

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV

IA. 2612 of 2023 IN
CP No. (IB) 1459/ (MB)/ C-IV/ 2020

In the matter of Application under section 30(6) for
approval of Resolution Plan under section 31(1)
of the Insolvency and Bankruptcy Code, 2016.

In the matter of :

Mr. Navin Khandelwal

... Resolution Professional of
the Corporate Debtor

In the matter of :

National Steel And Agro Industries Limited

...Financial Creditor

Versus

Rite Bite Private Limited

...Corporate Debtor

Order delivered on: 04.07.2023

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Shri Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant

: Mr. Rohit Dubey for the Resolution
Professional/ Applicant.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. The Bench is convened by videoconference today.
2. This Application under Section 30(6), 31 and 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) seeks the approval of the Resolution Plan submitted by the Successful Resolution Applicant.
 - 2.1 The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 02.06.2022 under section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Navin Khandelwal, was appointed as Interim Resolution Professional, who was appointed as Resolution Professional (RP) of the Corporate Debtor vide resolution passed by CoC its 1st meeting held on 01.07.2022.
 - 2.2 The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor. The RP issued Form-A under Regulation 6 dated 04.06.2022 and made Public Announcement calling the creditors to submit their claims. The last date for submission of proof of claim was 16.06.2022.
 - 2.3 Subsequently, the CoC approved the eligibility criteria for the prospective Resolution Applicants in the third Meeting of CoC held on 08.08.2022 and in this regard, an invitation for expression of interest was published in Form G on 13.08.2022 in one English namely "Free Press

Journal” and one regional language newspaper namely “Navshakti” wherein the last date for submission of Expression of Interest (“EOI”) was 28.08.2022 and last date for submission of Resolution Plan was 12.10.2022, which was extended by 7 days i.e. 19.10.2022 after due approval from CoC.

2.4 It is submitted by the Applicant that pursuant to the Publication of invitation for expression interest in Form G dated 13.08.2022, the Applicant received EOI from 3 Prospective Resolution Applicants (“PRA”). The said PRAs were featured in the Provisional List of PRA as well as Final List of PRA issued by the Applicant on 07.09.2022 and 12.09.2022 respectively.

2.5 The applicant further states that, two PRA had submitted their Resolution Plan on 19.10.2022 which was placed before the CoC for their consideration in the fifth CoC Meeting held on 20.10.2022.

2.6 Accordingly, in the 7th CoC meeting held on 22.11.2022, the Plans submitted by the prospective Resolution Applicants put forth for voting. The Applicant sought vote of the CoC members by electronic voting system which was conducted from 23.11.2022 to 24.11.2022.

2.7 Accordingly, the Resolution Plan submitted by Anjali Entrepreneurs Private Limited was approved by the CoC with 100% votes in its favour and the Prospective Resolution Applicant was declared as Successful Resolution Applicant (“SRA”).

2.8 It is submitted by the Applicant that the SRA has successfully furnished the Performance Security of Rs. 10,00,000 in the Bank Account of the

Corporate Debtor on 24.11.2022 and also have accepted the Letter of Intent issued by the Applicant on 24.11.2022

2.9 The salient features of the approved Resolution Plan of Successful Resolution Applicant are as follows:

Term of Resolution Plan shall be 3 months from the date of approval of the Resolution Plan by the adjudicating Authority. The Resolution Plqn shall be implemented in the following manner:

- (a) *Infusion by the Resolution Applicant of Insolvency Process Cos on actual basis within 30 days of the approval of the Resolution Plan by the Adjudicating Authority*
- (b) *After meeting out with the Insolvency Process Cost, remaining amount will be contributed by the resolution applicant in accordance with the below mentioned table. This amount shall be used for making payment to all the creditors and to other stakeholders in full and final settlement of their dues within 3 months of the approval of the resolution plan by the adjudicating authority. Resolution applicant can invest directly in the Corporate Debtor byway of equity or debt or the combination of both*

Term and Implementation Schedule of Rs. 110 Lakhs

<i>Sr. no.</i>	<i>Installment Amount</i>	<i>Payment Term</i>	<i>Payment shall be made to</i>
<i>1.</i>	<i>5,00,000</i>	<i>Within 1 month from the date order from AA</i>	<i>CIRP Expense (Any shortage in this will be adjusted with amount payable to financial creditor</i>

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2.	-	<i>Within 3 months from the date of order from AA</i>	<i>Employees or workman's due</i>
3.	52,53,333	<i>Upfront payment within 3 months from the date of order of AA</i>	<i>Secured Financial Creditor</i>
4.	52,46,667	<i>Within 3 months from the date of order of AA</i>	<i>Operational Creditor</i>
5.	-	<i>Within 3 months from the date of order of AA</i>	<i>Statutory Dues (Govt.)</i>

Cost of Resolution Plan and Distribution

The details of Creditor's claims admitted by the Resolution Professional claims and the amount provided against such claims in the plan are as follows:

S. No.	Particulars	Amount admitted as per IM	Percentage paid	Amount to be paid
1.	<i>Settlement of Insolvency Resolution Cost (Estimated Upto NCLT approval date)</i>	5,00,000	100%	5,00,000
2.	<i>Settlement of dues of Secured Financial Creditors</i>	-	-	-
3.	<i>Settlement of dues of Financial Creditors</i>	52,53,333	100%	52,53,333

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	<i>(Unrelated party)</i>			
4.	<i>Settlement of dues of Financial Creditors (related party)</i>	-	-	-
5.	<i>Settlement of dues of Employees, Workers for claims submitted</i>	-	-	-
6.	<i>Settlement of dues of Operational Creditors</i>	78,61,05,760	0.67%	52,46,667
7.	<i>Settlement of dues of Govt. dues</i>	-	-	-
8.	<i>Settlement of all other Current Liabilities (as per provisional financial statement asat 02.06.2022)</i>	-	-	-
9.	<i>Settlement of dues of Related Persons</i>	-	-	-
10.	<i>Settlement of Equity Share Holders</i>	-	-	-

Implementation Supervision and Monitoring of the Resolution Plan

Implementation of Resolution Plan	Proposed Timeline
Payment of Insolvency Resolution Cost	Within 30 days from NCLT approval of Resolution Plan
Appointment of 2 Directors in the Board of Company	Within 60 days from NCLT approval of Resolution Plan
Supervisory/Monitoring Committee	To be constituted within 30 days from NCLT approval of Resolution Plan
Subscription of Share of the corporate Debtor to the new Shareholders	Within 60 days from NCLT approval of Resolution Plan
Appointment of suitable management professionals to run the operations of Corporate Debtor, if required	Within 60 days from NCLT approval of Resolution Plan

Proposed Monitoring Committee

- Two Member from Financial Creditor
- Resolution Professional
- Two Member from proposed Board of Director
- Fees proposed for the Resolution Professional during Monitoring Committee period shall be equivalent to the fees of Resolution Professional during the CIRP period including any ancillary expenses.

3. The applicant, in response to query raised by this bench vide order dated

07.02.2022, was directed to file complete financial statements of the Corporate Debtor as on date of CIRP by way of additional Affidavit. In pursuance to the direction of this Bench, the Applicant has filed its Additional Affidavit dated 11.03.2023 placing on record the financial statements for the period 01.04.2021 to 31.03.2022 and 01.04.2022 to 02.06.2022 (i.e. until the Insolvency commencement date).

4. The Applicant states and submits that
 - i. the Resolution Plan is in due compliance with the requirements of Section 30(2) of the Code read with Regulation 38 of the CIRP Regulations and the Resolution Applicant is eligible to submit resolution plan and it does not fall under any of the category as mentioned in Section 29A of the Code;
 - ii. the Resolution Plan has been approved by the CoC by majority in their commercial wisdom as they have found the plan to be viable and feasible;
 - iii. no transaction(s) were found falling under the provisions of section 43, 45, 50 & 66 of the Code, hence no application(s) was filed before Adjudicating Authority; and
 - iv. The Resolution Plan is not subject to any contingency and is filed 3 days before the expiry of the period of CIRP provided in section 12 of the Code
5. The Applicant has filed application along with Form 'H' prescribed under Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and has appended a tabular summary of Applicant's determination of compliance of the Resolution Plan with various provisions and regulations under the Code and CIRP Regulations and has declared that-

- a. The Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of Operations;
- b. The Resolution Applicant is eligible to submit resolution plan as per the final list of Resolution Professional;
- c. The Resolution Applicant has submitted an Affidavit stating that it is eligible;
- d. The Resolution Plan-
 - i. provides for the payment of insolvency resolution process costs;
 - ii. provides for the payment to the operational creditors;
 - iii. provides for the payment to the financial creditors who did not vote in favour of the resolution plan.
 - iv. provides for the management of the affairs of the Corporate Debtor.
 - v. provides for the implementation and supervision of the resolution plan.
 - vi. Contravenes any of the provisions of the law for the time being in force.
- e. The Resolution Plan-
 - i. is feasible and viable according to the CoC, and
 - ii. has been approved by the CoC with 66% voting share;
- f. The Resolution plan has provisions for its effective implementation plan, according to the CoC;
- g. The amount due to the operational creditors under the resolution plan has been given priority over financial creditors;
- h. The Resolution Plan includes a statement as to how it has dealt with the interests of all stakeholders;
- i. The Resolution Applicant or any of its related parties have not failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code;

- j. The Resolution Applicant has submitted the statement giving details of such non-implementation;
 - k. The Resolution Plan provides-
 - i. the term of the plan and its implementation schedule;
 - ii. the management and control of the business of the Corporate Debtor during its term;
 - iii. Adequate means for supervising its implementation.
 - l. The Resolution Plan demonstrates that-
 - i. it addresses the cause of default;
 - ii. it is feasible and viable;
 - iii. it has provisions for its effective implementation;
 - iv. it has provisions for approvals required and the timeline for the same;
 - v. the resolution applicant has the capability to implement the resolution plan.
 - m. The RP has not filed applications in respect of transactions observed, found or determined by him;
 - n. The RP has provided details of performance security received as referred to in sub-regulation (4A) of regulation 36B.
6. We have heard the counsel(s) and perused the material on record.
- a. We note that no application has been filed by any person opposing the plan and no application relating to avoidance transactions is pending before us. We have perused the financial statements of the Corporate Debtor and find that no statutory dues are pending against the corporate debtor and no claim has been received from any workmen or employees relating to Provident Fund, ESI or Gratuity.

