

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CA No.893/2019
In
CP (IB) No.30/Chd/Pb/2017
(admitted)**

**Under Section 30(6) of the Insolvency
and Bankruptcy Code, 2016**

In the matter of :

F.M. Hammerle Textiles Limited

Vardhman Park, 341K-1, Mundian Khurd,
PO Sahabana, Chandigarh Road,
Ludhiana – 141123

...Corporate Debtor

And in the matter of:

CA No.893/2019

Mr. Rajeev Goel, Resolution Professional
FM Hammerle Textiles Limited

Available at:

BDO Restructuring Advisory LLP,
The Palm Spring Plaza
Unit No.1501 to 08
Sector-54, Golf Course Road
Gurgaon – 122001, Haryana

...Resolution Professional/Applicant

Order delivered on: 13.03.2020

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Resolution Professional	:	Mr. Yash Pal Gupta, Advocate
For the Resolution Applicant	:	Mr. Arun Saxena, Advocate
For the Committee of Creditors	:	Mr. Abhay Gupta, Advocate with Mr. D.K. Gupta, Advocate

Per: Pradeep.R.Sethi, Member (Technical)

ORDER

CA No.893/2019 is filed by the Resolution Professional (**RP**) under
Section **30(6)** of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred

to as the **Code**) seeking approval of resolution plan dated 25.01.2018 and Amendment made on 18.09.2019 as submitted by M/s New Ram Traders.

2. It has been submitted that petition was filed by F.M. Hammerle Textiles Limited (**Corporate Debtor**) under Section 10 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) and the same was admitted vide order dated 27.06.2017 and the CIRP of the corporate debtor was initiated. It is submitted that Mr. Mohan Lal Jain was appointed as Interim Resolution Professional (**IRP**) vide order dated 27.06.2017.

3. It is submitted that the IRP constituted the CoC consisting of State Bank of India being the sole member of the CoC as per the provisions of Section 21 of the Code.

4. It is stated that in the first meeting of the CoC held on 26.07.2017, the IRP was sought to be replaced with Mr. Rajeev Goel who was appointed as RP vide order dated 01.09.2017.

5. The RP made a public announcement for invitation of Expression of Interest (**EOI**) by publishing the Form G in Economic Times (All India Edition) dated 06.10.2017. The last date for submission of EOI was fixed as 20.10.2017 which was further extended to 06.11.2017 by another advertisement on 23.10.2017.

6. The RP apprised the CoC that EOI was received from 5 prospective resolution applicants. The RP also issued a Process Document dated 12.12.2017 for evaluation of the resolution plans which was amended two times vide Addendums dated 02.01.2018 and 23.01.2018.

7. CA No.219 of 2017 was filed by the RP under Section 12(2) of the IBC, 2016 for extension of the CIRP time period by a further period of 90 days and the same was allowed vide order dated 14.12.2017.

8. It is submitted that the RP received resolution plan from 2 prospective resolution applicants namely M/s. New Ram Traders and Donear Industries Limited which were opened and presented to the CoC members in its meeting held on 16.02.2018. The prospective resolution applicants were suggested to modify and submit the revised resolution plan.

9. In the 7th meeting of CoC held on 27.02.2018, both the resolution plans were evaluated in terms of the Resolution Plan Evaluation Criteria formulated under the Process Document dated 12.12.2017 and after evaluation and negotiations, M/s New Ram Traders was declared as 'H1 Resolution Applicant' and the financial bid was revised from ₹42 crores to ₹ 45 crores. The resolution plan dated 25.01.2018 submitted by M/s. New Ram Traders was approved by the CoC members after voting in their 8th meeting held on 15.03.2018.

10. The applicant herein filed CA No.97/2018 under Section 30(6) of the Code for approval of the Resolution Plan dated 25.01.2018 submitted by M/s. New Ram Traders.

