

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

**CA Nos.71/2018 & 171/2018
IN
CP (IB) NO. 51/Chd/Hry/2017
(Admitted matter)**

**Under Sections 30 (6), 31, 60 (5) (a)
read with Section 25 (2) (i) of the
Insolvency and Bankruptcy Code,
2016 read with Regulation 39 (4) of
the Insolvency & Bankruptcy
Board of India (Insolvency
Resolution Process for Corporate
Persons) Regulations, 2016.**

In the matter of:

State Bank of IndiaFinancial Creditor.

Versus

MOR Farms Pvt. Ltd.Corporate Debtor.

Order delivered on 15.06.2018.

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For Resolution Professional/ Applicant.	:	1) Mr.Anil Kohli, Resolution Professional 2) Mr.Abhishek Anand, Advocate
For Resolution Applicant	:	Mr.Tarun Vir Singh Lehal, Advocate
For State Bank of India	:	Mr.R.S.Bhatia, Advocate
For Bank of India	:	Mr.Yogesh Malik, Senior Manager
For Corporate Guarantors/ Directors of suspended Board of Directors	:	Mr.Diwan Sharma, Advocate

Per: R.P.Nagrath, Member (Judicial):

Order (Oral)

The instant application has been filed by the Resolution Professional, Mr. Anil Kohli for approval of a Resolution Plan submitted by Harsh Poultry Farms under Section 30 (6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereafter referred to as Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereafter referred to as Regulations).

2. The Company Petition bearing C.P. No.52/Chd/Hry/2017 was filed by State Bank of India / Financial Creditor under Section 7 of the Code for initiating Corporate Insolvency Resolution Process (in short CIRP) of MOR Farms Pvt. Limited / Corporate Debtor. This Tribunal vide order dated 04.09.2017 admitted the petition and by subsequent order dated 12.09.2017 (Annexure A-2, Page No.37) appointed Mr. Anil Kohli as the Interim Resolution Professional (IRP) with necessary directions and to file regular reports of events. The Resolution Professional made a public announcement in terms of Regulation 6 (1) of the Regulations in two newspapers inviting claims.

3. In terms of section 18 (1) (a) of the Code, the Resolution Professional collated all claims submitted by the creditors pursuant to the Public Announcement and after determination of the financial position of the Corporate Debtor constituted a Committee of Creditors comprising of both the financial creditors, namely; (i) State Bank of India having voting

share of 96.22% and Bank of India with voting share of 3.78%. The total amount of debt of financial creditors was calculated at ₹32,52,38,249.84.

4. The Resolution Professional in terms of Regulation 27 of the CIRP, on 25.09.2017 appointed two registered valuers i.e. M/s. Peritus Advisory (P) Ltd and M/s Crest Capital Group Pvt. Ltd. to determine the liquidation value in accordance with Regulation 35 of the CIRP Regulations. Liquidation Reports submitted by both the registered valuers have been placed on record by the Resolution Professional (Annexure A-7, Page No. 248 & 284). The average liquidation value is ₹3.91 crores.

5. That as required by Section 29 of the Code, the Resolution Professional prepared an Information Memorandum (hereinafter the "IM") (Annexure A-6, Page No. 64) of the Corporate Debtor which was shared with the CoC members after receiving undertaking to maintain confidentiality of the information provided in the IM from them.

6. In the second meeting of Committee of Creditors held on 16.11.2017, the process for Expression of Interest for resolution plan was discussed and criteria for Expression of Interest (EOI) for resolution plan for the Corporate Debtors was agreed.

7. An advertisement inviting EOI from interested persons was published in Financial Express on 24.11.2017 (Annexure A-9, Page No. 329) to be submitted by 10.12.2017.

8. Only one prospective Resolution Applicant being M/s. Harsh Poultry Farms, proprietorship firm having PAN EOUPS7570P represented through Mr. Narender Singh was received by the corporate

debtor. It is submitted that the said Resolution Applicant has been engaged in the business of poultry farm for over 20 years.

9. The Resolution Applicant gave confidentiality undertaking as required under Section 29 of the Code, which is at Annexure A-13 (page 335).

