



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH,  
PRAYAGRAJ**

---

**IA NO.243/2023  
IN  
CP (IB) NO.342/ALD/2018**

**IN THE MATTER OF:**

*(An Under Section 30 of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016)*

Vivek Raheja,  
Resolution Professional,  
Baghaulti Sugar & Distillery Limited,  
IP Registration No.IBBI/IPA-001/IP-P00055/2017/18/10133,  
JD-2C, 2<sup>nd</sup> Floor, Pitampura, Delhi 110034

**..... Applicant/ Resolution Professional**

***Versus***

Committee of Creditor through its lead Bank  
Bank of Baroda,  
Stressed Assets Management Branch,  
4<sup>th</sup> Floor, Rajendra Bhawan,  
Rajendra Palace, New Delhi - 110008

**.....Respondent No.1**

Dalmia Bharat Sugar and Industries Limited  
(Successful Resolution Applicant)  
Corporate office at :  
11<sup>th</sup> & 12<sup>th</sup> Floor, Hansalaya Building,  
15 Bharakhamba Road,  
New Delhi 110001

**.....Respondent No.2**

*In the matter of:*

Baghaulti Sugar & Distillery Limited

**.....Corporate Debtor**

**Order pronounced on 24<sup>th</sup> November, 2023**



**Coram:**

Mr. Praveen Gupta. : Member (Judicial)  
Mr. Ashish Verma : Member (Technical)

**Appearances:**

Sh. Punit Bali Sr. Adv. assisted by : *For the RP Mr. Vivek Raheja*  
Sh. Karan Gandhi, Adv. : *present in person*

Sh. Abhinendra Maheshwari, Adv. : *For the CoC/ Respondent No.1*

Sh. Amit Jhanji, Sr. Adv. assisted by: *For the SRA/ Respondent no.2*  
Sh. Viren Sharma, Sh. Sachit Singla,  
& Sh. Diptiman Singh, Advs.

**ORDER**

***Preliminary***

1. The present Interlocutory Application bearing IA No.243/2023 has been filed on behalf of Mr. Vivek Raheja, Resolution Professional (hereinafter referred as **“RP”**) of the Corporate Debtor i.e. M/s Baghauli Sugar & Distillery Limited under the provisions of Section 30 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **“the Code”** or **“IBC”**) read with Regulation 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ( hereinafter referred as **“CIRP Regulations”**) for approval of the Resolution Plan in respect of M/s Baghauli Sugar & Distillery Limited (**“Corporate Debtor”**).
2. The underlying Company Petition CP (IB) No.342/ALD/2018 filed on behalf of Financial Creditor i.e. Bank of Baroda under



Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”), which was admitted by this Adjudicating Authority *vide* its order dated 07.02.2020 (“**Admission Order**”). On that date, *i.e.*, 07.02.2020 (“**Insolvency Commencement Date**”), Mr. Vivek Raheja (IBBI/IPA-001/IP-P00055/2017/18/10133) was appointed as IRP.

### ***Collation of claims by RP***

3. It is stated in Resolution Plan that the public announcement was made on 10.02.2020 in *Financial Express (English)* and *Jansatta (Hindi)*, the last date for submission of claims was 21.02.2020, and RP called for proof of claims from the creditors of the Corporate Debtor and informed lenders to submit their claims as envisaged under the Code.
4. That pursuant to the public announcement made in FORM-A by the Resolution Professional, the details of claim submitted is as follows :-

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount claimed in Rs.</b>	<b>Amount of claim admitted in Rs.</b>	<b>% of Amount Claimed</b>
1	Secured Financial Creditors	3,46,63,90,852	3,30,39,05,429	95.31%
2	Unsecured	1,96,44,98,384	1,94,78,38,951	99.15%



	Financial Creditors (Related Party)			
3	Workmen & Employees	2,16,274	2,16,274	100%
4	Government dues	NIL	NIL	NIL
5	Operational Creditors (Other than Workmen and Employees and Government Dues)	61,67,842	55,53,689	90.04%
<b>Grand Total</b>		<b>5,43,72,73,352</b>	<b>5,25,75,14,343</b>	<b>96.69%</b>

5. Thereafter, Applicant/ RP constituted the CoC on the basis of the financial statements *interalia* information available and provided at the relevant time. The constituted CoC with the following Financial Creditors by mentioning their voting percentage are as under :-

<b>Sr. No.</b>	<b>Name of Financial Creditors</b>	<b>Class of Creditors</b>	<b>Voting Share (%)</b>
<b>1.</b>	Bank of Baroda	Secured Financial Creditor	56.23%
<b>2.</b>	Punjab National Bank (Erstwhile OBC)	Secured Financial Creditor	16.22%
<b>3.</b>	Union Bank of India	Secured Financial Creditor	8.83%
<b>4.</b>	Bank of India	Secured Financial Creditor	18.44%
<b>5.</b>	IFCI Ltd. acting on behalf of Govt. of India	Secured Financial Creditor	0.28%
	<b>TOTAL</b>		<b>100%</b>