11. Further, it is submitted that CA No.191/2017 was filed by Andhra Bank, a corporate guarantee holder seeking directions to the RP to accept their claims which was rejected by the IRP. The said application of Andhra Bank was dismissed vide order dated 17.11.2017 and the Andhra Bank filed an appeal bearing Company Appeal (AT) (Insolvency) No.61/2018 before Hon'ble National Company Law Appellate Tribunal (**NCLAT**). The Hon'ble NCLAT vide its order dated 04.05.2018, directed this Tribunal to not pass any further orders under Section 31 of the Code till the final adjudication of the said Appeal. The Hon'ble NCLAT vide its order dated 13.07.2018 disposed of the said appeal of the Andhra Bank, inter alia, reconstituting the COC with Andhra Bank as a member thereof,

being corporate guarantee holder and further directed that the Applicant herein to place the approved Resolution Plan of New Ram Traders before the reconstituted CoC. However, the newly inducted Andhra Bank was only given power to object to the plan only if the same is not in compliance with Section 30(2) of the Code.

12. In order to comply with the aforesaid directions of the Hon'ble NCLAT, CA 97/2018 was disposed of with liberty to file afresh, after compliance of the said order of Hon'ble NCLAT. It is stated that the applicant herein admitted the claims of the Corporate Guarantee holders **(CGH)** of the Corporate Debtor i.e. State Bank of India, Andhra Bank, Allahabad Bank, Canara Bank, Bank of Maharashtra, Phoenix ARC Private Limited (Assignor United Bank of India), Punjab & Sind Bank, Punjab National Bank, Bank of India, Bank of Baroda and Axis Bank Limited and reconstituted CoC with induction of the CGHs as the new members.

13. In the 9th meeting the CoC held on 16.08.2018, the earlier approved resolution plan dated 25.01.2018 of M/s. New Ram Traders (the successful resolution applicant) was placed before the reconstituted CoC and after deliberations on resolution plan, the successful resolution applicant was given time to submit the revised plan. It is stated that the revised resolution plan was submitted on 30.08.2018 and after discussion in the CoC, another revised plan was submitted on 24.09.2018.

14. It is also stated that the Resolution Plan dated 25.01.2018 along with addendum dated 09.11.2018 was placed before the CoC in its 14th meeting held on 17.11.2018 wherein SBI rejected the said resolution plan and the Resolution Professional filed CA No.587/2018 for liquidation of the Corporate Debtor.

15. It is stated that the successful resolution applicant filed application bearing CA No. 607/2018 seeking extension of CIRP period till 03.01.2019 and for direction to the CoC to consider the resolution plan submitted.

16. It was found that the directions of Hon'ble NCLAT were that only if the resolution plan is not in accordance with Section 30(2) then a valid objection can be raised by Andhra Bank who has been added as a member of CoC otherwise the CoC will approve it having already found it to be viable and workable and that however, SBI did not approve the original resolution plan on the ground that the offer by the resolution applicant in the original resolution plan is much lower than the liquidation value of the corporate debtor.

17. Vide order dated 17.09.2019 in CA No.607/2018, it was held in para No.21 and 22 as follows:-

“21. In view of these facts, we consider it reasonable to accept the contention of the resolution applicant that the CoC be directed to consider the resolution plan of the resolution applicant. As recorded in order dated 30.08.2019, SBI has conveyed its no objection for holding a fresh meeting to consider revised resolution plan by the resolution applicant.

22. We therefore, direct the resolution applicant to submit its final revised resolution plan to the RP within three days from today and also direct the RP to convene a meeting of the CoC to consider the final revised resolution plan submitted by the resolution applicant. In accordance with Section 30(5) of the Code, the resolution applicant be asked to attend the meeting of CoC but shall not have right to vote at the meeting. The RP may convene the meeting of the CoC on such a date so as to ensure that a report on the decision of the CoC is conveyed to the AA within a period of 20 days from today.”

18. It was also held in para No.27 thereof as follows:-

“27. xx xx xx xx. In the exceptional circumstances of this case and for the purpose of effectuating one of the main objectives of the Code of insolvency resolution, we direct that the period from the passing of the order by Hon'ble NCLAT on 13.07.2018 till today be excluded so as to give one month for the completion of the process directed in para 22 above and for consequential action by the RP for submitting appropriate application before the AA. In case no such application is received within one month from today, the AA will consider appropriate suo moto action.”

19. The Successful Resolution Applicant i.e. M/s. New Ram Traders was directed to submit its final revised resolution plan within 3 days from the date of

order and the RP was directed to convene a meeting of the CoC for consideration of the final plan. Further, exclusion of time was also granted as discussed above.