10. It is submitted that in the third meeting of CoC held on 13.12.2017 (Annexure A-16, Page 340), the resolution plan submitted by the Resolution Applicant was discussed. The Resolution Applicant submitted a total bid of ₹5.25 crores and provided for payment as under:-

S.No.	Time	Payment percentage	Payment amount (in lacs)	Comments
1	Dec-17	5%	21.25	Upfront as EMD / Deposit
2	Dec 2017-Jan 2018	5%	21.25	At the time of approval by CoC
3	28-Feb-18	15%	63.75	
4	30-Apr-18	15%	63.75	
5	30-Jun-18	15%	63.75	
6	31-Aug-18	15%	63.75	
7	31-Oct-18	15%	63.75	
8	31-Dec-18	15%	63.75	
	Total	100%	₹425.00	

It was noted by the CoC that although many terms and conditions were stipulated in the resolution plan but the main condition precedent for the resolution plan was that **all lands on which the poultry farm is located**

(not in name of the company but mortgaged with the banks) to be transferred to the company / Resolution Applicant. The land was owned by the promoters and not in name of company. Without the lands, the poultry farm is of no use. The Resolution Applicant proposed to pay additional ₹100 Lakhs for these two lands, which is equivalent to the market value of the land. This amount shall, however, be over and above the Resolution Plan amount of ₹425 Lakhs. The stand of State Bank of India, however, was that since the land is agricultural no action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) could be initiated by the bank. It is further contended that agricultural land can only be sold under the proceedings before the Debts Recovery Tribunal which is a time consuming process.

11. In the aforesaid third meeting of CoC, the promoter of the Corporate Debtor i.e. Mr. Shamsheer Singh was asked whether he would be interested to pay the Bank for discharge of his personal guarantees. It is observed from the minutes of the third meeting that Mr. Shamsheer Singh submitted that he is willing to pay State Bank of India a sum of ₹4.50 crores within 1 year towards settlement of his dues in personal capacity so as to release the lands and also agreed to sell the lands to the Resolution Applicant for a consideration of ₹1 crore. In view of such discussion, it was informed to the Resolution Applicant to revise the respective plan and Mr. Shamsheer Singh was asked to submit the revised settlement proposal.

12. In the same meeting, the Resolution Applicant submitted a revised plan as detailed under:-

Revised Resolution Plan of M/s. Harsh Poultry Farms

Total Bid Consideration: ₹5.5 Cr.

<i>S.No</i>	<i>Time</i>	<i>Payment percentage</i>	<i>Payment amount (in lacs)</i>	<i>Comments</i>
1	Dec 2017	5%	22.50	Upfront as EMD / Deposit
2	Dec 2017- Jan 2018	5%	22.50	At the time of approval by CoC
3	Upto 31-March-2018	90%	22.50	
	<i>Total</i>	<i>100%</i>	<i>₹450.00</i>	

A sum of ₹1 Crore was agreed to be paid to Mr. Shamsher Singh by the Resolution Applicant towards consideration of purchase of lands upon which poultry farm is constructed.

13. Mr. Shamsher Singh also revised and submitted a revised settlement proposal that a sum of ₹4.75 crores will be paid to State Bank of India within 1 year towards settlement of dues in personal capacity, which is inclusive of ₹1.00 crore to be received as sale consideration from the Resolution Applicant. The Settlement proposal submitted by Mr. Shamsher Singh during the CoC meeting is as under:-

S.No	Time	Payment percentage	Payment amount(in Lakhs)
1	Immediate	5%	23.75
2	Within 1 month of Sanction	5%	23.75
3	Within 3 month of Sanction	5%	23.75
4	Within 6 month of Sanction	10%	47.5
5	Within 9 month of Sanction	25%	118.75
6	Within 12 month of Sanction but on or before 31.12.2018	50%	237.5
	Total	100%	475.00

14. The aforementioned plans were submitted to the members/banks for taking internal approvals and the CoC directed the Resolution Professional to submit the Resolution Plan to the CoC in the next meeting after checking compliances and completion of Transaction Audit Review.