6. The RP submits that a total of 34 CoC meetings have been held during the whole CIRP period.

### ***Evaluation and voting***

7. It is stated that the 3<sup>rd</sup> CoC meeting was convened by the Applicant/ RP on 02.06.2020 proposing for publishing the Form G inviting Expression of Interest 'EOI'. The same was passed with 90.56% voting shares by the CoC. Further, the Applicant/ RP published the brief particulars of the invitation of EOI in prescribed Form G on 11.06.2020, whereby the Proposed Resolution Applicants were invited to submit their EOI for submission of their Resolution Plans for the Corporate Debtor by 26.06.2020. The said Form G was also published on the IBBI website. In pursuance of publication of Form G, two EOIs were received by the RP, however no Resolution Plan was submitted.
8. Thereafter, in pursuance of 4<sup>th</sup> CoC meeting held on 05.08.2020, the RP had again issued Form G, which was published on 13.08.2020, in which no EOI was received. Further, as discussed in the 5<sup>th</sup> CoC meeting held on 01.10.2020, RP had issued Form G again and after publishing the same on 07.10.2020, RP had received EOI from three Prospective Resolution Applicants ( hereinafter referred as "**PRAs**"), out of



whom, two PRAs had already submitted their EOIs earlier. Thereafter, provisional list of PRAs was issued on 22.10.2020 and objections were invited till 27.10.2020. Therefore, as there were no objections received, the final list of of PRAs was issued on 29.10.2020, and the PRAs have been supplied the information memorandum and other details with respect to the Corporate Debtor for submission of Resolution Plan. The last date for submission of Resolution Plan was 24.11.2020. In the result, as no Resolution Plan was received from PRAs till the last date of submission, the CoC in its 8<sup>th</sup> meeting held on 14.12.2020 resolved to again issue EOI, which was accordingly published on 19.12.2020, and the RP had received 8 responses in terms of EOI, which are as under :-

<b>SR. NO.</b>	<b>NAME</b>
<b>1.</b>	DCM Shriram Infrastructure Limited
<b>2.</b>	Sri Jaibalaji Steel Rolling Mills Private Limited
<b>3.</b>	Superior Food Grains (P) Limited
<b>4.</b>	Gulshan Polyols Limited
<b>5.</b>	Kundan Care Products Limited
<b>6.</b>	Kundan International Private Limited
<b>7.</b>	Equilibrated Venture Cflow Private Limited
<b>8.</b>	RKG Asset Management LLP

9. In pursuance thereto, the Resolution Professional has received two Resolution plans. The RAs who have submitted the Resolution Plans, are given as under :-



1) Kundan Care Products Limited

2) Equilibrated Venture Cflow Private Limited

10. The RP had received the final Resolution Plan after removing the defects on 11.03.2022, which was to be received till 04.03.2022 as resolved in the 22<sup>nd</sup> CoC meeting held on 02.03.2022. Thereafter, in the 23<sup>rd</sup> CoC meeting held on 10.03.2022 & 11.03.2022, quantitative parameters and qualitative parameters of the Resolution Plan in terms of Evaluation Matrix forming part of RFRP documents was considered at length and consequently the Kundan Care Products Ltd. scored the highest Resolution Plan in both quantitative parameters and qualitative parameters. Further, both the Resolution Plan were put to vote by electronic voting from 14.03.2022 till 08.04.2022, and upon the said Resolution Plan, the Members was abstained from voting with 72.45%. Thereafter, the RP held 25<sup>th</sup> CoC meeting on 16.04.2022, and the resolution for liquidation of Corporate Debtor was passed by 99.72% voting majority.

11. In pursuance thereto, the RP has moved the application for liquidation before this Tribunal vide IA No.127/2022 and during the pendency of said application, one of the RA namely Equilibrated Venture Cflow Private Limited filed an IA



No.173/2022 for acceptance of its enhanced proposal and consider for approval of its resolution plan, which was allowed. Accordingly, RP had withdrawn the IA No.127/2022 as discussed in 26<sup>th</sup> CoC meeting. Subsequently, RP had filed an IA No.443/2022 seeking exclusion of time period from the CIRP as well as for publication of fresh Form G. This application was allowed and permission was granted to publish fresh Form G.

