

IA(IBC)/124(KOB)/2021
IN IBA/24/KOB/2020

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA**

IA (IBC)/124(KOB)/2021
in
IBA/24/KOB/2020
(Under Section 30(6) & 31 of IBC, 2016)

Order delivered on: 31/12/2021

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Anil Kumar. B, Member (Technical)

Mohanan T.S.,
Resolution Professional of
M/s Namudirisons Agro Foods India Private Ltd.,
Thekkinathil House,
Valayanchirangara P.O.,
Vengola, Perumbavoor,
Ernakulam, Kerala- 683 556.
Email: tsmohanan@gmail.com

... Applicant

Parties/Counsel present (through video conference)

For Applicant : Shri. Mohanan T.S., Resolution Professional
along with Shri Prasanth Kumar, Advocate

ORDER

Per: Ashok Kumar Borah, Member (J)

This application IA(IBC)/124/KOB/2021 has been filed by the Resolution Professional for approval of the Resolution Plan under 31 of the IBC, 2016 in the matter of M/s Nambudirisons Agro Foods India Private Limited submitted by M/s Dasmesh Warehousing Private Limited (“**Resolution Applicant**”) as approved by the Committee of Creditors (“**CoC**”)

pursuant to Section 30(6) of the Insolvency and Bankruptcy Code, 2016.

The Resolution Professional has sought the following reliefs:

- a. To approve the Resolution Plan submitted by M/s DASMESH WAREHOUSING PRIVATE LTD, (the Resolution Applicant) on the terms and conditions mentioned in the Resolution Plan under Section 31 of IBC.
- b. To approve exemptions and reliefs sought as per para 18 of this application.
- c. To approve various measures as proposed in para 21 of this application once the Resolution Applicant take over the management control of the Corporate Debtor.

The facts in brief are as under: -

2. An application for Corporate Insolvency Resolution Process has been filed by M/s Abheeshnair Engineering Private Limited (“**Operational Creditor**”) under Section 9 of the Insolvency and Bankruptcy Code read with Rule 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 as IBA/24/KOB/2020 against M/s Nambudirisons Agro Foods India Private Limited (“**Corporate Debtor**”). The application IBA/24/KOB/2020 was admitted by this Tribunal, vide order dated 26th November, 2020. Accordingly, moratorium was declared under Section 14 of the IBC and Sri Mohanan T. S, Insolvency Professional, was appointed as Interim Resolution Professional, who was directed to take necessary action in accordance with the relevant provisions of the IBC.

3. It is stated that, Sri. Mohanan T S, the Interim Resolution Professional, took over the management of the affairs of the Corporate

Debtor and caused public announcement on 3rd December, 2020, under Regulation 6(1) of the IBBI (Insolvency Resolution Process of Corporate Persons) ,2016 calling for claims by the creditors. The IRP received some claims. On due verification of claims received, following claims have been admitted and the admitted amount are shown in the below statement:-

Creditors	Amount Claimed (Rs.)	Amount admitted
Financial Creditor	4,40,56,379.71	2,86,05,129.71
Operational Creditor	3,88,44,122.42	2,51,87,222.44
Employees/Workmen	3,70,548.00	0
Other Creditors	1,36,000.00	0
Total	8,34,07,050.13	5,37,92,352.15

4. The Committee of Creditors (CoC) was formed with Bank of Baroda as the sole Financial Creditor with 100% voting rights.
5. The Interim Resolution Professional submitted the list of creditors and the report certifying the constitution of the committee of creditors to this Tribunal on 23.1.2020 and this Tribunal had taken the same on record as per order dated 07.01.2021.
6. In the first CoC meeting held on 30.12.2020, it was resolved to appoint Sri Mohanan T.S, Interim Resolution Professional, as Resolution Professional as per Section 22(2) of the IBC. The appointment of the Resolution Professional was approved by this Tribunal as per order dated 05.02.2021.

