

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

1. I.A. 2464/2021 I.A. 2524/2021 I.A. 2513/2021

IN

C.P.(IB)-3141(MB)/2018

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
SMT ANURADHA SANJAY BHATIA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **19.09.2022**

NAME OF THE PARTIES: Mahavir Interchem

V/s

Lakeland Chemicals (India) Ltd

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel for the Resolution Professional, Mr. Umang Mehta is present through virtual hearing.

I.A. 2464/2021:

Order pronounced in the open court vide separate order. In the result, the above Interlocutory Application No. 2464/2021 is allowed.

I.A. 2524/2021:

Order pronounced in the open court vide separate order. In the result, the above Interlocutory Application No. 2524/2021 is dismissed with costs of Rs. 1 lac.

I.A. 2513/2021:

Order pronounced in the open court vide separate order. In the result, the above Interlocutory Application No. 2513/2021 is dismissed with costs of Rs. 50,000/- payable by each petitioner.

Sd/-

ANURADHA SANJAY BHATIA
Member (Technical)
//Rajeev//

Sd/-

H. V. SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

**I.A. No. 2464 of 2021
IN
C.P. No. 3141 of 2018**

In the matter of an Application
under Section 30(6) and Section
60(5) of the Insolvency and
Bankruptcy Code, 2016.

Concur

In the matter of
Mahavir Interchem
... Operational Creditor
V/s.
Lakeland Chemicals (India) Ltd.
... Corporate Debtor

I.A. No. 2464/2021
Mr. Brijendra Kumar Mishra
...Applicant/
Resolution Professional

Date of conclusion of arguments : **19.07.2022**
Order pronounced on : **19.09.2022**

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Gaurav Joshi, Sr. Advocate a/w. Mr. Rohit
Gupta, Mr. Umang Mehta, Mr. Amir Attari,
Advocate
Mr. Brijendra Kumar Mishra, Resolution
Professional-in-person

Per Shri H. V. Subba Rao, Member (Judicial)

ORDER

1. This is an Application under Section 30(6) and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) filed by the Resolution Professional seeking approval of the

Resolution Plan submitted by the Resolution Applicant M/s. KLJ Resources Ltd., which is approved by 96.38% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'COC').

2. The facts leading to the Application are as under:

- i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 23.09.2019 under section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Nandkishore Bhatia, was appointed as Interim Resolution Professional. The COC in its meeting held on 13.01.2020 appointed (the present Applicant) as the Resolution Professional (RP) and the same was approved by this Bench vide an order dated 24.01.2020. The IRP published a public announcement on 22.10.2019, inviting claims from the creditors of the Corporate Debtor.
- ii. The Applicant submits the claims of financial and operational creditors exist is as under:

Stakeholder	Claim received	Claim Admitted
Financial Creditors		
Bank of Baroda	182.13	182.13
Total Secured Financial Creditors Dues	182.13	182.13
Financial Creditor Unsecured and related	6.96	6.85
Operational creditors	34.19	24.98
Statutory Dues	8.50	4.61
Claims filed by workman	4.87	4.19
Other Creditor (other than financial and operational)	0.73	0.35
Total	237.39	223.10

- iii. Thereafter, IRP upon verification of the same, constituted the CoC. Pursuant to the public announcement RP received 6 (six) Expression of Interest from the Prospective Resolution Applicant (PRA).
- iv. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

3. That the Applicant had appointed registered valuers for valuation of assets of the Corporate Debtor in two categories, namely fixed assets (property, plant & machinery) and securities & financial assets (SFA). four sets of registered valuers had been appointed for each category of assets of the Corporate Debtor and accordingly, the respective valuers had submitted their valuation reports to the Applicant. The Applicant states that the liquidation value and fair value as per the valuation reports submitted by the valuers is as under:

A. Fixed Assets (Property, plant & machinery):-

Sr. No.	Particulars	Keshav Chikodi & Kedar Chikodi		Kunal Vikamsey		Average Value	
		Fair	Liq.	Fair	Liq.	Fair	Liq.
1.	Fixed Assets	21.16	14.82	19.88	13.34	20.52	14.08
	Total (A)	21.16	14.82	19.88	13.34	20.52	14.08