20. By virtue of the aforesaid order, the Successful Resolution Applicant vide email dated 19.09.2019 submitted the final revised resolution plan dated 25.01.2018 along with amendment made on 18.09.2019 (Annexure RP-20). The CoC in its 16th meeting held on 23.09.2019 approved the revised resolution plan dated 25.01.2018 (along with amendment dated 18.09.2019) submitted by New Ram Traders by 100% voting share in favour of it. A copy of the Letter of Intent dated 23.09.2019 stated to be issued to the successful resolution applicant is attached as Annexure RP-22.

21. It has been prayed in the application that the Resolution Plan dated 25.01.2018 and amendment made on 18.09.2019 as submitted by M/s New Ram Traders be approved.

22. Vide order dated 30.01.2020, the learned counsel for the RP was directed to file a descriptive Form H, copy of RFRP and the minutes of the CoC thereto along with copy of the performance guarantee, details regarding fair and liquidation value. The same was filed by way of affidavit dated 13.02.2020 (Diary No.1287 dated 17.02.2020) stating therein that the liquidation value of the assets of the Corporate Debtor as on 27.06.2017 as computed by the valuers was ₹6657.53 lakhs and the tentative liquidation value computed on 15.03.2019 (as per directions of Adjudicating Authority (**AA**) dated 28.03.2019) was arrived at ₹5826.29 lakhs. Details regarding both the liquidation values are stated to be attached as Annexure A-1 and A-2 of the affidavit respectively. It is stated that performance guarantee to the tune of ₹1 crore in accordance with the process document issued by the Resolution Professional was submitted. Copy of the

Performance Guarantee is stated to be enclosed as Annexure A-4. Detailed descriptive Form H was filed as Annexure A-5.

23. In compliance of the order dated 30.01.2020, affidavits of the CoC (Diary No.1319 dated 18.02.2020) and the Resolution Applicant along with his two sons (Diary No.1336 dated 18.02.2020) were filed. The CoC in its affidavit has stated that the cost of earlier resolution plan was about ₹59.95 crores which was far less than liquidation value of ₹66.57 crores whereas the total cost of present resolution plan is ₹64.33 crores which is much close to the liquidation value of ₹66.57 crores. It is also stated that the tentative liquidation value worked out as per order dated 28.03.2019 is ₹58.37 crores and therefore, the current resolution plan approved by the CoC is much above the tentative liquidation value.

24. In the affidavit of the Resolution Applicant, it is stated that Clause 8.3 has been mistakenly and inadvertently mentioned in the main paragraph VIII at page No.197 of the Company Application No.893 of 2019. It was deposed that there is no such Clause 8.3 in Part VIII of the Resolution Plan as there is no requirement to constitute a Monitoring Committee since the Interim Monitoring Committee will continue till the disbursement as per the approved Resolution Plan. Further, it is stated that the CIRP cost considered in the successful Resolution Plan is ₹10,50,00,000/- which was estimated as on 31.03.2019 and thereafter, the CIRP cost has increased substantially. The Resolution Applicant has undertaken to provide additional fund over and above ₹64,33,31,000/- to make payment of any increase in the CIRP cost from the amount mentioned in the approved plan till the date of approval of such plan by this Tribunal. It is stated that in the initial plan submitted by the Resolution Applicant, the total amount offered was ₹59,92,00,000/- and that the amount offered in the successful

Resolution Plan is ₹64,33,31,000/- and therefore, after considering the increased CIRP cost from 01.04.2019 till the date of approval of the Resolution Plan by this Tribunal, the amount paid under the Resolution Plan shall exceed the liquidation value.

25. The RP has filed compliance certificate in Form H (Annexure -5, Diary No.1287 dated 17.02.2020). It is certified by the RP in para 4 of Form H that the resolution plan complies with all the provisions of the Code, CIRP Regulations and does not contravene any of the provisions of law for the time being in force and that the resolution plan stands duly approved by the 100% of the voting share of the financial creditors. It is also stated in para 4 (ii) of Form H that the affidavit of the successful resolution applicant regarding its eligibility under Section 29A of the Code is in order.

26. The learned counsel for the RP submitted that as per Form H (Annexure -5, Diary No. 1287 dated 17.02.2020), all the provisions of the Code and the Regulations were complied with and that the approval of the resolution plan was made by 100% voting share of the financial creditors in the meeting of the CoC held on 23.09.2019 and therefore, the resolution plan submitted by M/s. New Ram Traders may be approved.