7. The Resolution Professional convened subsequent CoC meetings on 09.02.2021, 08.03.2021, 27.04.2021, 05.05.2021 and 27.07.2021 wherein significant decisions like appointment of Registered Valuers, Auditors for preparing the Financial Statements of the Corporate Debtor for the period from 1.04.2018 to 26.11.2020 (date of declaration of CIRP), appointment of transaction auditor for determining avoidance transactions, filing of application under Section 19(1) of the IBC, approval of Information memorandum and evaluation matrix, publication for expression of interest from prospective Resolution Applicants, presentation of the Resolution Plan, filing of application for extension of CIRP for 90 days under Section 12(2) and approval of Resolution Plan were taken.

8. In the CoC meeting held on 09.02.2021, the RP appointed two registered valuers each for land and building, plant and machineries and current assets. As per the valuation made by registered valuers, the average fair value of the Corporate Debtor was Rs. 110 lakhs and average liquidation value was 76 lakhs.

Background of the Resolution Applicant

9. M/s Dasmesh Warehousing Private Limited (Resolution Applicant) belongs to the FEI group of companies. The group consists of the following companies: -

- i. FEI Cargo limited -IATA registered and having international partners world-wide.
- ii. Freight Express Intl Private Limited.
- iii. Principal Container Line Private Ltd- Multi-model transporter licenced by American Government (FMC approved)

iv. M/s Dasmesh Warehousing Private Limited -The group has a total turnover of 175 crores and net profit of 2 crores as on 31st March, 2020

10. M/s Dashmesh Warehousing Private limited is engaged in warehousing and stockists' activities and have experience in FMCG sector including super stockist of the Corporate Debtor. Sri. Koyyampurath Prathapan Nair, director of the Resolution Applicant is also a shareholder of the Corporate Debtor, holding shares 10%the Corporate Debtor. However, as per section 5(24)(j) of the IBC, the Resolution Applicant is not a related party of the Corporate Debtor. M/s Dasmesh Warehousing Pvt Limited is also an Operational Creditor of the Corporate Debtor having an admitted claim of 77.39 lakhs. The Resolution Applicant does not have any other relation with the Corporate Debtor and is not ineligible as per Section 29A of the IBC. Shri S Abhijeet P.Nair, Smt Smita Pillai and Shri Koyyampurath Prathapachandran Nair are the Directors of M/s Dasmesh Warehousing Private Limited.

11. The Resolution Applicant also complies with the provisions of Clause (h) of Sub-Section (2) of Section 25 of the IBC with regard to the complexity and scale of operations of the business of Corporate Debtor and such other conditions specified by the Board to submit the Resolution Plan. The Resolution Applicant or any of its related parties have not failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. The Resolution Applicant has submitted as annexure to the Resolution

Plan, an affidavit pursuant to Section 30(1) of the IBC code confirming its eligibility under Section 29A of the code to submit Resolution Plan.

Resolution Plan

12. The Prospective Resolution Applicant M/s Dasmesh Warehousing Pvt Limited submitted the Resolution Plan on 13.04.2021 and made a detailed presentation of the Resolution Plan before the CoC in the fourth meeting of the CoC held on 27.04.2021. The CoC deliberated on the Resolution Plan and sought a few clarifications on the various provisions of the Resolution Plan.

Salient features of the Resolution Plan

13. The Resolution Plan is prepared in conformity with Regulation 39 (Mandatory contents of the Resolution Plan) of Insolvency and Bankruptcy Board of India Insolvency Resolution Process of Corporate Persons) Regulations 2016.

14. The Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force.

15. The Resolution Applicant will bring an equity amount of Rs.65 lakhs to settle the liabilities of the Corporate Debtor and infuse a sum of Rs.110 lakhs for capital cost and working capital for restructuring the operations of the Corporate Debtor.