B. Securities & financial assets (SFA):-

Sr. No.	Particulars	Harshad Deshpande		Gaurang Shah		Average Value	
		Fair	Liq.	Fair	Liq.	Fair	Liq.
1.	Inventories	1.32	1.10	1.47	1.10	1.39	1.10
2.	Trade Receivables	0.51	0.39	0.60	0.58	0.55	0.49
3.	Other Current Assets	0.62	0.47	0.50	0.43	0.56	0.45
	Total (B)	2.45	1.96	2.56	2.11	2.51	2.04

Grand Total (A+B)

Sr. No.	Particulars	Fair	Liq.	Fair	Liq.	Average Fair	Average Liq.
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	Total (A+B) in Crores	23.61	16.78	22.44	15.45	23.03	16.12
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4. During the period of CIRP, the RP issued Form-G on 17.02.2020, for inviting Expressions of Interest (EOI), from prospective resolution applicants to submit their resolution plan(s) in respect of the Corporate Debtor. The last date for receiving the expression of interest, was 04.03.2020.
5. The Applicant states that the COC in its COC Meeting decided that a revised advertisement for inviting EOI be issued. Form G inviting EOI was published on 12.03.2020. The last date for receipt of EOI was 27.03.2020 and last date of receipt of Resolution Plan was 11.05.2020.
6. The Applicant further states that in furtherance of the revised Form-G issued by applicant, he received EOIs from 3 Prospective Resolution Applicants (PRAs) within the stipulated time period. Below are the names of the prospective resolution applicant:
 - i. Dharampal Satyapal Limited
 - ii. Mr. Vijay Athalye, the Suspended Director of the Corporate Debtor.
 - iii. KLJ Resources Limited.
7. The Applicant submits that, during the 17th Meeting of COC held on 08.06.2021, the proposed Resolution Plans were evaluated on the basis of the evaluation matrix. The resolution passed and e-voting conducted on 21.08.2021, it was declared that the plan submitted by the KLJ Resources Limited approved.
8. The COC in its 17th meeting held on 08.06.2021 considered the final Resolution Plan of M/s. KLJ Resources Limited and approved the Plan with a voting share of 96.38% and compliance certificate was in Form

“H” was issued by the Resolution Professional. Following is the Resolution passed by the COC:-

“RESOLVED THAT the Resolution Plan submitted by KLJ Resources Limited dated June 4, 2021 be and is hereby approved.

RESOLVED FURTHER THAT the Resolution professional id hereby directed to issue letter of Intent (“LOI”) to KLJ Resources Limited on receipt of performance Guarantee to file the said resolution Plan with the Adjudicating Authority for their approval.”

9. The salient features of the Resolution Plan are as under:

a. A Company registered under the provisions of the Companies Act, 1956 having corporate Identity Number (“CIN”) L67120WB1986PLC041487 and its registered office at 8, Cammac Street, Kolkata, West Bengal 700017, India. **KLJ Resources Limited (KLJRL)**, the “Successful Resolution Applicant” (SRA) is part of the major Industrial Group, which is the largest manufacturer and Market Leaders in Plasticizers & Polymer Compounds in South Asia. KLJRL is engaged in distribution and trading of petrochemicals. The present net worth of KLJRL is Rs 432.63 Cr as on 31st March 2020 (Audited).

b. The Corporate debtor Lakeland Chemicals (India) Limited (“LCIL”), incorporated on 30th April, 2004, have its registered office at Survey No. 63/6A, 6B, Khopoli Rasayani Road, Madap, Khalapur Dist-Raigad Maharashtra 410202 India. LCIL is a company in the Specialty Chemicals domain with a focus on Surfactants. The Company is into manufacturing of surfactants and the plant has capability to perform Ethoxylation and Esterification Reactions with an installed capacity of processing 17,500 MT to 20,000 MT per

annum. Plant also has a dedicated Laboratory, Quality Control and R&D Center.

c. Fresh Equity infusion for improving operations:

i. **Equity Share Capital** – Resolution Applicant shall infuse Rs 10.00 Cr as equity share capital/ premium within E+30 days. Against this infusion of funds, Resolution Applicant shall be issued and allotted 100,00,000 fully paid up equity shares of INR 10 each of the fully diluted share capital of the Company.

ii. **Optionally Convertible Debentures** - INR 27.98 Crores shall be infused by the Resolution Applicant as Optionally Convertible Debentures in E+30 days.