27. We have carefully considered the submissions of the learned counsel for the RP and the learned Counsel for the Resolution Applicant and CoC and have also perused the record.

28. The corporate debtor was incorporated on 12.01.2006 and as discussed above, the CIRP proceedings were initiated by order delivered on 27.06.2017. The present application is filed for approval of the resolution plan submitted by M/s. New Ram Traders. The approval has been sought under the provisions of Section 31 (1) of the Code.

29. We may first of all state that the final details of the financial creditors, the distribution of voting share among them and the position of voting for the resolution plan is as under (para No.5 of Form H – Annexure-5, Diary No.1287 dated 17.02.2020)

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Jammu and Kashmir Bank	Nil	-N.A.-
2	Corporation Bank	Nil	-N.A.-
3	Canara Bank	Nil	-N.A.-
4	Allahabad Bank	Nil	-N.A.-
5	Bank of Maharashtra	Nil	-N.A.-
6	Andhra Bank	Nil	-N.A.-
7	State Bank of India	100%	100%
8	Phoenix ARC Private Limited (Assignor United Bank of India)	Nil	-N.A.-
9	Punjab & Sindh Bank	Nil	-N.A.-
10	Punjab National Bank	Nil	-N.A.-
11	Bank of India	Nil	-N.A.-
12	Bank of Baroda	Nil	-N.A.-
13	Axis Bank	Nil	-N.A.-

30. The details of stakeholders under the resolution plan given in para 7 of Form H (Annexure -5, Diary No. 1287 dated 17.02.2020) is as follows:-

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Dissenting Secured Financial Creditors	-N.A.-	-N.A.-	-N.A.-	-N.A.-
2	Other Secured Financial Creditor	16568.13	16480.56	5150	31.24
3	Dissenting Unsecured Financial Creditors	-N.A.-	-N.A.-	-N.A.-	-N.A.-
4	Other Unsecured Financial Creditors (Corporate Guarantee Holders- admitted	57465	57465	58	0.1

	<i>by RP in compliance of NCLAT order dated 13.07.2018)</i>				
5	<i>Claim of related party without any voting rights and not a part of CoC</i>	2895.18	2895.18	Nil	0
6	<i>Operational Creditors</i>	4978.07	977.16	24.43	2.5
	<i>Government/ Statutory Dues</i>			<i>Will be paid in full, if any amount was due as on 27.06.2017</i>	
	<i>Employees, Wages & Salaries</i>	29.46	20.88	20.88	100
<i>Total</i>				5253.31	

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

31. The compliance of the resolution plan has been given in para No.9 of Form H (supra) as follows:-

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)	Page no.
25(2)(h)	<i>Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?</i>	<i>Clause II</i>	Yes	164 – 168
Section 29A	<i>Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?</i>	Yes	Yes	239 – 250
Section 30(1)	<i>Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?</i>	Yes	Yes	239 – 250
Section 30(2)	<i>Whether the Resolution Plan:</i> <i>(a) provides for the payment of insolvency resolution process costs?</i>	<i>Clause 11.1</i>	Yes	214
	<i>(b) provides for the payment of the debts of operational creditors?</i>		Yes	215
	<i>(c) provides for the management of the affairs of the Corporate debtor?</i>	<i>Clause 11.4</i>	Yes	190 – 196
	<i>(d) provides for the implementation and supervision of the resolution plan?</i>	<i>Clause VII</i>	Yes	197 –
	<i>(e) contravenes any of the provisions of the</i>	<i>Clause VIII</i>	Yes	198

	<i>law for the time being in force?</i>	Clause IV (A) (e)		172
Section 30(4)	<i>Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?</i>	Yes	Yes	258 – 265
Section 31(1)	<i>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</i>	Yes	Yes	197-198
Regulation 35A	<i>Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?</i>	.	<i>The RP has conducted a Transaction Audit and there were no transactions for reporting. However, The timeline of One Hundred and Fifteenth day is not applicable on this particular case.</i>	
Regulation 38 (1)	<i>Whether the Resolution Plan identifies specific sources of funds that will be used to pay the - (a) insolvency resolution process costs? (b) liquidation value due to operational creditors? (c) liquidation value due to dissenting financial creditors?</i>	Clause XI	Yes	213 - 216
Regulation 38(1A)	<i>Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?</i>	Clause IX	Yes	176 & 199 -207
Regulation 38(2)	<i>Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?</i>	Clause VIII Clause VII Clause VIII	Yes	197 – 198 190 – 196 197 - 198
38(3)	<i>Whether the resolution plan demonstrates that – (a) it addresses the cause of default?</i>	Clause 7.7.1	Yes	192

	(b) it is feasible and viable?	Annexure I		217
	(c) it has provisions for its effective implementation?	Clause VIII		197 – 198
	(d) it has provisions for approvals required and the timeline for the same?	No such approvals required Clause II		164
	(e) the resolution applicant has the capability to implement the resolution plan?			
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		No, as there were no such transactions which required reporting.	