16. The equity of Rs. 65 lakhs that will be brought in by the Resolution Applicant as resolution amount, will be utilized for payment of resolution

cost, payment to the Operational Creditors and payment to the secured Financial Creditors in the manner detailed below:

(a) Insolvency Resolution Process Cost

The Insolvency Resolution Cost of Rs.14.75 Lakhs (Rupees Fourteen Lakhs and Seventy-Five Thousand only) will be paid in priority to the payments of other debts of the Corporate Debtor as per Section 30(2)(a) of the Insolvency and Bankruptcy Code, 2016. Details of the Resolution Cost as approved by the Committee of Creditors in the meeting held on 27.07.2021 are as given below:

Sl. No.	Particulars	Amount	GST	Total Amount
1	Fee for Resolution Professional from December 2020 to October 2021.	10.90	NIL	10.90
2.	Cost of engaging professionals like, registered valuers, legal professional, Auditors and other incidental expenses	3.75	0.10	3.85
	Total	14.65		14.75

(b) Payment to the Operational Creditors

Payment to the Operational Creditors under the Resolution Plan shall be given priority of payment over Financial Creditors as per Regulation 38(1). The amount that will be paid to the Operational Creditors will not be less than the liquidation value payable to Operational Creditors in the event

of liquidation as per Section 53 and it is NIL in the case of the Corporate Debtor.

(c) Payment terms

The total resolution amount of 65 lakhs will be paid by the Resolution Applicant in lumpsum within 60 days from the date of approval of the Resolution Plan by this Tribunal.

Payment to Workmen due and Employee due

17. Workmen dues and employee due as on the CIRP commencement date, as per provisional balance sheet as on 26.11.2020 is Rs.28,35,608. There are no admitted claims of Workmen and employees. Hence that amount is proposed to be written off.

Statutory dues

18. Statutory dues of Rs.17,28,072/- is payable for ESI (Rs 1,69,979), EPF (Rs.12,99,924) and TDS (Rs.2,58,169) as per the provisional balance sheet dated 26/11/2020. Since no claim from the government authorities have been received, the Statutory dues of Rs.17,28,072 is proposed to be written off.

Equity Shareholders

19. The net worth of the Corporate Debtor as on 26/11/2020 (date of declaration of CIRP) is negative by Rs.5.82 Crores and the book value per share is negative. Hence the share capital of Corporate Debtor has no value and the existing share capital of Rs. 11,111,100 (Rs. 1.11 Crores) of the Corporate Debtor is proposed to be extinguished.

Loan from Unsecured Creditors

20. Loan from the directors amounting to Rs. 3,22,85,115.50 and loan from related parties amounting to Rs. 93,12,341/- due as per the provisional balance sheet dated 26/11/2020 is proposed to be written off as no claim was received from them.

Unsecured short-term loans and advances, trade payables and expenses payables

21. Unsecured loans and advances (48.39 lakhs), trade payables (Rs.51.98 lakhs) and expenses payables (Rs.15.58 lakhs) as on the CIRP date for which no claims were received are proposed to be written off.

Proposal for Operational re-structuring

22. The Resolution Professional will infuse Rs. 1,11,00,000/- for the capital re structuring of the Corporate Debtor as detailed below: -

Capital Cost	Amount (Rs.)
Machineries and other Capital Costs	50,00,000
Purchase of Vehicles	50,00,000
Total	1,00,00,000
Operational Cost	
Working Capital	11,00,000
Total	11,00,000
Total Restructuring Cost	1,11,00,000

The Resolution Applicant will bring in Rs. 65 lakhs by way of equity in the Corporate Debtor and Rs. 111 lakhs as interest free long- term loan from directors. The Resolution Applicant has remitted Rs.6.5 lakhs in the resolution account towards 10% of the financial bid as per EOI terms. The

Resolution Applicant propose to complete repairs to building, replacement of plant and machineries, equipment and accessories, obtain necessary approvals and make the factory operational within 60 days of handing over the factory to them. The Resolution Applicant has sought exemptions and relief as part of the Resolution Plan as detailed in para 4.2 of the Resolution Plan. The projected financial statements of M/s Nambudirisons Agro Foods India Pvt limited after taking over by the Resolution Applicant is detailed in para 5.3 of the Resolution Plan. The Resolution Professional hereby confirms that the Resolution Plan submitted by the Resolution Applicant complied with the following provisions of Section 30(1) of the IBC, 2016 and confirms that the Resolution Plan:

- a) was prepared on the basis of the information memorandum approved by the CoC. The Resolution Plan was submitted along with an affidavit stating that he was eligible under section 299A of the IBC, to submit the Resolution Plan. The Resolution Professional hereby confirms that the Resolution Applicant satisfied the eligibility criteria prescribed under Section 29 A of the IBC,2016 and confirms that the Resolution Plan provides for
- b) payment of the Insolvency Resolution Process cost, in a manner specified by the Board in priority to the payment of other debts of the Corporate Debtor.
- c) provides for the payments of the debts of Operational Creditors in such manner which shall not be less than the amount to be paid to the Operational Creditors in the event of the liquidation of the Corporate Debtor under Section 53 of the IBC. In the case of M/s Nambudirisons Agro Foods India Private Limited, the amount payable to the Operational Creditors under section 53 of the IBC is zero. But the Committee of Creditors approved a payment of Rs.2, 51,250/- (Rupees two lakhs and fifty- one thousand two hundred and fifty only) to the Operational Creditors.
- d) provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan.
- e) Provides for the implementation and supervision of the Resolution Plan.
- f) Does not contravene any of the provisions of the law for the time being in force.
- g) Confirms to all other requirements as specified by the Board.

Approval of the Resolution Plan by the CoC

23. The Resolution Plan was presented in the fourth meeting of the Committee of creditors held on 27/04/2021 in which the Resolution Applicant was also present. The Committee of Creditors in its fifth meeting held on 05/05/2021, analyzed the Resolution Plan in detail and proposed a few modifications. M/s Dasmesh Warehousing private limited (Resolution Applicant) submitted the revised Resolution Plan incorporating the modifications proposed by the CoC. The Resolution Plan submitted by M/s Dasmesh warehousing Pvt Ltd, was approved by CoC in its meeting held on 27/07/2021, after considering its viability and feasibility and other requirements specified in IBC and IBBI (Insolvency Resolution Process of Corporate Persons) Regulations 2016. Following resolution was passed in the meeting approving the Resolution Plan.

“Resolved that the Resolution Plan submitted by M/s Dasmesh Warehousing Private Limited (Resolution Applicant) is hereby approved with 100% voting share.”

“Resolved further that the resolution amount of Rs.65,00,000/- Rupees sixty-five lakhs only) offered by the Resolution Applicant will be distributed as follows: -

a) Rs.14,75,000/- (Rupees fourteen lakhs seventy –five thousand only) towards the resolution cost.

b) Rs.2, 51,250 1- (Rupees two lakhs fifty -one thousand two hundred and fifty only) to be paid to the Operational Creditors whose claims have been admitted by the Resolution Professional. The payments to the Operational Creditors will be made in proportion to the admitted claims.

c) Balance amount of Rs. 47, 73,750/- (Rupees Forty-seven lakhs seventy -three thousand seven hundred and fifty only) to be paid to the secured Financial Creditor.”

Based on the approval of the Resolution Plan by the CoC, a letter of intent was issued to the Resolution Applicant conveying the approval of the

Resolution Plan and inter alia stipulating the condition that the Resolution Applicant shall implement the Resolution Plan as per the terms and conditions set out in the Resolution Plan and in case the Resolution Plan is not implemented, the performance security provided shall not be refunded. The Resolution Applicant accepted the letter of intent.

Payment Schedule

24. All payments within the limits of Rs.65 lakhs and the amount would be disbursed as approved by the Committee of Creditors within 60 days from the date of the "Approval date or before the Effective date" whichever is earlier. Upon payment of 100% of the resolution amount, the Financial Creditor shall release all encumbrances charges, security interest created on the assets of the company.

Exemptions and reliefs sought

25. The Resolution Applicant has sought for the following exemptions and reliefs as part of the Resolution Plan as detailed in para 4.2 of the Resolution Plan.

- i. All debts and dues, liability or obligations, which are not included in the Resolution Plan shall be deemed to have been irrevocably waived, and permanently extinguished and written off in full with effect from the effective date.
- ii. All the dues including statutory dues owed to the Central Government, or the State Government or any local authority which are not included in the Resolution Plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the approval date could be continued.
- iii. To seek all benefits of the income tax exemptions from the appropriate authorities as available to companies under CIRP (IBC companies).
- iv. To settle all legal proceedings pending against the Corporate Debtor in any court or tribunal, or tax authorities and other contingent liabilities irrevocably and unconditionally as on the effective date.

