSE") and National Stock Exchange ("NSE"), incorporated in 1989 (CIN L24110MH1989PLC052251) having its registered office at W-34 34/1 MIDC Talaja Raigad Maharashtra 410208 India. The Corporate Debtor is engaged in the manufacturing of intermediates, active pharmaceutical ingredients and finished dosages catering to both the domestic Indian and foreign market.

- Details of the plants:

- Formulation plants involved in production of tablets and capsules are located in Dehradun, Uttarakhand.
- Active Pharma Ingredients (API) plant involved in production of API/ intermediates are located in Talaja, Maharashtra.
- Toxicology division specializes in pre-clinical & toxicology studies on animal is located in Talaja, Maharashtra.

- c. The main objects of the Resolution Applicant as contained in its Memorandum of Association are as follows:

To carry on the business of manufacture, buy, sell, import, export, distribute and otherwise deal in all kinds and varieties of cosmetics, health care products, food preservatives and additives, artificial flavourings, artificial dyes and colouring agents, beauty and skin care products, perfumes, colognes, food supplements, health aids and glamour products.

To carry on the business of manufacturers , buyers, sellers, importers, exporters, merchants, distributors, stockists, traders, dealers, researchers and developers in organic products, bulk drugs, pharmaceuticals, drugs, medicines, ayurvedic, allopathic, homeopathic, unani and other pharmaceutical drugs and medicines, injections, surgical and medical equipment's, injections, surgical and medical instruments , capsules, lotions, patents and proprietary medicines ,common medical preparations basic drugs and medicines, biological and non-biological capsules, vitamins and tonic preparation, medicated ointments and all other related drugs.

- d. The Resolution Plan proposes a total Consideration of **Rs. 256.36/- Crores** (Rupees Two Hundred Fifty Six Crores and Thirty Six Lakhs only).

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

A) Corporate Insolvency Resolution Process Costs

- i. The CIRP Cost as disclosed by the Resolution Professional on the virtual data room is Rs. 19,02,155/- (Rupees Nineteen Lakhs Two Thousand One Hundred and Fifty Five only) as of

30.06.2022. The CIRP Costs shall be paid in full and in priority, towards final payment of the insolvency resolution process costs payable under Section 30(2)(a) of the Code.

- ii. The CIRP Costs shall be paid in priority to any other Creditors of the Corporate Debtor in accordance with the Code on the Payment Date. Provided that, such portion of the CIRP Cost which is contingent/disputed as per the data provided by the Resolution Professional to the Resolution Applicant ("Contingent CIRP Cost") shall be deposited in a separate escrow account ("CIRP Cost Escrow Account"). The funds lying in the CIRP Cost Escrow Account shall be utilised as per the instructions of the Monitoring Committee. Further provided that-
 - a. In the event the final order regarding Contingent CIRP Cost is in favour of the Corporate Debtor (i.e. not payable by the Corporate Debtor to the relevant counter party), then such amount deposited in the IRP Cost Escrow Account shall be distributed among the Assenting Financial Creditors in proportion to their admitted Claims.
 - b. In the event the final order regarding Contingent CIRP Cost is not in favour of the Corporate Debtor (i.e. payable by the Corporate Debtor to the relevant counter party), then such amount deposited in the IRP Cost Escrow Account shall be paid to the relevant counter party as Contingent CIRP Cost.
- iii. The CIRP Costs (including the Contingent CIRP Cost) shall be paid out of the RA Infusion.
- iv. In order to enable the Corporate Debtor to pay the CIRP Costs, the Resolution Professional/shall provide details (including the

names, amounts payable to and bank account details of such Persons) of relevant persons to the Monitoring Committee and the Monitoring Agent in writing at least 10 (ten) Business Days prior to the Payment Date.

- v. The Resolution Professional shall also provide to the Monitoring Committee/Monitoring Agent an estimate of the Contingent CIRP Cost.