- 12.** Further, RP conducted and confirmed in the 27<sup>th</sup> CoC meeting regarding publication of Form G, which was published on 12.12.2022 and the last date for receipt of EOI was 27.12.2022. In pursuant thereto, the RP had received 17 responses in terms of EOI, which are as under :-

<b>SR. NO.</b>	<b>NAME</b>
<b>1.</b>	RKG Fund I, A Scheme of RKG Trust
<b>2.</b>	Equilibrated Venture Cflow Private Limited
<b>3.</b>	Ideal BuildTech Pvt. Ltd.
<b>4.</b>	Sandeep Gupta, Shalini Gupta And AK Mittal
<b>5.</b>	SBM and Co. Pvt Ltd and Atharv Sugar Private Limited
<b>6.</b>	Divri Inframanagement Pvt. Ltd, Chandra Laxmi Hospital P. Ltd and Mukesh Kumar Agarwal
<b>7.</b>	Sponge Sales India Pvt. Ltd
<b>8.</b>	SVM Impex Private Limited
<b>9.</b>	Dalmia Bharat Sugar and Industries
<b>10.</b>	Bommidala Enterprises Pvt Ltd.





11.	Vijay Laxmi Ravi Industries in consortium with Shees Ram Singh Ravi
12.	Pramod Saxena Contractor, represented by Sole Propreitor, Pramod Saxena
13.	Anil Khandelwal
14.	Joginder Khurana
15.	Ashish Goyal
16.	Manju Singhal
17.	Amrit Agarwal

13. Thereafter, RP out of 17 PRAs, received six resolution plan from the following PRAs :-

SR. NO.	NAME
1.	Consortium of Sandeep Gupta, Shalini Gupta And AK Mittal
2.	Consortium of SBM and Co. Pvt Ltd and Atharv Sugar Private Limited
3.	Dalmia Bharat Sugar and Industries
4.	Equilibrated Venture Cflow Private Limited
5.	RKG Fund I, A Scheme of RKG Trust
6.	SVM Impex Private Limited

14. Further, in 33<sup>rd</sup> CoC meeting held on 21.04.2023, six resolution plans were put for e-voting, which as per instructions of CoC was kept open from 24.04.2023 till 11.05.2023. Therefore, the CoC had approved the Resolution Plan submitted by M/s Dalmia Bharat and Sugar Industries Limited and it is declared Successful Resolution Applicant (hereinafter referred as “**SRA**”) with 100% voting majority. The relevant agenda item no.10 which is annexed as Annexure 8 with the application passed by



the CoC member with 100% of its vote share in 33<sup>rd</sup> meeting, is reproduced hereunder:

**ITEM NO.10**

**TO DISCUSS AND APPROVE THE RESOLUTION PLAN OF DALMIA BHARAT SUGAR AND INDUSTRIES LIMITED**

**"RESOLVED THAT** in pursuant to Section 30(3) of the Insolvency and Bankruptcy Code 2016 read with Regulation 39(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the consent of members of the CoC be and is hereby accorded to approve the Final Resolution Plan submitted by Dalmia Bharat Sugar and Industries Limited along with all the Addendum and Annexures."

**"RESOLVED FURTHER THAT** pursuant to the provisions of Section 30(6) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the Resolution Professional be and is hereby authorized to submit the Resolution Plan as approved by the Committee of Creditors to the Hon'ble NCLT and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto."

**Votes Casted**

Name of CoC Member	Voting Share (%)	Votes Caste (%)			
		For	Against	Abstained	Not Voted
Bank of Baroda	56.23%	Assented	-	-	-
Punjab National Bank (e-OBC)	16.22%	Assented	-	-	-
Union Bank of India	8.83%	Assented	-	-	
Bank of India	18.44%	Assented	-	-	
IFCI Ltd acting on behalf of Govt of India	0.28%	Assented	-	-	
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>



15. A compliance Certificate in terms of prescribed Form H under regulation 39(4) of the CIRP Regulations was also filed before this Tribunal. As per FORM H, the fair value of the Corporate Debtor is **Rs.1,18,39,50,320/-** and the liquidation value is **Rs.69,41,71,814/-** as per the registered valuers report.

***Details of Resolution Plan/ Payment Schedule***

16. The Successful Resolution Applicant M/s Dalmia Bharat and Sugar Industries Limited is one of the youngest major sugar companies in India and one of the fastest-growing cane-based multi-product companies in India.

***The amount proposed in the Resolution Plan are tabulated below:***

<b>Sl. No.</b>	<b>Types of debts</b>	<b>Resolution Amount (In Rs.)</b>	<b>Payment Term</b>
1.	CIRP Cost	5 Crore	Rs.5 Crore shall be paid within 90 days of the approval of Resolution Plan.
2.	Secured Financial Creditor	134.50 Crore	Rs.134.50 Crore (including 3 Crore for assignment of 20 Crs. of remaining Debt along with release of personal guarantees of Ram Balak and his collateral securities) shall be



			paid within 90 days of the approval of Resolution Plan.
3.	Unsecured Financial Creditor	NIL	NIL
4.	Operational Creditors (Statutory dues)	NIL	NIL
4.	Operational Creditors (Goods & Services)	0.17 Crore	Rs.0.17 Crore shall be paid within 90 days of the approval of Resolution Plan
5.	Workmen/ Employees	0.02 Crore	Rs.0.02 Crore shall be paid within 90 days of the approval of Resolution Plan
6.	Contingent Liabilities (Non Statutory)	0.50 Crore	Rs.0.50 Crore shall be paid within 90 days of the approval of Resolution Plan
7.	Statutory Dues as per Information Memorandum	NIL	NIL
8.	Infusion of funds for Capex	235 Crore	To be infused as and when required