- v. Extinguish all liabilities in relation of corporate guarantees and indemnities provided by the Corporate Debtor as on the effective date.
- vi. All claims and rights of the promoters and directors of the Corporate Debtor may be irrevocably and unconditionally extinguished.
- vii. To release all encumbrances, charges, security interests etc created on the assets of the Corporate Debt on payment of the 100% resolution amount
- viii. Revocation of all power of attorneys provided by the Corporate Debtor to any person as on the effective date.
- ix. Terminate without liability all outstanding negotiable instruments issued by the Corporate Debtor or any other person on behalf of the Corporate Debtor.
- x. All actions with regard to the assets /claims/rights etc. as mentioned in the balance sheet of the Corporate Debtor as well as off balance sheet as on the effective date shall be the assets / claims/rights of the Resolution Applicant and shall be dealt with its sole discretion.
- xi. To permit amendment of the constitutional documents of the Corporate Debtor.

On and from the Effective Date

26. On and from the Effective Date the Resolution Applicant shall take over the management of the Corporate Debtor and shall acquire the management control inter alia by taking the following measures: -

- 1) All existing Directors of the company shall be deemed to have resigned and vacated their office. The Board of Directors of the company shall be restored and reconstituted by the Resolution Applicant. The reconstituted board shall be entitled to exercise all powers of the Board of Directors of the company under the applicable laws.
- 2) All existing employees of the company shall be deemed to have resigned and new employees shall be appointed by the Resolution Applicant.
- 3) All relevant forms and all necessary actions in relation to resignation of existing directors and appointment of new directors and key managerial person shall be effectuated. The order of the NCLT approving the Resolution Plan shall direct the Registrar of Companies to take an account of such appointments, resignation of directors and key managerial persons of the company.
- 4) The Auditors of the company shall be deemed to have vacated office and new person/firm nominated by the Resolution

Applicant shall be designated and appointed as the Auditor of the company.

- 5) All powers of attorneys and/or other corporate authorizations or mandates issued by the company to any person/s to enable such person/s to carry out various functions of the company, to sign and execute various documents and/or represent the company and to operate the bank accounts of the company shall stand revoked with immediate effect as on the date of Effective Date. The reconstituted Board of Directors of the company shall be entitled to authorize such person/s as it deemed fit to carry out such functions of the company, sign and execute various documents and/or represent the company and to operate the bank accounts of the company.
- 6) Upon completion of the action contemplated in the Resolution Plan, the Resolution Applicant shall hold 100% share capital of the company.

27. As per Section 39(4), the Resolution Professional has submitted compliance certificate in Form H before this Tribunal.

28. On 08.11.2021 when this matter was taken up for hearing, this Tribunal observed that the interests of the Statutory Authorities has not been protected in the Resolution Plan. Hence, RP was directed to clarify the above and if required the RP is directed to submit addendum in the Resolution Plan. In compliance of the above order by the RP filed an addendum on 17.11.2021. In the Addendum, the RP has stated that where the Corporate Debtor has failed to fulfil its statutory obligations and maintain a separate earmarked corpus for its statutory dues, no claim with respect to the statutory dues can lie, during liquidation or resolution, against the Resolution Applicant and the general estate of the Corporate Debtor managed by him or her, and that they would have been treated at par with other Operational Creditors of the Corporate Debtor and received "Nil" funds from any liquidation proceeds.

FINDINGS: -

29. We have heard the submissions made by the Resolution Professional and his learned Counsel who appeared in person through video conferencing. It is seen that the Resolution Plan submitted by *M/s Dasmesh Warehousing Private Limited* has been approved in the 6th CoC Meeting held on 27.07.2021 with 100% voting right and that the CoC found that the plan stands the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the Resolution Applicant for making the Resolution Plan effective, after approval by this Bench.

30. The Resolution Applicant in the Resolution Plan has dealt with interests of all stakeholders of the Corporate Debtor, including the Financial Creditors, the Operational Creditors and the CIRP cost.

Section 30 of the Code provides as below:

“(1) A Resolution Applicant may submit a Resolution Plan to the resolution professional prepared on the basis of the information memorandum.