B) Operational Creditors (excluding Workmen and Employees)

- i. In the Resolution Applicant's estimate, the Operational Creditors shall not be entitled to any amount in terms of Sections 30(2) and 53 of the Code read with Regulation 38 of the CIRP Regulations. However, towards just and equitable treatment of the Operational Creditors (excluding Workmen and Employees), they shall be paid an upfront amount of INR 40 Lakhs from the RA Infusion in proportion to their admitted Claims.
- ii. Nil payment is proposed for the Workmen and Employees as there exists no Claim from the Workmen and Employees. However, an amount of INR 8.89 Crores (as on 31 March 2022) which is an unfunded liability of the Corporate Debtor towards gratuity and other dues of its Workmen and Employees shall be paid to the Workmen and Employees, as and when due, in terms of Applicable Law. It is clarified that the said amount will be arranged by the Resolution Applicant over and above the RA Infusion (defined below). The said INR 8.89 Crores payable to Workmen and Employees and INR 40 Lakhs payable to Operational Creditors (excluding Workmen and Employees) is collectively referred as "OC Payment Amount".
- iii. If the Operational Creditors (excluding Workmen and

Employees) and Workmen and Employees are entitled to some amounts in terms of Section 30(2), Section 53 of the Code then such amount shall be paid on the Payment Date, in priority to the payments to be made to the Financial Creditors. Any such additional payment shall be proportionately deducted from the Payments to be made to the Assenting Financial Creditors such that the total obligation of the Resolution Applicant does not exceed the Total Resolution Amount.

iv. On and from the Payment Date:

- All related Claims shall stand irrevocably and unconditionally satisfied and extinguished,
- All outstanding obligations of the Corporate Debtor towards Operational Creditors including Employees and Workmen shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled;
- All legal proceedings initiated before any forum by or on behalf of any Employees or Workmen or Operational Creditors including governmental, statutory and tax authorities, to enforce any rights or Claims against the Corporate Debtor shall immediately, irrevocably and unconditionally stand abated, withdrawn, settled and / or extinguished and the Employees and Workmen and Operational Creditors shall take all necessary steps to ensure the same;
- Corporate Debtor shall stand discharged of admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, disputed or undisputed, present or future, any default or event of default under any documents or other

agreements or arrangements (including any side letter, letter of comfort, letter of undertaking etc.) in relation to any period prior to the date of the NCLT Order or arising on account of the acquisition of control by the Resolution Applicant and all rights/ remedies of the operational creditors shall stand permanently extinguished; and (v) the Employees and Workmen of the Corporate Debtor shall have no further rights or Claims against the Corporate Debtor, in respect of the period prior to the date of the NCLT Order.

C) Proposal for Other Creditors

- i. NIL payment is being proposed for the Other Creditor.

D) Proposal for Financial Creditors

- i. Payment to Dissenting Financial Creditors –

- In the event the Dissenting Financial Creditors are entitled to an amount in the nature of liquidation value in terms of Sections 30 and Section 53 of the Code read with Regulation 38 of the CIRP Regulations (“DFC Payout”), then the Dissenting Financial Creditors would be provided the DFC Payout from the RA Infusion.
- Notwithstanding anything to the contrary contained in this Resolution Plan, the Dissenting Financial Creditors shall neither be entitled to, nor shall they receive any amounts other than the amounts due to them in the nature of liquidation value as stipulated hereinabove i.e. the DFC Payout. The Resolution Applicant submits that such treatment of Dissenting

Financial Creditors is fair and equitable, and in compliance with Section 30(2), 53 of the Code and Regulation 38(1) of the CIRP Regulations.