**Estimated Total Amount Proposed to be brought in the Corporate Debtor for the turnaround of the Corporate Debtor:**

<b>S. No.</b>	<b>Particulars</b>	<b>In Rupees</b>
<b>A</b>	CIRP Cost	5 Crore
<b>B</b>	Upfront cash payment to the Financial Creditors to be paid within 90 days from the approval date	134.50 Crore



<b>C</b>	<b>Total Upfront Cash Payment as part of Resolution Plan (A+B)</b>	139.50 Crore
<b>D</b>	Workmen & Employee/due/claim retirement benefit	0.02 Crore
<b>E</b>	Operational Creditor (Goods & Services)	0.17 Crore
<b>F</b>	Other Creditors	NIL
<b>G</b>	<b>Payment to outside party (C+D+E+F)</b>	139.69 Crore
<b>H</b>	Contingent Liabilities (Non Statutory)	0.50 Crore
<b>I</b>	Repairs/Refurbishment (To be brought through equity)	NIL
<b>J</b>	Working capital margin (To be brought through equity)	235 Crore
<b>K</b>	<b>Total Fund Required (G+H+I+J)</b>	<b>375.19 Crore</b>

### ***Sources of Funds***

- 17.** The overall Resolution Plan is for a total amount of approximately Rs.140.19 Crores which shall be infused by Successful Resolution Applicant by equity infusion, unsecured loan from Banks.
- 18.** The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations, which a Resolution Plan is required to adhere to, as follows:



**Compliance with Section 30(2) of the Code:**

<b>Section 30(2) of Insolvency and Bankruptcy Code, 2016</b>	<b>Compliance under Resolution Plan</b>	<b>Relevant Page Number of Application</b>
(a) Plan must provide for payment of CIRP cost in priority to repayment of other debts of the CD in the manner specified by the Board.	Provided in Chapter VIII Clause 3 of the Resolution Plan	Page 590 (Page 69 of Resolution Plan)
(b) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than	Provided in Chapter VIII Clause 3 of the Resolution Plan	Page 590 (Page 69 of Resolution Plan)
(b)(i) the amount payable to them in the event of liquidation u/s 53; or	Provided in Chapter VIII Clause 3 of the Resolution Plan	Page 590 (Page 69 of Resolution Plan)
(b)(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and	Provided in Chapter VIII Clause 3 of the Resolution Plan	Page 590 (Page 69 of Resolution Plan)



(b) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	NA (as the Resolution Plan is approved by 100% voting)	NA
(c) Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Provided in Chapter X Clause 2 of Resolution Plan	Page 595 (Page 74 of Resolution Plan)
(d) Implementation and Supervision.	Provided in Chapter XI Clause 4 of Resolution Plan	Page 599 (Page 78 of Resolution Plan)
(e) Plan does not contravene any of the provisions of the law for the time being in force.	Provided in Chapter XV Clause 4 of Resolution Plan	Page 623 (Page 102 of Resolution Plan)

**Measures provided in Resolution Plan in terms of Regulation 37 of CIRP Regulations.**

<b>Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</b>	<b>Compliance under Resolution Plan</b>	<b>Relevant Page Number of Application</b>
a) transfer of all or part of the assets of the corporate debtor to one or more persons;	No such sales envisaged under the Resolution Plan	Page no.539 (Page no.18 of Resolution Plan)
b) sale of all or part of the assets whether subject to any security interest or not;	No such sales envisaged under the Resolution Plan	Page no.539 (Page no.18 of Resolution Plan)



ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Provided in Chapter IX Clause 1 of Resolution Plan	Page no.593 (Page no.72-73 of Resolution Plan)
c) the substantial acquisition of shares of the corporate debtor, or the merger or the consolidation of the corporate debtor with one or more persons;	Provided in Chapter VIII Clause 3 of Resolution Plan	Page no.589 (Page no.68 of Resolution Plan)
ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Provided in Chapter IX Clause 1 of Resolution Plan	Page no.593 (Page no.72-73 of Resolution Plan)
d) satisfaction or modification of any security interest;	Provided in Chapter IX Clause 1 of Resolution Plan	Page no.593 (Page no.72-73 of Resolution Plan)
e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Debts of various category of creditors are proposed to be settled, restructured/ waived as provided under the Resolution Plan	Page 540 (Page 19 of Resolution Plan)
f) reduction in the amount payable to the creditors;	Resolution amount proposed by the RA shall result in partial recovery of the dues of the creditors as detailed in the financial plan	Page 540 (Page 19 of Resolution Plan)
g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Resolution Plan proposes upfront settlement of the entire debt. Hence there are no change of term	Page 540 (Page 19 of Resolution Plan)