15. It is further submitted by learned counsel for Resolution Professional that by email dated 16.12.2017 (Annexure A-17, Page No. 346) requested the Resolution Applicant to submit a net-worth certificate and a certificate from the Bank in which the Resolution Applicant is maintaining bank account. The Resolution Applicant submitted both certificates, which have also been placed on record by the Resolution Professional.

16. The Resolution Applicant submitted revised resolution plan in terms of the modifications sought during the meeting of the CoC

convened on 13.12.2017. Details of revised plan is as under:-

Proposed Offer	<p>The Resolution Plan provides that out of total resolution plan consideration of Rs 450 lakhs, CIRP cost shall be paid in priority and the balance amount shall be distributed among the Financial Creditors.</p> <p>All Operational creditors will be paid in the normal course of business.</p> <p>All Employees of the corporate debtor will be retained and they will be paid as per the existing agreements. All Govt. dues including income tax, sales tax, service tax or any other amount payable to Govt. authority to be waived.</p>
Conditions	<ul style="list-style-type: none"> • The RA shall take over all movable fixed assets of the Company including plant & machinery at book value. • The RA shall take over all current assets of the Company with stock of hens, eggs and feed at book value. • The plan is subject to the condition that the two land parcels on which the poultry farms are constructed and which are in the ownership of individual promoters and their relatives, will be transferred to the resolution applicant for which RA is ready to pay additional Rs 100 lakhs which fairly reflects the market value of these land parcels at this point of time. This amount will be over and above the resolution plan amount of Rs 450 lakhs.
Payment Terms	<p>Out of Total Resolution Plan Consideration of Rs 450 Lakhs, 5% has already been deposited as EMD in Dec. 2017, another 5% of the amount will be deposited after the approval of the resolution plan by COC and remaining 90% shall be paid upto March 31st, 2018. The Resolution Applicant has also stated in the Resolution Plan that if payment is made before the mentioned due date then, they should get rebate computed at a rate of 10% p.a. as the interest for the period the amount is paid in advance.</p>

Sources of Funds	The Funds for purchase will be arranged by RA directly. The RA also have agricultural income and income from the poultry business and the assets created out of this. The RA shall also generate the funds from these activities.
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17. The revised plan submitted by the Resolution Applicant was circulated to both the members of the CoC by the Resolution Professional which was considered by both the financial creditors in order to take approval. The State Bank of India vide its letter dated 03.02.2018 (Annexure A-18) informed the Resolution Professional that the Bank has since obtained necessary internal approval of the appropriate authority of the bank to proceed with the proposed resolution plan of ₹4.50 crores for settlement of dues under the following terms and conditions:-

- (a) *The sum of ₹22.50 lacs will be paid within one month of the date of conveyance of approval.*
- (b) *₹4.05 crores will be paid on or before 31.03.2018*
- (c) *Bank of India's claim of ₹0.01.23 crores, be paid out of Resolution Plan amount of ₹4.50 crores on the basis of proportionate share of the total claims of the secured creditors.*
- (d) *Cost of CIRP to the tune of ₹0.30 crores approximately being borne/paid by us will be deducted first from the resolution amount of ₹4.50 crores.*
- (e) *Investor M/s. Harsh Poultry Farms will also purchase the land at villages Morkhi and Ludana where the units are*

situated and the proceed of ₹1.00 crore in lieu thereof will have to be deposited with us.

18. In the last meeting of CoC held on 06.02.2018 (Annexure A-22, Page No. 374), the resolution plan submitted by the Resolution Applicant was considered. The CoC further deliberated on the contents of the resolution plan and suggested the Resolution Applicant to reconsider the following conditions and incorporate them in the resolution plan by way of revised / modified plan or addendum to the plan already submitted-

- a) Release of Company's assets/charge will take place on full & final payment under the resolution plan by RA and in case the Resolution Plan isn't implemented or fail due to any reasons then the entire amount deposited by RA shall be liable to be forfeited by financial creditors to which RA agreed.
- b) Submit in writing the confirmed and bonafide sources of funds for the implementation of the plan.
- c) Reconsider removing condition relating to waiver of the statutory dues from the resolution plan and instead a prayer be made to Hon'ble NCLT to this effect. The plan must mention clearly the status of the plan in case of denial by NCLT for the prayer.
- d) Incorporate the clause as to the arrangement for the implementation and supervision of resolution plan.
- e) Incorporate a specific statement in the plan that the information and disclosures as required under the Code have been provided and resolution plan complies with the provisions of Code specifically section 29(A) of the Code.