ii. Payment to the Secured Assenting Financial Creditors –

- The Available Cash shall be transferred to the Secured Financial Creditors who vote in favour of this Resolution Plan (“Secured Assenting Financial Creditors”), in proportion to their admitted claims on the Payment Date. The distribution of the Available Cash shall be discussed and agreed to among the members of the Committee of Creditors and shall be specifically annexed with the application for approval of this Plan that shall be filed by the Resolution Professional with the NCLT under Section 30(6) of the Code.
- Any positive difference of the Closing Adjustment Amount (defined below) (“Closing Adjustment Payment”) shall be contributed by the Resolution Applicant over and above the RA Infusion and shall be distributed amongst the Secured Assenting Financial Creditors, within 15 days of the same being verified and confirmed by an independent chartered accountant to be appointed by the Monitoring Committee. If the Closing Adjustment Amount is a negative number, then the same shall be deducted from the final payment proposed to be made to the Secured Assenting Financial Creditors. The amounts due to Secured Assenting Financial Creditors in terms of this Paragraph shall be distributed in a manner as may be decided by the CoC in its sole and absolute

discretion, which may consider the order of priority amongst creditors as laid down in sub-section (1) of Section 53 of the Code.

- **“Closing Adjustment Amount”** shall mean the amount by which the working capital (excluding cash and bank balances and fixed deposits) in the books of the Corporate Debtor as on the Payment Date is greater than the working capital (excluding cash and bank balances and fixed deposits) in the books of the Corporate Debtor as on 31 March 2022.
 - Provided that and notwithstanding anything to the contrary contained in this Resolution Plan, any balance sheet adjustment including a decrease in current liabilities on account of implementation of this Resolution Plan will not have any impact on the determination of the Closing Adjustment Amount as aforesaid.
 - RA Infusion (-) less payment of IRP Cost (-) less INR 40 Lakhs payable to the Operational Creditors (excluding Workmen and Employees (-) less DFC Payout (-) less payment to Unsecured Assenting Financial Creditors (-) less INR 1 Lakh payable to public shareholders shall be transferred to the Secured Assenting Financial Creditors in proportion to their admitted claims on the Payment Date.
- iii. Payment to Unsecured Assenting Financial Creditors
- Notwithstanding anything to the contrary contained in this Resolution Plan, an amount of INR 2.50 Crores from the RA Infusion (“Unsecured AFC Amount”) shall be set aside for payment to the Unsecured Financial

Creditors who vote in favour of this Resolution (“Unsecured Assenting Financial Creditors”). It is clarified that a dissenting Unsecured Financial Creditors shall be paid in accordance with the provisions set out in Step 4 above.

- Towards ensuring fair and equitable treatment, the Unsecured AFC Amount shall be paid to the Unsecured Assenting Financial Creditors on the Payment Date towards full and final settlement of their Claims, in proportion to their admitted Claims in such manner so as to ensure that the percentage recovery of the Unsecured Financial Creditors qua their admitted Claim and the percentage recovery of the Secured Financial Creditors qua their admitted Claim is the same. The distribution of the Unsecured AFC Amount among the Unsecured Assenting Financial Creditors shall be discussed and agreed to among the members of the Committee of Creditors and shall be specifically annexed with the application for approval of this Plan that shall be filed by the Resolution Professional with the NCLT under Section 30(6) of the Code.
- Provided further that if any amount from the Unsecured AFC Amount is left over after payments to the Unsecured Assenting Financial Creditors in the manner provided above (“Balance Unsecured AFC Amount”) then such Balance Unsecured AFC Amount shall be paid to the Secured Assenting Financial Creditors in accordance with the distribution mechanism approved by the Committee of Creditors.

E) Delisting and Extinguishment of Existing Shareholding

- i. As an integral part of the Resolution Plan, the shares of the Corporate Debtor shall be de-listed, in terms of SEBI (Delisting of Equity Shares) Regulations, 2021 (“Delisting Regulations”), as amended from time to time which prescribes that that the procedure under the Delisting Regulations are not applicable for any delisting pursuant to an approved resolution plan under the Code, if:
 - The resolution plan sets out a specific delisting procedure; or
 - The resolution plan provides an exit option to existing public shareholders at a price which is higher of the liquidation value (as applied in the order of priority of claims prescribed under Section 53 of IBC) and the exit price being paid to the promoters.
- ii. In this regard, the Non-Promoter Group shareholders (i.e. the public shareholders) shall be paid an exit price aggregating to INR 1 Lakh from the RA Infusion in proportion to their shareholding and pursuant to the same, their shareholding shall be extinguished. This amount of INR 1 Lakh is in the Resolution Applicant’s reasonable estimate higher of the liquidation value (as applied in the order of priority of claims prescribed under Section 53 of IBC) and the exit price being paid to the promoters of the Corporate Debtor.
- iii. 1 (one) day after the Payment Date, the shares of the Corporate Debtor (other than the fresh shares being allocated to the Resolution Applicant in terms of his Resolution Plan) shall be extinguished and cancelled by virtue of the order of the NCLT Order and there shall be no requirement to comply with