h) amendment of the constitutional documents of the corporate debtor	Provided in Chapter XIII Clause 22 of Resolution Plan	Page 613 (Page 92 of Resolution Plan)
i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Provided in Chapter III Clause A of Resolution Plan	Page 535 (Page 14 of Resolution Plan)
j) change in portfolio of goods or services produced or rendered by the corporate debtor;	The RA presently intends to carry on the business in the same line of activity as that of the CD	Page 541 (Page 20 of Resolution Plan)
k) change in technology used by the corporate debtor; and	The resolution plan proposes to modernize and upgrade the processes of CD	Page 541 (Page 20 of Resolution Plan)
l) Obtaining necessary approvals from Central and State Governments and other authorities	Provided in Chapter XI Clause 2 of Resolution Plan	Page 597-598 (Page 76-77 of Resolution Plan)

***Mandatory contents of Resolution Plan in terms of***

***Regulation 38(1) of CIRP Regulations:***

<b>Regulation 38(1) and (2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</b>	<b>Compliance under Resolution Plan</b>	<b>Relevant Page Number of Application</b>



38(1)(a) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors	Provided in Chapter VIII Clause 5 of Resolution Plan	Page no.590 (Page no.69 of Resolution Plan)
38(1)(b) The amount payable under a resolution plan - (b) 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.	Provided in Chapter VIII Clause 5 of Resolution Plan	Page no.590 (Page no.69 of Resolution Plan)
38 (1A) Shall include a statement as to how it has dealt with the interests of all the stakeholder, including financial creditors and operational creditors of the Corporate Debtor	Provided in Chapter VIII Clause 5 of Resolution Plan	Page no.590 (Page no.69 of Resolution Plan)
38 (1B) shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan	Provided in Chapter XV Clause 4 of Resolution Plan	Page 623 (Page 102 of Resolution Plan)



approved by the Adjudicating Authority at any time in the past		
38 (2)(a) shall provide for the term of the plan and its implementation schedule;	Provided in Chapter XI & XII	Page 597-602 of Application and Page No.76-81 of the Resolution Plan
38 (2)(b) shall provide for the management and control of the business of the Corporate Debtor during its term	Provided in Chapter X	Page 595 of Application and Page No.74 of the Resolution Plan
38 (2)(c) Shall provide for the adequate means for supervising its implementation.	Provided in Chapter XI Clause 4	Page 599-600 of Application and Page No.78-79 of the Resolution Plan
38 (3) A resolution plan shall demonstrate that – (a) it addresses the cause of default;	This has been provided in Resolution Plan in Chapter V	Page 557-563 of Application and Page



<p>(b) it is feasible and viable;</p>	<p>This has been provided in Resolution Plan in Chapter IV &amp; VII</p>	<p>No.36-42 of the Resolution Plan. Page 544-556 &amp; 566-574 of Application and Page No. 23-35 &amp; 45-53 of the Resolution Plan.</p>
<p>(c) it has provisions for its effective implementation;</p>	<p>This has been provided in Resolution Plan in Chapter XI &amp; XII</p>	<p>Page 597-602 of Application and Page No.76-81 of the Resolution Plan.</p>
<p>(d) it has provisions for approvals required and the timeline for the same; and</p>	<p>This has been provided in Resolution Plan in Chapter XI &amp; XII</p>	<p>Page 597-602 of Application and Page No.76-81 of the Resolution Plan.</p>
<p>(e) the resolution applicant has the capability to implement the resolution plan.</p>	<p>This has been provided in Resolution Plan in Chapter IV</p>	<p>Page 544-556 of Application and Page No.23-35 of the Resolution Plan.</p>



### **Details of Monitoring Committee:**

Name(s) of the proposed member(s) of implementation and monitoring committee	Brief description of the Proposed member(s) of the I & M committee
1. Vivek Raheja.	Resolution Professional
2. Two representatives nominated by lead Bank i.e. Bank of Baroda.	Representatives of CoC Representatives of Successful Resolution Applicant
3. Mr. Pankaj Rastogi and; Mr. Naveen Kumar Gupta.	