19. The CoC further deliberated and finally it was agreed that in order to maximize the value for minor financial creditor and to avoid

unnecessary delay in the resolution process, Bank of India be given an amount of ₹54.79 Lacs as share of resolution proceeds based on liquidation value of assets exclusively charged to it which would otherwise also be available to it had it dissented from resolution plan. It was agreed by Bank of India subject to the internal approvals from their competent authority. The Resolution Professional apprised the CoC that during the course of CIRP the Applicant has not come across any specified transaction as mentioned in Sections 43, 45, 50 & 66 of the Code. However, a Transaction Review Audit to identify the specified transactions as mentioned in section 43, 45, 50 & 66 is in process and report is awaited. The Resolution Professional will report to CoC, if any such transaction is found/observed/determined upon receipt of Report of Transaction Review Audit and appropriate steps under the Code will be taken. The CoC considered all the aforesaid circumstances in the meeting held on 06.02.2018 (Annexure A-22) and unanimously by 100% voting resolved to approve the resolution plan as submitted by the Resolution Applicant, subject to Bank of India getting approval from higher authority and compliances to be made under the Code. The extract of the resolution passed by the CoC in its meeting held on 06.02.2018 is as under :-

***To approve the Resolution Plan for filing with
Adjudicating Authority i.e. Hon'ble NCLT***

*The resolution plan was put to CoC for their approval and
voting and accordingly it was;*

*“Resolved that the consent of members of committee of
creditors, subject to the Bank of India getting approval from*

higher authority which shall be communicated by them via email by 7th of February, 2018 be and is hereby accorded to approve the resolution plan for filing with Adjudicating Authority i.e. Hon'ble NCLT.”

20. It was also stated that Bank of India vide its email dated 09.02.2018 (Annexure A-24) gave its consent to the resolution plan and confirmed that its competent authority has approved their consent to the resolution plan. The Resolution Applicant as required under the resolution plan has deposited an amount of ₹22.50 lacs with the financial creditor, which was confirmed by State Bank of India vide its email dated 09.02.2018 (Annexure A-23, Page 380). The Resolution Applicant as on 09.02.2018 has deposited a total of ₹45 lakhs with State Bank of India.

21. We have heard the learned counsel for the Resolution Professional, Financial Creditors, the Resolution Applicant and the learned counsel for the Promoter Directors of the Suspended Board of Directors and also the counsel representing all the guarantors of the Financial Creditors, who are stated to be the owners of agricultural land, on which the Poultry Farm is situated.

22. That the salient features of the resolution plan of the Resolution Applicant are detailed as under:-

Financial Creditors	Rs.450 Lakhs towards the full & final settlement of the dues of financial creditors payable as :				
	S.N O	Time	Payment percentag e	Paymen t amount (In lakhs)	Comment s
	1	Dec -17	5%	22.50	Upfront As EMD/ Deposit
	2	Jan 2018- Feb 2018	5%	22.50	At time of Resolutio n Plan Approval by COC
	3	Within 30 days of the Resolutio n Plan approval from Hon'ble NCLT	90%	405.00	
		Total	100%	450.00	
Operational Creditors and Employees	<p>a) All Operational creditors in the normal course of business to be paid in normal course of business.</p> <p>b) All Employees of the company will be kept as they are and will not be terminated. They will be paid as per the existing agreement.</p>				