(2) 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 [payment] of other debts of the Corporate Debtor;

(b) provides for the [payment] of the debts of Operational Creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under section 53;

(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) conforms to such other requirements as may be specified by the Board.

[Explanation-For the purpose of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

(3) The resolution professional shall present to the committee of creditors for its approval such Resolution Plans which confirm the conditions referred to in subsection (2).

(4) The committee of creditors may approve a Resolution Plan by a vote of not less than [sixty-six] percent of voting share of the Financial Creditors, after considering the feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the Committee of Creditors shall not approve a Resolution Plan, submitted before the commencement of the Insolvency and Bankruptcy Code, (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the Resolution Applicant is ineligible under Section 29A and may require the resolution professional to invite a fresh Resolution Plan where no other Resolution Plan is available with it:

Provided further that where the Resolution Applicant referred to in the first proviso is ineligible under clause (c) of Section 29A, the Resolution Applicant shall be allowed by the Committee of Creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of Section 29A.

Provided also that nothing in the second proviso shall be construed as extension of period for the purpose of the proviso to Sub-Section (3) of Section 12, and the corporate insolvency Resolution Process shall be completed within the period specified in that Sub-Section.]

[Provided also that the eligibility criteria in Section 29A as amended by the Insolvency and Bankruptcy Code, (Amendment) Ordinance, 2018 (Ord. 6 of 2018) shall apply to the Resolution Applicant who has not submitted Resolution Plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ord. 6 of 2018).]

(5) The Resolution Applicant may attend the meeting of the committee of creditors in which the Resolution Plan of the applicant is considered:

Provided that the Resolution Applicant shall not have a right to vote at the meeting of the committee of creditors unless such Resolution Applicant is also a Financial Creditor.

(6) The resolution professional shall submit the Resolution Plan as approved by the committee of creditors to the Adjudicating Authority”

31. Section 31 of the Code provides as below:

“(1) 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.]

(2) Where the Adjudicating Authority is satisfied that the Resolution Plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the Resolution Plan.

(3) After the order of approval under sub-section (1), —

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.”

[(4) The Resolution Applicant shall, pursuant to the Resolution Plan approved under Sub-Section (1), obtain necessary approval required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority under Sub-

Section (1) or within such period as provided for in such law, whichever is later:

Provided that where the Resolution Plan contains a provision for combination as referred to in Section 5 of the Competition Act, 2002 (12 of 2003), the Resolution Applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such Resolution Plan by the Committee of Creditors.]

32. It is also necessary to refer the provisions of Regulation 38 and 39 of CIRP Regulations to come to a conclusion that requirements of the Regulations are fulfilled. Regulation 38 and 39 are as follows: -

Regulation 38 - Mandatory contents of the Resolution Plan:

[(1) The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over Financial Creditors.]

[(1A) A Resolution Plan shall include a statement as to how it has dealt with the interests of all stakeholders, including Financial Creditors and Operational Creditors, of the Corporate Debtor.]

(2) A Resolution Plan shall provide:

(a) the term of the plan and its implementation schedule;

(b) the management and control of the business of the Corporate Debtor during its term; and

(c) adequate means for supervising its implementation.

[(3) A Resolution Plan shall demonstrate that –

- (a) it addresses the cause of default;*
- (b) it is feasible and viable;*
- (c) it has provisions for its effective implementation;*
- (d) it has provisions for approvals required and the timeline for the same; and*
- (e) the Resolution Applicant has the capability to implement the Resolution Plan.*

Regulation 39 - Approval of Resolution Plan:

(1) A prospective Resolution Applicant in the final list may submit Resolution Plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for Resolution Plans under regulation 36B along with

(a) an affidavit stating that it is eligible under section 29A to submit Resolution Plans;

(c) an undertaking by the prospective Resolution Applicant that every information and records provided in connection with or in the Resolution Plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency Resolution Process, forfeit any refundable deposit, and attract penal action under the Code.

(1A) A Resolution Plan which does not comply with the provisions of sub-regulation (1) shall be rejected.