19. The Applicant submits that the SRA has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the SRA, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations. The affidavit under Section 29A is at page no.279-281 in the application, which is reproduced thereunder:-

*We "**Dalmia Bharat Sugar And Industries Limited**" State, submit and confirm as follows:-*

*1. We hereby unconditionally state, submit and confirm that we are not disqualified from submitting a Resolution Plan in respect of Baghaulti Sugar and Distilleries Private Limited, pursuant to the provisions of the IB Code and/or otherwise.*

*2. We state, submit and declare that none of (a) us being the Resolution Applicant; (b) any other person acting jointly or in concert with us; (c) any person who is a promoter and/or in the management and/or control of the Resolution Applicant; (d) any person who shall be the promoter and/or*



*in management and/or control of Baghaulti Sugar and Distilleries Private Limited during the implementation of the Resolution related party of any person referred to in(c) and/or (d)*

- a) is an undercharged insolvent;*
- b) is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;*
- c) at the time of submission of the Resolution Plan, has an account, or an account of a corporate debtor under my/our or under an of the above mentioned person's management or control or of whom I/us or any of the above mentioned persons is/are a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law at the time being in force an at least a period of one year has not lapsed from the date of such classification, if applicable, till the date of the commencement of the corporate insolvency resolution process of the Corporate Debtor;*
- d) has been convicted for any offence punishable with imprisonment for two years or more under any Act specified in the Twelfth Schedule of for seven years or more under any law for the time being in force;*
- e) is disqualified to act as a director under the Companies Act, 2013;*
- f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities market;*
- g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudication Authority under the IBC Code.*
- h) has executed a guarantee in favor of a creditor in respect of a corporate debtor against which an*



*application for insolvency resolution made by such creditor has been admitted under this IBC Code; and no such guarantee has been invoked by the creditor or, if invoked, remains unpaid in full or part;*

- i) is subject to any disability corresponding to (a) to (h) above under nay law in a jurisdiction outside India;*
- j) has a connected person not eligible under clauses (a) to (i).*

*The expression "connected person" means-*

- (i) any person who is the promoter or in the management or control of the resolution applicant; or*
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementing of the resolution plan; or*
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clause (i) and (ii).*

*3. That the Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself, other person acting jointly or in concert with it and all the connected persons as required under the Code and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not have a connected person who is ineligible under clause (a) to (i) of section 29A of the Code.*

*4. That the Applicant unconditionally and irrevocably agrees and undertakes that is shall make full disclosure in respect of itself, other person acting jointly or in concert with it and all the connected persons as per the provision of the Code and the rules and regulations framed thereunder to submit a resolution plan and that it shall provide all documents, representations and Information as may be required by the RP or the CoC to Substantiate to the satisfaction of the RP and the CoC that the Applicant is eligible under the Code and the rules and regulations thereunder to submit a resolution plan in respect of the Corporate Debtor.*

*5. That the Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and*



information as may be required to verify the statements made under this affidavit including without Limitation, the following details:

- a. persons who are promoters on In management or control of the Resolution Applicant;
- b. persons who will be promoters or in management or control of the Corporate Debtor during the implementation of the Resolution Plan;
- c. holding companies, subsidiary companies, associate companies and related parties of the persons mentioned at (a) and (b) and
- d. Details of convictions, pending criminal proceedings, disqualifications under the Companies Act, 2013 orders of directions issued by SEBI, categorization as willful defaulters, etc. of the Resolution Applicant, other person acting jointly or in concert with it and the connected person.

6. That the Applicant understands that the CoC and the RP may evaluate the resolution plan to be submitted by the Applicant or any other person acting, jointly with it and such evaluation shall be considered to be a breach of the terms of the RFRP and accordingly the resolution plan submitted in terms of the RFRP shall be considered to be non-responsive and hold the Resolution Applicant ineligible form participating in the process of CIRP of the Company.

7. That the Applicant agrees that each member of the CoC and the RP are entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility and assessing, agreeing and approving the resolution plan submitted by the Applicant.

8. That in the event any of the above statements are found to be untrue or incorrect, then the Applicant unconditionally agrees to indemnify and hold harmless the RP and each member of the CoC against losses, claims or damages incurred by the Applicant.

9. That the Applicant agrees and undertakes to disclose/inform forthwith, to the RP and the members of the CoC, if the Applicant becomes aware of any change in factual information in relation to its connected person (as defined





*under the Code) which would make it ineligible under any of the provisions of Section 29A of the Code at any stage of the CIRP of the Corporate Debtor, after the submission of this affidavit.*

*10. That if, at any time after the submitting of this affidavit and before the approval of the Applicant's resolution plan by the Hon'ble Adjudicating Authority under the Code, the Applicant becomes ineligible to be a resolution applicant as per the provisions of the Code (and in particular Section 29A of the Code), the fact of such intelligibility shall be forthwith brought to the attention of the RP and the CoC.*

*11. That, no information/details, have been concealed while signing the Affidavit and there are no further facts to be disclosed to determine eligibility of (name of the Applicant) in terms of Section 29A of the Code.*

*12. That this affidavit shall be governed in accordance with the laws of India and the courts of Delhi shall have the exclusive jurisdiction over any dispute arising under this affidavit.*

- 20.** The Applicant has filed a Compliance Certificate in prescribed Form, i.e. Form 'H' in compliance with Regulation 39(4) of the CIRP Regulations. The RP has issued the Letter of Intent to the Successful Resolution Applicant and the Successful Resolution Applicant provided the Performance Bank Guarantee of Rs.5,00,00,000/- (Rupees Five Crore Only) dated 15.05.2023 which expires on 14.05.2024 and the same is annexed as Annexure-16 at page nos.888-893, which is required under Regulation 36B (4A) of CIRP Regulations, 2016.