	<p>c) It is submitted that Hon'ble NCLT may kindly give waiver from liability to any taxation dues for previous periods, that may arise in future.</p> <p>d) We understand that the company has certain pending export obligations in lieu of the benefit of duty on import of the machines. Prayer to be made before Hon'ble NCLT for waiver of these export obligations.</p>
Equity shareholder	<p>a) 100% equity of the Company to be transferred to us</p> <p>b) Nothing to be paid to be the existing shareholders against their equity shares.</p> <p>c) The management of the Company will be handed over to us on full and final payment to financial creditors and we will nominate the board members in the company. The existing directors to be removed.</p>
Assets to be transferred	<p>a) All movable fixed assets of the company including plant & machinery to be taken over at book value.</p> <p>b) All current assets of the company with stock of hens, eggs and feed to be taken over at book value.</p> <p>c) All lands on which the poultry farms are located (currently not in name of the company but mortgaged with the banks) which are given below to be transferred to the Company/ Resolution Applicant. Our Plan is subject to the approval of this condition as the poultry farm is constructed on lands owned by the promoters and not in name of company. Without the lands, the poultry farm is no</p>

	<p>use. We will pay additional ₹100 Lakhs for these two lands, which is the market value of these lands at this point of time. This amount will be over and above the Resolution Plan amount of ₹450 Lakhs.</p> <ol style="list-style-type: none"> i. Agriculture land admeasuring 23K-08M, on which infrastructure has already constructed, situated at village Ludana, near Gohana Jind road, Tehsil Safidon, District Jind Haryana owned by Sh. Raj Kumar, Sh. Anil Kumar and Sh. Shamsher Singh ii. Agriculture land admeasuring 31K-04M (03K-04M & 28K-0M) at village Ludana, near Gohana Jind road, Tehsil Safidon, District Jind Haryana owned by Smt. Sudesh, Smt. Santosh, Smt. Seema, Sh. Raj Kumar, Sh. Anil Kumar and Sh. Shamsher Singh <p>d) Acceptance letter in the form of Affidavits from the co-owners of two lands on which poultry farm is constructed, for the purchase of lands to be provides to us.</p> <p>e) All plots in the name of the company to be taken over book value.</p>
Sources of funds	<p>The money for implementation of the Resolution Plan will be arranged by the Resolution Applicant. The Resolution Applicant has agriculture income and income from the poultry business and assets created out of this. The Resolution Applicant also have a balance of ₹240 Lakhs with Bank of India in the name of Mr. Narender Singh (Proprietor- Harsh Poultry Farms). Bank statement dated 6th Feb 2018 mentioning the available amount of ₹2,40,68,224/- is enclosed (Page No. 360). Balance funds will be arranged by us, after the</p>

	<p>resolution plan approval letter by Committee of Creditors, is received by us.</p> <p>The Resolution Applicant undertake to make the full payment under the resolution plan, within 30 days of the Approval of the Resolution Plan by Hon'ble NCLT</p>
Corporate insolvency Resolution Process costs	The insolvency resolution process costs shall be paid first and recovered from the above amount of ₹450 Lakhs
Supervision & Implementation of Resolution Plan	<p>The above resolution plan will be implemented and supervised by the existing resolution professional at a fee mutually agreed between us and resolution professional. The management of the company shall also report to him.</p> <p>Extinguishment of liability and release of Company's Assets/ charge will take place once Full & Final payment is made to the Financial Creditors and after this complete ownership of 100 % will be transferred to us.</p> <p>In case Resolution Plan isn't implemented or failed due to any reasons then the entire amount deposited by the Resolution Applicant shall liable to be forfeited by the Financial Creditors.</p>
Liquidation value due to dissenting financial creditors and provide that	Payment to the dissenting secured financial creditors shall be made based on the liquidation value in proportion of their claim in priority to the claims to be paid to the consenting secured financial creditors. Such payment will be made before any recoveries are made

such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan	by the financial creditors who vote in favour of the resolution plan.
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23. It is informed to us by the learned counsel for the Resolution Professional that the Auditor as appointed by the CoC to carry out Transaction Audit Review i.e. M/s. AKG & Associates have submitted their report on 21.04.2018 and the Resolution Professional has filed a separate application seeking avoidance of certain transactions under Section 66 of the Code which is registered as C.A. No. 171 of 2018.