32. Section 30(2)(b) as substituted by Act No. 26 of 2019 w.e.f.

06.08.2019 is as follows:-

“(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than— (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor— (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority; (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]”

33. It is observed that the total admitted claim due to Operational Creditors is Rs.977.16 lakhs. The liquidation value given in Form H is ₹66,57,53,000/-. However, the dues of Financial Creditors are much more than this value. Therefore, nothing is payable to the Operational Creditors in the event of liquidation and the amount to be distributed between operational creditors in the event of liquidation, if distributed in order of priority in Section 53(1) of the Code would be NIL. However, the RA proposes to offer 2.5% of the admitted amount (on pro rata basis) for payment against dues for operational creditors and the said payment will be made to the operational creditors in priority over the payment to secured and unsecured financial creditors. Hence, the amount offered to operational creditors is ₹24.43 lakhs. Further, there are no dissenting financial creditors as the resolution plan has been approved by 100% voting share of the Financial Creditors.

34. The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading as follows: -

If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

35. The conditions provided for in Section 31(1) of the Code for approval of resolution plan are therefore: -

(a) *The Resolution Plan is approved by the CoC under Section 30(4) of the Code;*

- (b) *The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*
- (c) *The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

36. It is submitted by the RP that the resolution plan has been approved by a vote of 100% of voting share of the financial creditor and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

37. The provisions of Section 30(2) of the Code are as follows: -

The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

- (a) *provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;*
- (b) *Section 30(2)(b) provisions have been extracted above and may be seen;*
- (c) *provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;*
- (d) *the implementation and supervision of the resolution plan;*
- (e) *does not contravene any of the provisions of the law for the time being in force;*
- (f) *confirms to such other requirements as may be specified by the Board.*

38. The compliance of Section 30(2) of the Code is given in para No.9 of Form H (*supra*). The same is being further examined as under: -

Section 30(2)(a): The resolution plan provides for the payment of ₹1050 lakhs as CIRP cost (estimated till 31.03.2019) which will be first made in priority to all other creditors of the corporate debtor. It is also stated that the Resolution Applicant undertakes that any incremental CIRP Cost till the date

of approval of the plan by the AA will be paid in full and in priority before making any payments to other creditors.

Section 30(2)(b): It is stated in Form H that the average liquidation value of the corporate debtor is ₹66,57,53,000/-. It is further stated that as the debts of financial creditors are higher than liquidation value as estimated by Resolution Applicant, there is no amount left as such for payment to operational creditors in the event of liquidation of the Corporate Debtor. The amount of dues of operational creditors as admitted by the RP is ₹977.16 lakhs. However, the RA proposes to offer 2.5% of the admitted amount (on pro rata basis) for payment against dues for operational creditors and the said payment will be made to the operational creditors in priority over the payment to secured and unsecured financial creditors. Hence, the amount offered to operational creditors is ₹24.43 lakhs.

Further, it is stated in the resolution plan that the RA proposes to pay 0.1% of ₹574.65 crores (the total admitted claim of the Corporate Guarantee) i.e. ₹0.58 crore in full and final settlement within 30 days of the approval of the plan. The resolution plan provides payment of ₹20.88 lakhs towards 100% of dues of workmen.

Section 30(2) (c) & (d): The resolution plan provides complete and detailed plan for management of the affairs of the corporate debtor (page 190 of the application). As per para VII of the resolution plan and upon the AA Approval, the corporate debtor will be managed by the Interim Monitoring Committee **(IMC)** which will comprise of one person appointed by the financial creditor and one person appointed by RA. The tenure of the IMC will be for a maximum period of 90 days and will be dissolved on completion of payments made towards CIRP cost and towards different class of

persons. Further, it is stated in the resolution plan that the RA will retain all the employees of the corporate debtor but the board of directors and Key Managerial Personnel of the corporate debtor will be reconstituted and appointed. As mentioned in para 7.2 of the plan, the Board of Directors of the Resolution Applicant will consist of Mr. Shirishkumar Ramkrishna Sonavane, Mr. Kunal Sonavane and Mr. Rohit Sonavane. It is also stated in para 7.3 of the plan that Mr. Sanjeev Sinha will be the CEO of the CD.