## **Details of Resolution Plan/ Payment Schedule**

**21.** The Applicant submits the relevant information about the amount claimed, the amount admitted, and the amount proposed to be paid by the SRA, *i.e.* M/s Dalmia Bharat Sugar and Industries Limited under the said Resolution Plan which is tabulated as under:

<b>Sl. No.</b>	<b>Types of debts</b>	<b>Amount claimed in Rs.</b>	<b>Claim Amount admitted in Rs.</b>	<b>Resolution Amount (In Rs.)</b>	<b>Payment Term</b>	<b>% of Amount claimed</b>
1.	CIRP Cost	NA	NA	5 Crore	Rs.5 Crore shall be paid within 90 days of the approval of Resolution Plan.	NA
2.	Secured Financial Creditor	3,46,63,90,852	3,30,39,05,429	134.50 Crore	Rs.134.50 Crore (including 3 Crore for assignment of 20 Crs. of remaining Debt along with release of personal guarantees of Ram Balak and his collateral securities) shall be paid within 90 days of the approval of Resolution Plan.	25.77%
3.	Unsecured Financial Creditor (Related Party)	1,96,44,98,384	1,94,78,38,951	NIL	NIL	NIL
4.	Operational Creditors (Goods & Services)	61,67,842	55,53,689	0.17 Crore	Rs.0.17 Crore shall be paid within 90 days of the approval of Resolution Plan	3.63%
4.	Operational Creditors (Statutory dues)	NIL	NIL	NIL	NA	NIL



5.	Workmen/ Employees	2,16,274	2,16,274	0.02 Crore	Rs.0.02 Crore shall be paid within 90 days of the approval of Resolution Plan	1.08%
6.	Contingent Liabilities (Non Statutory)	NIL	NIL	0.50 Crore	Rs.0.50 Crore shall be paid within 90 days of the approval of Resolution Plan	NA
7.	Statutory Dues as per Information Memorandum	NIL	NIL	NIL	NIL	NIL
8.	Infusion of funds for Capex	NIL	NIL	235 Crore	To be infused as and when required	NA

**22.** The Resolution Plan size is approximately of Rs.140.19 Crores. The remaining amount of Rs.235 Cr. as included in the Plan is by way of unsecured loan from Banks. The **“Effective Date”** will be the date on which the Adjudicating Authority approves the Resolution Plan.

**Details on Management and Implementation as per the Resolution Plan.**

**23.** The Resolution Plan also provides for details of management and control, implementation and supervision of the Resolution Plan and term of plan and the same is already set out in Para 18 *supra*.

**Details on fraudulent and avoidance transaction**

**24.** In the Resolution Plan, in Chapter XI Clause 4 at page no.600 of the application IA No.243/2023, it has been provided that:



*(viii) In case if the Resolution Professional is of opinion that the corporate debtor has been subjected to any Preferential, Undervalued, Extortionate & Fraudulent transactions under section 43, 45, 50 & 66 respectively or establishes the same from the report of the transaction auditor appointed by him during the CIRP period, the resolution professional shall make a transaction application with the Adjudicating Authority for appropriate relief. If there are, any recovery/ realization amount is made from the said transactions (Preferential, Undervalued, Extortionate & Fraudulent transactions), the said recovery /realization amount would not belong to the corporate debtor but to the financial creditors of the corporate debtor. The recovery/realization amount would be allocated to the creditors of the corporate debtor in the same proportion as the funds allocated to the creditors in the resolution plan. Further it is clarified that for pursuing the applications filed with Hon'ble NCLT in relation to the above sections and any amount recovered will be only for the benefit of the financial creditors.*

*The cost of the litigation during the period post approval of resolution plan, shall be borne by stakeholders and after approval of the Resolution Plan, Bank of Baroda, being lead member of the consortium of secured financial creditors, shall pursue the litigation.*

Applications U/s 43 & 66 of the I&B Code, 2016 for avoidable transactions have been filed separately vide IA No.396/2022 and IA No.395/2022 respectively, and are pending. In view of the above, we order that the Bank of Baroda with largest voting share in CoC and also being lead banker in consortium of the financial creditors, would pursue the PUFÉ applications as proposed by SRA as above.