- procedure as required under the Companies Act 2013 or SEBI regulations. It shall be applicable and binding to all stakeholders (including Creditors and shareholders) of the Corporate Debtor, without requiring their consent or approval.
- iv. Simultaneous to the de-listing, 1 (one) day after the Payment Date, the issued equity share capital of the Corporate Debtor as held by its shareholders including the Promoter Group (if any) as on the date of the NCLT Order along with the pre-CIRP equity shares in terms of Step 6 above shall be (a) extinguished and cancelled in their entirety without any consideration other than that being paid to the public shareholders in terms of Paragraph 7.2 above (b) without requirement of writing of the words "and reduced" in the corporate name and style of Corporate Debtor.
- v. It is understood that capital reduction of the Corporate Debtor had earlier been undertaken in terms of the Previous Resolution Plan ("Earlier Capital Reduction"). Since the Previous Resolution Plan has not been implemented and the CIRP of the Corporate Debtor has been re-initiated resulting inter alia in restoration/non settlement of the debt of the Creditors it could be asserted that the Earlier Capital Reduction was not in compliance with Applicable Law. Accordingly, upon approval of this Resolution Plan the Earlier Capital Reduction would be deemed to have not occurred and the entire pre-CIRP equity including that of the Promoter Group shall be extinguished in terms of this Resolution Plan. For avoidance of doubt, it is clarified that the capital reduction in terms of this Resolution Plan may be continued from the current stage of the Corporate Debtor.
- vi. Extinguishment of shares of Corporate Debtor may be done

through capital reduction or selective capital reduction.

- vii. It is clarified for the avoidance of doubt that any changes made in the constitutional documents of the Corporate Debtor (i.e., the memorandum of association or articles of association of the Corporate Debtor) for the implementation of the provisions of the Plan will bind the Corporate Debtor and all its stakeholders, and no approval or consent shall be required from any other Person/Governmental Authority in relation to this action.
- viii. Upon implementation of this step, the share certificates or shares issued in the dematerialized form, in respect of the cancelled equity share capital of the Corporate Debtor held by their respective holders shall also be deemed to have been cancelled.
- ix. Upon the cancellation of the share capital of the Corporate Debtor as contemplated above, the amount of reduction in the equity share capital of the Corporate Debtor shall be credited to the capital reserve of the Corporate Debtor.

F) The share capital of the Corporate Debtor after the completion of the above steps shall be as follows:

- i. The Resolution Applicant shall acquire 100% (fresh) equity against such portion of the RA Infusion as may be determined by the Resolution Applicant in its own discretion.
- ii. The share capital of the Corporate Debtor after the completion of the above steps shall be as follows:

Name of Shareholder	Equity Shareholding
Resolution Applicant	100%

8. **Supervision of the Plan; Mechanism regarding management and control of the affairs of the Corporate Debtor**

i. **Management Post Effective Date and prior to the Closing**

Date - Regulation 38(2)(c) of CIRP Regulations provides for the resolution plan to set out adequate means for supervision of the implementation of the Plan. In view of the above stated Regulation and in order to ensure that the Corporate Debtor continues as a going concern and operates in its ordinary course of business prior to the Closing Date, the management of the Corporate Debtor between the Effective Date and the Closing Date ("Interim Term") will be carried out based on the mechanism described below:

a. Constitution of Monitoring Committee and its Power and

Responsibilities - On the Effective Date, a monitoring committee shall be constituted ("**Monitoring Committee**") which, shall comprise of 1 (one) Representative of the Secured Assenting Financial Creditors, 1 (one) Representative of the Resolution Applicant and the existing Resolution Professional, acting as the Monitoring Agent (defined below), each having one (1) vote. A total of 3 (three) members of the Monitoring Committee shall constitute the quorum of any meeting of the Monitoring Committee. During the term of the Resolution Plan, the Monitoring Committee shall, inter alia:

- Supervise the implementation of the Resolution Plan by the Resolution Applicant.
- Supervise and monitor the management and operations of the Corporate Debtor in the ordinary course and on a going concern basis, being undertaken by the Monitoring Agent, and as and when

deemed fit, provide instructions to the Monitoring Agent in this regard which shall be implemented by the Monitoring Agent.

- Subject to the aforesaid, the Monitoring Committee shall be entitled to do all such acts, deeds, matters and things as may be necessary in relation to implementation of the Resolution Plan by the Resolution Applicant in accordance with the terms of the Resolution Plan.
- The Monitoring Committee or its members or the entities nominating such members or the Monitoring Agent, shall not be liable for any act or omission in their capacity as such member or Monitoring Agent or for any act or omission pursuant to the terms of the Resolution Plan or for any actions of the Monitoring Agent to ensure preserving the going concern status of the Corporate Debtor. The Corporate Debtor will keep each member of Monitoring Committee and the Monitoring Agent indemnified for any costs, damages, liabilities, including legal costs imposed on or suffered by the member(s) of the Monitoring Committee and/ or the Monitoring Agent.
- All decisions of the Monitoring Committee shall be by way of a majority vote of all members present and voting.

b. Monitoring Agent and its Power and Responsibilities -

During the Term, Mr. Pulkit Gupta who is the existing Resolution Professional and therefore experienced in managing the affairs of the Corporate Debtor during the corporate insolvency resolution period, shall be appointed

as a monitoring agent ("Monitoring Agent") on such remunerations as may be mutually discussed and agreed upon between the Resolution Applicant and the Monitoring Agent. The Monitoring Agent shall be the ex officio chairperson of the Monitoring Committee and subject to the supervision of the Monitoring Committee and instructions, if any, given by the Monitoring Committee as mentioned above, shall have the power to:

- Manage and oversee the day-to-day operations of the Corporate Debtor and to ensure that the Corporate Debtor continues to function in the ordinary course of business.
- Manage all affairs of the Corporate Debtor and preserve its assets and business as a going concern.
- Supervise the withdrawals of funds from the bank accounts of the Corporate Debtor; and to such extent have similar duties, power and protection to that of a Resolution Professional under the corporate insolvency resolution period, subject to the supervision of the Monitoring Committee and instructions, if any, given by the Monitoring Committee as mentioned above.
- The Monitoring Agent shall be authorized to take all steps/ corporate actions required to be taken by the Corporate Debtor, for the timely implementation of the Resolution Plan including for ensuring corporate compliances.
- The Monitoring Agent shall be authorized to make any filings or applications on behalf of the Corporate

Debtor before any judicial/quasi-judicial/local or district administrative authorities.

- The Monitoring Agent shall continue to represent the Corporate Debtor in litigations and proceedings before various authorities by or against the Corporate Debtor. The Monitoring Agent shall provide regular updates to the Monitoring Committee on both operational matters of the Corporate Debtor as well as the steps undertaken in relation to implementation of the Resolution Plan.

9. **Financial Proposal:**

The Resolution Applicant's total plan value for the Corporate Debtor is INR 256.36 Crores i.e. Total Resolution Amount (it is clarified that this amount is a sum of the RA Infusion and Available Cash, accordingly on account of any decrease or increase in the amount of the Available Cash, the Total Resolution Amount will accordingly decrease or increase; it is further clarified that the RA Infusion will however remain constant), break-up of which amongst various stakeholders of the Corporate Debtor is provided below:

Sr. No.	Stakeholders /Creditors	Particulars
1.	IRP Costs	Payable in full and in priority to all other Creditors of the Corporate Debtor.
2.	Operational Creditors <i>(excluding Workmen and Employees)</i>	INR 40 Lakhs is proposed to be paid to the Operational Creditors <i>(excluding Workmen and Employees)</i> .
3.	Workmen and Employees	Nil payment is proposed to Workmen and Employees as we understand that there are no Claims from the Workmen and Employees.