24. The Resolution Applicant in the resolution plan has sought the following two waivers:-

- (a) *with regard to liability to any taxation dues for previous periods, that may arise in future; and*
- (b) *the export obligations in lieu of the benefit of duty on import of the machines with the following particulars:-*

<i>EPCG LICENCE NO.</i>	<i>DATE</i>	<i>EXPORT OBLIGATION (FIXED) USD</i>
<i>3330002447</i>	<i>16.08.2012</i>	<i>338511.87</i>
<i>3330002488</i>	<i>07.09.2012</i>	<i>485943.34</i>

3330002534	25.09.2012	326013.09
3330002806	12.04.2013	112787.32
3330003178	11.02.2014	139120.90
	TOTAL	1402376.52

25. During the hearing, it was observed that the personal guarantors have entered into a settlement with the State Bank of India for release of their personal guarantees and have agreed to sell the land to the Resolution Applicant. The personal guarantors have filed their affidavits (Page No. 362-373) before us to the effect that they have agreed to sell the land to the Resolution Applicant and the amount settled with the Bank shall be paid within 1 year.

26. The learned Counsel for the Resolution Professional submits that the Resolution Plan (Annexure A-25, Page No. 382) approved by the CoC conforms all the requirements of sub-section (2) of section 30 of the Code. On a reference to the Resolution Plan, we are also satisfied that the plan submitted by the Resolution Applicant fulfills all the requirements of the Code. When the matter was listed on 13.06.2018, the Resolution Professional was directed to file necessary certificate for compliance of Regulation 39 (2) of IBBI (CIRP) Regulations. The Resolution Professional filed his affidavit of compliance vide diary No.2186, dated 15.06.2018. It is stated that the resolution plan conforms to the conditions referred to in section 30 (2) of the Code that the plan was voted

by the members of CoC with 160% votes in favour of the plan and the compliance certificate as required by Regulation 39 (4) of CIRP Regulations has already been filed by diary No.1920, dated 31.05.2018.

27. It may be observed that the Resolution Professional filed the compliance certificate in detail of various provisions, viz, Section 30 (2), Regulation 37 (1), 38 (1), 38 (2), 38 (3) of the CIRP Regulations.

28. Along with the instant CA No.71 of 2018, the Resolution Professional filed a detailed compliance status (Page No. 387) and certified that the Resolution Plan provides for the following:-

- a) *for the payment of insolvency resolution process costs, as denied in Section 5(13) of the Insolvency and Bankruptcy Code, 2016 and in a manner specified by the Board, in priority to the repayment of other debt of the Corporate Debtor;*
- b) *for the repayment of the debts of operational creditors in a manner as specified by the Board;*
- c) *for the management of the affairs of the Corporate Debtor after approval of the resolution plan;*
- d) *for 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) *the contents of the resolution plan meet all the requirements of the Code and the Regulation; and*

g) that the Resolution Plan conforms to the requirements as specified by the Board.

29. Further, the Resolution Applicant has filed disclosure of eligibility under Section 29A of the Code for submitting Resolution Plan and an undertaking has been filed along with the instant application at Annexure A-20.

30. In the present case the Resolution Plan has been unanimously approved by the members of the CoC in the meeting dated 06.02.2018. The Resolution Plan has been approved by the CoC within the stipulated period of 180 days from the date of admission of the application under Section 7 of the Code.

31. We have gone through the contents of Resolution Plan submitted for approval which contains statements dealing with the interest of all stakeholders, including financial creditors, operational creditors and employees of the Corporate Debtor as to the proposal for payment of their dues. The Resolution Plan further deals with the provisions for the Insolvency Resolution Process cost as per Regulation 38(1) of the Regulations. The Resolution Plan also provides for the term and its implementation schedule, management and control of business of the Corporate Debtor during the term of the Resolution Plan and adequate means for supervision its implementation. The provisions and implementation of the Resolution Plan shall be as under:-

“ The above resolution plan will be implemented and supervised by the existing resolution professional at a fee

*mutually agreed between us and resolution professional.
The management of the company shall also report to him.*