## ***Waivers, Reliefs and Exemptions***

**25.** The SRA has sought/prayed for the reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC, that from the plan approval date all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn, satisfied and discharged. From the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorized to seek appropriate orders from respective authorities/courts/tribunals for renewal of licenses/withdrawal/dismissal or abetment of the proceedings as the case may be. SRA has also filed an affidavit vide diary no.2005 dated 31.07.2023, wherein SRA has given the following undertaking :-

*I state that the waivers and exemptions being sought by the Successful Resolution Applicant in the Resolution Plan submitted in the matter of the*



*Corporate Debtor are in nature of prayers before this Hon'ble Adjudicating Authority and is not a condition precedent for the purpose of implementation of the resolution plan. It is most humbly prayed that this Hon'ble Adjudicating Authority may consider granting some waivers and exemptions which shall be beneficial in the revival/ resolution & survival post revival of the Corporate Debtor, however, it is clarified that the resolution plan shall be implemented by the Successful Resolution Applicant as per the terms stipulated in the Resolution Plan from the date of approval by this Hon'ble Adjudicating Authority irrespective of the decision taken by this Hon'ble Adjudicating Authority with respect to the waivers and exemptions being sought.*

### **Analysis & Findings**

- 26.** On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC with 100% of the members voting in favour of the Resolution Plan. As per the CoC, the Plan meets the requirement of being a viable and feasible for revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.
- 27.** On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 37, 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



28. The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws by the concerned authorities.
29. It may be clarified that litigations wherever pending against the corporate debtor would be governed by Section 32A of the Code.
30. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
31. In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which may follow under law, the CoC shall forfeit the Performance Bank Guarantee of Rs.5,00,00,000/-.

### **Orders**

32. This is also noted that an objection application was also filed by the Ex-Management vide IA No.434/2023 raising objection against approval of the Resolution Plan in the face of the order dated 21.11.2013 passed by the Hon'ble Supreme Court in *Contempt Petition No. 412 of 2012 in CA No. 9813 of 2011 titled*

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as *SEBI vs Sahara India Real Estate Corporation Ltd* as well as the order dated 27<sup>th</sup> August, 2021 passed by this Tribunal. The said IA No. 434 of 2023 has already been dealt with by us separately and same has been dismissed except to the extent of directing the RP/COC to move an application before the Hon'ble Supreme Court for seeking clarification in the context of order dated 21.11.2013 passed by the Hon'ble Supreme Court and order dated 27.08.2021 passed by this Tribunal before commencing implementation of plan. The approval of the plan already ordered by us in the present I.A No. 243/2023 is subject to seeking the clarification from the Hon'ble Supreme Court on the aforesaid terms.

- 33.** Subject to the observations made in this Order, the Resolution Plan of Rs.140.19 Cr. [containing the mandatory contents of Resolution Plan in terms of Regulation 38(1)], is hereby approved as per Section 31(1), after satisfying ourselves that the resolution plan as approved by the COC under sub- section (4) of Section 30 on 21.04.2023 meets the requirements as referred to in sub section (2) of Section 30.





- 34.** The reliefs, concessions and waivers sought/prayed by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws including Companies Act, 2013 and Income Tax Act, 1961, etc.
- 35.** The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 36.** The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- 37.** The Monitoring Committee as proposed in the resolution plan is appointed as under:

Name(s) of the proposed member(s) of implementation and monitoring committee	Brief description of the Proposed member(s) of the I & M committee
1. Vivek Raheja.	Resolution Professional
2. Two representatives nominated by lead Bank i.e. Bank of Baroda.	Representatives of CoC Representatives of Successful Resolution Applicant
3. Mr. Pankaj Rastogi and; Mr. Naveen Kumar Gupta.	

- 38.** The above Monitoring Committee shall ensure timely & successful implementation of Resolution Plan approved by this order.



- 39.** The CIRP cost as per the payment plan given in Para 21 is Rs. 5 Crore which shall be paid within 90 days of the Approval of the Resolution Plan. The said payment towards CIRP cost is modified to the extent that the CIRP cost would be payable as Rs.5 Crore or as per actual whichever is more.
- 40.** The Resolution Plan as above is approved except to the extent of directing the RP/COC to move an application before the Hon'ble Supreme Court for seeking clarification in the context of order dated 21.11.2013 passed by the Hon'ble Supreme Court and order dated 27.08.2021 passed by this Tribunal before commencing implementation of plan. The approval of the plan already ordered by us in the present I.A No. 243/2023 is subject to seeking the clarification from the Hon'ble Supreme Court in the aforesaid terms.
- 41. IA No.243/2023** shall stand disposed of accordingly.
- 42.** A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies.
- 43.** The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.



- 44.** The Resolution Professional is further directed to hand over all records, premises/ factories/documents available with it to the Resolution Applicant to finalize the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalize the further course of action required for starting of operations of the Corporate Debtor.
- 45.** The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 46.** The registry is further directed to send the copy of the order to the IBBI also for their record.
- 47.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
- 48.** File be consigned to the record.

-Sd-

**(Ashish Verma)**  
**Member (Technical)**

-Sd-

**(Praveen Gupta)**  
**Member (Judicial)**

**Dated: 24.11.2023**

*Typed by:*  
*Kavya Prakash Srivastava*  
*(Stenographer)*