(2) The resolution professional shall submit to the committee all Resolution Plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him: -

- a. preferential transactions under section 43;*
- b. undervalued transactions under section 45;*
- c. extortionate credit transactions under section 50; and*
- d. fraudulent transactions under section 66,*

(3) The committee shall evaluate the Resolution Plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best Resolution Plan and may approve it with such modifications as it deems fit:

Provided that the committee shall record the reasons for approving or rejecting a Resolution Plan.

[(4) The resolution professional shall endeavour to submit the Resolution Plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency Resolution Process under section 12, along with a compliance certificate in Form H of the Schedule and the evidence of receipt of performance security required under Sub- Regulation (4A) of Regulation 36B].

(5) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a Resolution Plan to the participants and the Resolution Applicant.

(6) A provision in a Resolution Plan which would otherwise require the consent of the members or partners of the Corporate Debtor, as the case may be, under the terms of the constitutional documents of the Corporate Debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.

(7) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the Corporate Debtor, prior to the insolvency commencement date.

(8) A person in charge of the management or control of the business and operations of the Corporate Debtor after a Resolution Plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a Resolution Plan.

[(9) A creditor, who is aggrieved by non-implementation of a Resolution Plan approved under Sub-Section (1) of Section 31, may apply to the Adjudicating Authority for directions]

33. Ongoing through the Resolution Plan submitted by M/s Dasmesh Warehousing Private Limited it is discerned that the Resolution Plan is in accordance with Section 30 and 31 of the Code and also complies with the requirement of Regulations 38 and 39 of CIRP Regulations.

34. The Resolution Plan was approved by the CoC with 100% voting right satisfies all the criteria required for approval of Resolution Plan by the Adjudicating Authority.

35. The Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance of all applicable law for the time being in force.

36. It is clarified that the Resolution Applicant shall take over the Corporate Debtor with all its assets and liabilities as per terms of the approved Resolution Plan. If any relief concerning any identified liability of the Corporate Debtor is required, then that needs to be specifically mentioned and sought for in the Resolution Plan.

37. On perusal of the Resolution Plan, we found that the Resolution Plan has been prepared with necessary provisions for its effective implementation.

38. The approved Resolution Plan, shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the Resolution Plan.

39. On-going through the relief sought by the Resolution Professional, it is seen that the exemptions and reliefs sought for under relief (xi) cannot be granted, as once the Resolution Plan is approved the Resolution Applicant cannot seek any alternation or modification of the Resolution Plan from this Tribunal. Relief (xi) cannot be granted as the constitutional documents of the Corporate Debtor cannot be amended without the approval of the statutory authorities concerned.

40. On approval of the Resolution Plan this Bench hereby discharges the Resolution Professional from the duties of the RP by submitting all the records maintained by him to the Insolvency and Bankruptcy Board of India as provided under the Insolvency and Bankruptcy Code, 2016 and the Regulations thereunder.

41. The Resolution Applicant shall, pursuant to the Resolution Plan approved under Sub-Section (1) of Section 31, obtain necessary approval required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan by this Tribunal under Sub-Section (1) of Section 31 or within such period as provided for in such law, whichever is later.

42. Subject to the observations made in this Order, the Resolution Plan submitted by M/s. Dasmesh Warehousing Pvt. Ltd. is hereby **APPROVED** by this Bench.

43. Any relief sought for in the Resolution Plan, where the contract/agreement/understanding/proceedings/actions/notice etc. not specifically identified or is for future and contingent liability, is hereby rejected.

44. The order of Moratorium dated 26.11.2020 passed by this Adjudicating Authority under Section 14 of the I&B Code, 2016 shall cease to have effect from the date of passing of this Order.

45. The Resolution Professional shall forward all records relating to the conduct of the CIRP along with the 'Resolution Plan' to the IBBI, so that the Board may record the same on its data-base.

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46. The directions embodied and period of implementation provided herein above shall be effective from the date of this Order

47. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application, if required, in connection with implementation of this Resolution Plan.

48. With the above **Order of approval of the Resolution Plan**, this **IA(IBC)/124/KOB/2021** stands disposed of.

Dated this the 31st day of December, 2021

Sd/-
(Anil Kumar. B)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

Rajasree