*Extinguishment of liability and release of
Company's assets / charge will take place once Full & Final
payment is made to the Financial Creditors and after this
complete ownership of 100% will be transferred to us.*

*In case Resolution Plan isn't implemented or failed
due to any reasons, then the entire amount deposited by
us shall liable to be forfeited by the Financial Creditors."*

32. Before parting with this order, it is necessary to deal with the conditions laid down by the Resolution Applicant in the Resolution Plan, which were discussed by the CoC. One of the prayers made by the Resolution Applicant is seeking waivers of liability from any taxation dues for the previous periods which may arise in future and to exempt the Resolution Applicant from the pending export obligations in lieu of the benefits of duty on import of the machines. Learned representing the Financial Creditors and the Resolution Professional submit that the CoC could not make a decision with regard to such waiver as the same was not within their competence. It is admitted proposition of fact that pursuant to the public announcement, no such claim has been made by the Government Department. The concern shown here-in is with regard to any dues that may arise in future in respect of the past period. With regard to the export obligations to which the corporate debtor was liable, it is submitted by learned counsel for the Resolution Professional and the learned counsel representing the promoter directors of the suspended Board of Directors that the corporate debtor had imported certain machines

in the year 2012, 2013 and 2014 and there are pending obligations in lieu of the benefit of duty on the said import. The export obligation liable to be paid to the Government is to the tune of 14,20,52 USD. It is contended that the export obligation would become due latest by the year 2020-24.

33. We have given our thoughtful consideration to the submissions made by the learned counsel for the parties and the prayer made in the Resolution Plan and we find that since the corporate debtor defaulted in making the payment of the debt and is undergoing insolvency resolution process, it would be perfectly legal in exempting the Resolution Applicant from complying with the export obligations as it is taking over the corporate debtor on fulfilling certain conditions including payments to the Financial Creditors as agreed upon and the plan must be implemented free of any such conditions.

34. It is also important to note that there is no haircut for the payment obligations to the operational creditor and as they are to be paid their dues in the normal course of business. Even the past employees of the corporate debtor will continue to be engaged by the Resolution Applicant without having recourse to termination of their services and shall be paid as per the existing agreement with them. The initial amount of ₹45 lacs stands already deposited by the Resolution Applicant.

35. In view of the above discussion, the Resolution Plan Annexure A-25 stands approved granting waiver in respect of the past tax dues to the Government which may arise in future and exempt the

Resolution Applicant from the export obligations, which the corporate debtor had entered. It is further stipulated that all the operational creditors shall be paid their dues in the normal course of business and the employees of the company will not be terminated and would be paid as per the existing agreement. The Resolution Plan so approved shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan. The Resolution Applicant shall be bound to pay the rest of the balance amount of ₹405 lacs within 30 days from the receipt of the certified copy of this order.

36. When the matter was listed on 04.06.2018, Mr.Diwan Sharma, Advocate representing Shamsher Singh Director of the suspended Board of Directors submitted that there are six guarantors, who mortgaged their land for extending loan by State Bank of India and all of them have assented to the Resolution Plan.

37. The matter was then fixed for 13.06.2018 and Mr.Diwan Sharma, Advocate filed his power of attorney for all the guarantors and submitted that all the guarantors shall abide by all the terms of the Resolution Plan. It was contended that all the guarantors have already furnished their affidavits for execution of the sale deed in favour of the Resolution Applicant as per the terms of the Resolution Plan.

38. On the approval of the Resolution Plan, we direct that moratorium order passed by this Tribunal under Section 14 of the Code shall cease to effect and that the Resolution Professional shall forward all the record relating to the conduct of the corporate insolvency resolution

process and the Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.

Copy of this order be communicated to the Resolution Professional, Resolution Applicant, Financial Creditors and the counsel representing the Guarantors of the suspended Board of Directors.

CA No.171/2018:

CA No.171/2018 is adjourned to 03.08.2018 for preliminary hearing.

Sd/-

(Pradeep R.Sethi)
Member (Technical)

Sd/-

(Justice R.P.Nagrath)
Member (Judicial)

June 15, 2018.
Ashwani