		However, an amount of INR 8.89 Crores as of 31 March 2022 which is an unfunded liability of the Corporate Debtor towards gratuity and other dues of its Workmen and Employees (<i>i.e. OC Payment Amount</i>) shall be paid to the Workmen and Employees, as and when due, in terms of Applicable Law. It is clarified that the said amount will be arranged by the Resolution Applicant over and above the RA Infusion.
4.	Other Creditors (Form F)	Nil payment is proposed for the Other Creditors.
5.	Financial Creditors (<i>excluding the Financial Creditors which are related parties of the Corporate Debtor</i>)	<p>The Dissenting Financial Creditors (<i>if any</i>) shall be paid the amount due to them in terms of Sections 30(2), 53 of the Code read with Regulation 38 of the CIRP Regulations (<i>i.e. DFC Payout</i>) from the RA Infusion.</p> <p>The Secured Assenting Financial Creditors will be paid:</p> <p>(a) Available Cash;</p> <p>(b) Closing Adjustment Payment; and</p> <p>(c) RA Infusion (-) less payment of IRP Cost (-) less INR 40 Lakhs payable to the Operational Creditors (<i>excluding Workmen and Employees</i>) (-) less DFC Payout (-) less payment to Unsecured Assenting Financial Creditors (-) less INR 1 Lakh payable to public shareholders.</p> <p>(d) Unsecured AFC Amount (if any) in the</p>

		manner provided in Plan.
		Unsecured Assenting Financial Creditors: INR 2.50 Crores in the manner provided in Plan.
6.	Promoter Group <i>(includes Financial Creditors which are related parties of the Corporate Debtor)</i>	Nil payment is proposed for the Promoter Group <i>(includes Financial Creditors which are related parties of the Corporate Debtor).</i>
7.	Non-Promoter Group shareholders <i>(i.e. the public shareholders)</i>	Exit price aggregating to INR 1 Lakh from the RA Infusion in proportion to their existing shareholding in the Corporate Debtor.

10. The Resolution Applicant is eligible to submit resolution plan. The Successful Resolution Applicant has given an Affidavit satisfying the eligibility criteria as per the provisions under section 29A of the Insolvency & Bankruptcy Code, 2016.

11. 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. The Resolution Applicant has agreed to meet the cost of project from existing resources including infusion of equity/debt through

the parent company, from sale of unsold inventories and if required from raising finance through external sources.

- iv. The Resolution Applicant has also agreed that dissenting Financial Creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor. The Respondent has proposed to liquidation value to Unsecured Financial Creditors who dissent from the plan.
- v. Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- vi. Provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2)(d) & Regulation 38(2)(c).
- vii. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- viii. 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).
- ix. 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).
- x. 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.
- xi. 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.

- xii. 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 Sub-section (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)].
12. The Resolution Plan has been approved in the 20th COC meeting held on 16.11.2022 with 79.28% voting in accordance with the provisions of the Code and none of the stake holders find any objection application objecting the approval of the Resolution Plan.
13. 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.

14. 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)**.”*

15. 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.

16. 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. There are no workers claims. 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. 3698 of 2022 is allowed. The Resolution Plan submitted by **Innova Captab Limited**, 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. We shall clarify here that any amount recovered under any avoidance applications relating to the Corporate Debtor being allowed by the Adjudicating Authority would ensure unto the benefit of the Resolution Applicant.

- iv. 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.
- v. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vi. 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.
- vii. 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.
- viii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- ix. The Interlocutory Application No. 3698 of 2022 is accordingly **allowed** and **disposed of**.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

//Sourabh/LRA/Court-III//

Sd/-

H. V. SUBBA RAO
MEMBER (JUDICIAL)