Terms of the Optionally Convertible Debentures shall be as follows:

- Face value of INR 10
- Annual coupon of 2% (Cumulative)
- Convertible any time after complete payment to Financial Creditors at the discretion of new constituted board of the company.
- O/s value of OCDs, along with accrued interest, shall be converted into Class AA Shares at any time after complete payment to Financial Creditors.

iii. **Unsecured Loan** - INR 5.00 Crores shall be infused by the Resolution Applicant as Unsecured Loan as working capital margin in the third year of operations.

iv. **Working Capital Loan** – Resolution Applicant is proposing to avail need based working capital facilities from public sector banks Rs 15 Cr in the E+ 1 year and Rs 10 Cr in the second year of operations.

- v. The Resolution Applicant has given a Performance Guarantee of Rs. 2,50,00,000/- and letter of acceptance vide letter dated 23.08.2021.
 - vi. Resolution Applicant will provide Earnest Money of Rs 0.50 Cr by way of a bank guarantee.
- d. **Monitoring Committee:-** Upon approval of this Revised Resolution Plan by the Adjudicating Authority, the Monitoring Committee shall be appointed with members as indicated in the Revised Resolution Plan.
- e. **Formation of New Board:-** It is proposed that upon the Resolution Applicant acquiring full control over the Company on the E+30 Days (Date by which full payment to creditors of the CD as proposed in the Resolution Plan shall be made), the existing Board will be replaced by a new Board of Directors constituted with adequate representation from the Resolution Applicant and independent directors in compliance with Applicable Laws.
- i. Appointment of CEO, COO, CFO and CS:- The Resolution Applicant reserves the right to replace existing management with appropriate persons of its choice.
 - ii. Appointment of Auditors (Statutory and Internal):- Resolution Applicant shall have the right to replace the existing auditors (statutory and internal) of the Company and appoint new auditors as deemed fit by Resolution Applicant upon acquisition of the control over the Company by Resolution Applicant pursuant to approval of the Revised Resolution Plan.
 - iii. Key Managerial Professionals :- Resolution Applicant through its promoters, has all-round experience to direct and oversee the operations. This experience will ensure successful turnaround of the Corporate Debtor. Resolution Applicant shall

also utilize services of its own managerial team to kick start the resurrection process of corporate debtor

f. No Subrogation: In case any person has issued any guarantee or has provided collateral to the creditor of the Corporate Debtor to secure debt / payment obligation and such guarantee / collateral has been invoked against such person and such person has made the payment, the right of subrogation created against the Corporate Debtor pursuant to section 140 of the Contract Act shall stand waived. The person obligated to make payment to the creditor of the Corporate Debtor will have no right to claim the debt/ payment from the corporate debtor.

g. Effective Date (E): – Effective Date (E) shall mean such date on which the approval is granted by Hon'ble Adjudicating Authority.

h. The Resolution Plan proposes a total Consideration of Rs. 37.98 Crores for the settlement of claim by the Resolution Applicant.

10. The details of the proposed payments are as follows:

A) CORPORATE INSOLVENCY RESOLUTION PROCESS COSTS

i. In terms of Section 30(2) of IBC, the CIRP costs are to be paid in full and in priority over the payments to be made to any other creditors. CIRP Costs shall, amongst other things, include the costs, fees and charges incurred by the Resolution Professional in running the operations of the Company as a going concern. The Resolution Applicant has estimated Rs. 4.00 Crores against this cost, which may vary till the conclusion of the CIRP of the Corporate Debtor. The Resolution Applicant has agreed to pay the entire CIRP costs

accrued till the conclusion of the CIRP of the Corporate Debtor. In case the actual CIRP Cost is less than the estimated CIRP Cost of Rs 4.00 Crores, the balance amount shall be paid to Financial Creditors.

B) FINANCIAL CREDITORS

i. Financial Creditors – Secured

Company's debt as admitted by the Resolution Professional (Resolution Applicant) i.e. Rs 182.13 Cr is grossly unsustainable given its asset value, current state of operations, projected turnover and profitability margins of the company. Thus, Resolution Applicant is proposing reduction of 'Financial Creditors' dues from Rs 182.13 Cr to Rs 32.49 Cr.