Section 30(2) (e): In Form H (*supra*) (para No.4), the RP has certified that the resolution plan complies with the provisions of the Code and Regulations and does not contravene any of the provisions of law for the time being in force.

39. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan states that upon NCLT Approval Date, an Interim Monitoring Committee will be constituted. The constitution of the Committee is given in para no VIII of the plan. The terms of the plan and its implementation schedule is stated to be 90 days from the approval of the plan by the Adjudicating Authority. The RA will make full and final payment of ₹5150 lakhs to secured financial creditor i.e. SBI out of which ₹500 lakhs will be deposited at the end of 30 days from the approval of the resolution plan and the balance ₹4650 lakhs will be paid in an Escrow Account within 90 days from the approval of the resolution plan. The payment of ₹24.43 lakhs to operational creditors is proposed to be made in priority over secured and unsecured financial creditors. Payment of dues to workmen and employees is proposed to be made within 30 days of approval of resolution plan by AA in the manner provided for in Para 11.2 of the Resolution Plan.

40. The sources of funds are stated to be infusion of ₹1700 lakhs towards Equity to be issued by the Corporate Debtor within 30 days of the approval of the resolution plan; infusion of funds to the tune of ₹233 lakhs by way of loans from friends/ relatives/ associates; and ₹4500 lakhs as term loan from Bank (Bharat Corporation Bank). Also, the resolution plan provides for ₹130 lakhs towards working capital requirement.

41. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No.4 of Form H (supra) the RP has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that the resolution applicant New Ram traders has submitted affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The RP has submitted that the resolution plan has been approved by the CoC with 100% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations. It has been held in para 42 of **K. Sashidhar Vs. Indian Overseas Bank &Ors. (Civil Appeal No. 10673 of 2018 dated 05.02.2019)** by the Hon'ble Supreme Court *inter alia* that no corresponding provision has been envisaged by the legislature to empower the resolution professional., the Adjudicating Authority (NCLT) or for that matter the Appellate Authority (NCLAT), to reverse the "commercial decision" of the CoC. It was also held that whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority. In view of

the above discussion, the decision taken by the financial creditors falls within the ambit of its commercial and banking wisdom and is therefore, not being interfered with.

42. We may add that in the case of **Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Ors. In Civil Appeal Nos.4242 of 2019**, it has been held in para 26 thereof that “No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016....”

43. In view of the above discussion, the decision taken by the financial creditors falls within the ambit of its commercial and banking wisdom and is therefore, not being interfered with.

44. We shall now discuss the requirements of Regulation 39(4) of the Regulations. It can be observed that as per the terms of the process document dated 12.12.2017 issued by RP, a Proposal Performance Guarantee (**PPG**) to the tune of ₹1,00,00,000/- was submitted by the Resolution Applicant. Copy of the minutes wherein the request for the resolution plan was approved, a copy of the RFRP and the Performance Guarantee is attached as Annexure-4 (Colly) of affidavit filed vide Diary No.1287 dated 17.02.2020. As per Amendment No.3 dated 19.11.2019, the validity of the Bank Guarantee is presently 16.05.2020 and the claim expiry date is 16.06.2020. It is thereby submitted that the requirements of performance security under Regulation 39(4) of the Regulations read with 36B(4A) of the Regulations are complied with.

45. On the basis of discussion made above and in view of the provisions of Section 30(4) of the Code, we approve the resolution plan submitted by M/s.

New Ram Traders as approved by the CoC. The resolution so approved shall be binding on the corporate debtor and 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, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

46. Under the provisions of Section 31 (3) of the Code, we also direct as under:-

- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 27.06.2017 shall cease to have effect; and
- b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

47. CA No. 893/2019 is disposed of.

Pronounced in the open Court.

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

Sd/-
(Pradeep R. Sethi)
Member (Technical)

March 13, 2020
Anchal