- b. After noticing that the Corporate Debtor has receivables amounting to 51.83 Cr. and the proceeds of realization therefrom has not been clearly dealt with in the Plan, this Bench, vide its order dated 30.3.2023, remitted back this Plan and directed the Resolution Professional to hold a meeting of CoC and Successful Resolution Applicant to give clarity of treatment of such proceeds of debtors. Accordingly, IA no. 3724 of 2022 in CP No. (IB) 1459/ (MB)/ C-IV/ 2020 was disposed off with liberty to the Resolution Professional to file fresh Application within 20 days from the communication of the order for passing fresh order.
- c. In pursuance to the order dated 30.03.2023, the Resolution Professional immediately intimated the contents of order to the CoC members and the successful resolution applicant and has filed an IA no. 2612/2023 on 19.04.2023, which came up for hearing on 22.06.2023. The Applicant Resolution Professional has submitted that a meeting of CoC was convened on 12.04.2023 in which the successful resolution applicant submitted the response regarding treatment of receivables in its resolution plan and agreed to submit necessary affidavit to clarify regarding treatment of receivables of INR 51.83 Cr. The successful resolution applicant submitted the affidavit dated 19.04.2023 stating that, though, there are outstanding receivable of Rs. 51.83 Crores in the books of the Corporate Debtor, but there exists a provision for doubtful debts amounting to Rs. 51.64 Crores against said receivable in that financial statement, accordingly, the rarest possibility exist of recovery. It is further stated by the Successful Resolution Applicant that *“Moreover by paying an amount much above than the estimated liquidation value by them of the corporate debtor and providing more than mandatory payments to the creditors, the RA believes that in the amount of surplus above estimated liquidation value by them it has adequately considered the receivables as well”*. It is further

stated by the SRA that “*However, the SRA believes the same to be bad and irrecoverable, therefore in case any recovery occurs out of these receivables the same shall be used as an working capital within the corporate debtor. This affidavit shall be read along with our resolution plan dated 11.10.2022 and the binding in the same manner as the finally submitted resolution plan*”.

- d. This Bench has considered the submission of the Successful Resolution Applicant in relation to outstanding receivables amounting to Rs. 51.83 Crores and finds merit in the contention of the Successful Resolution Applicant that, out of this sum, a sum of Rs 51.64 Crores is considered as bad by the Corporate Debtor itself, and if any sum is recovered, the same shall be utilized for the purpose of working of the corporate debtor.
- e. In view of the foregoing, this Bench is of the considered view that IA no. 2612 of 2023 read along with IA 3724/2022 deserve to be allowed, and the Resolution Plan annexed with IA 3724/2022 read with Affidavit dated 19.4.2023 of the Successful Resolution Applicant is approved.

ORDER

- 7. The Interlocutory Application No. 2612 of 2023 in CP(IB) 1459 of MB/2020 is allowed and disposed of accordingly along with IA 3724/2022. 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 the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- 7.1 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.

- 7.2 The moratorium under Section 14 of the Code shall cease to have effect from this date.
- 7.3 The Monitoring Committee, to be constituted in accordance with clause 6.2 of the Plan, 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.
- 7.4 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. Any waiver sought in the Resolution Plan, shall be subject to compliance with procedure and approval by the Authorities concerned in accordance with the law applicable to such authority, subject to the provisions of this Code. However, the authorities shall not deny any relief or waiver, which is otherwise permissible in accordance with the law applicable to them read with the provisions of this Code, on account of settlement of dues of such authority at less than their claim amount.
- 7.5 In terms of the judgement of Hon'ble Supreme Court in the matter of Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, "on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to

initiate or continue any proceedings in, respect to a claim, which is not 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.”

7.6 In view of the above judgement, the applicant is entitled to waivers/ concessions/reliefs as expressly provided under the Code and under any other

law for the time being in force. Further, any application for renewal or extension or restoration of any license or approval or connection from any authority shall be subject to payment of prescribed fee and/or deposit(s) and adherence to the procedure stipulated by such authority, however such authority shall not refuse/deny approval/extension/restoration merely on ground of previous defaults/non-compliance of the Corporate Debtor.

- 7.7 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.
- 7.8 The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
8. With the above directions, the Resolution Plan of the Applicant is hereby approved. Accordingly, IA-2612 of 2023 in CP(IB) 1459 of MB/2020 is **allowed and disposed** of accordingly along with IA 3724/2022.

Sd/-
Prabhat Kumar
Member (Technical)
04.07.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)