- Rs 32.49 Cr shall be paid upfront within 30 days from the Effective Date
- No Interest shall be paid to Financial Creditors

ii. Payment to Dissenting Financial Creditors

The financial creditors who do not vote in favour of the Revised Resolution Plan ("Dissenting Financial Creditors") shall be paid an amount which shall not be less than the amount to be paid to such creditors in accordance with subsection (1) of section 53 in the event of a liquidation of the corporate debtor. The Dissenting Financial Creditor will be paid in priority to the assenting Financial Creditor. Such amount shall be reduced in proportion from the INR 32.49 Crores proposed to be paid to Financial Creditors who vote in favour of the Revised Resolution Plan.

iii. Financial Creditors – Unsecured and Related

Financial Creditors (Unsecured and Related) admitted as per the Information Memorandum are Rs 6.85 Cr. The Revised Resolution Plan has earmarked Rs 0.07 crores for payment towards these outstanding dues.

C. Payment to Operational creditors

i. Workmen and Employees

As per the claims received by the Workmen and Employees of the Company amount to Rs 4.87 crores out of which claims aggregating to Rs 4.19 crores have been verified and admitted for the purposes of CIRP by the Resolution Professional.

As operational creditors of the company, in terms of IBC and IBBI Regulations, the payment due to the Workmen and Employees should not be less than the amount Operational Creditor would have received in accordance with Section 30 (2)(b) of the Code (“Minimum OC Payout”) payable to such workmen and Employees

Resolution Applicant is proposing that out of total fund infused, Rs 1.00 Cr shall be earmarked for payment to workmen and employees i.e. 23.89% (approx.) of the total admitted claim

- Rs 1 Cr shall be paid within 30 days from the Effective Date (At least a day before payment is made to financial creditor as per this Revised Resolution Plan).
- No Interest shall be paid to Workmen or Employees

ii. Payment for Statutory Dues including Outstanding Governmental Authority Dues. Taxes. etc

As per IBC, statutory liabilities are Operational Debt. Therefore, each Governmental Authority will be entitled to

receive their proportionate share of the Non-Financial Creditor Allocated Amount remaining after payments for CIRP Costs, Workmen and employees ("Operational Creditors and Other Creditors Allocated Amount"). Statutory dues claim admitted by the Resolution Professional as per the Information Memorandum are Rs 4.61 Cr.

- Resolution Applicant proposes to pay 1.52% (aprox) of the claim admitted on pro-rata basis to a maximum value of Rs 0.07 Cr.
- Rs 0.07 Cr shall be paid upfront within 30 days from the Effective Date
- No Interest shall be paid towards Statutory Liabilities.

iii. Operational Creditors (other than workmen and statutory dues)

Admitted as per the Information Memorandum are Rs. 24.98 Cr. Based on the admitted claims in respect of the operational creditors in the estimate of the resolution applicant the company liquidation value is not sufficient to cover the debt of the operational creditor in full. However out of total fund infused, Rs 0.25 Cr shall be earmarked for payment to operational creditors i.e. 1.00% (approx.) of the total admitted claim.

- Rs 0.25 Cr shall be paid upfront within 30 days from the Effective Date (At least a day before payment to financial creditors).
- No Interest shall be paid to Operational Creditors.

D. Preoperative and Contingency

Resolution Applicant has made provision of Rs 0.09 Cr for contingency payments including payment towards Monitoring/ Steering Committee Charges. Any additional funds required over and above the allocated amount of Rs 0.09 Cr for payment towards Monitoring/ Steering Committee charges will be infused by the Resolution Applicants without reducing the payment to the Secured Financial Creditor. The charges of Monitoring/ Steering committee to include any litigation expenses incurred by the RP/Monitoring Committee in relation to the CIRP/ resolution plan after the NCLT Approval for defending the Resolution Plan.

E. Other Creditor (other than financial and operational)

Some other creditors have filed claims to the tune of Rs 0.73 crs out of which RP has admitted Rs.0.35 crs. This Revised Resolution Plan has earmarked Rs. 0.01 crores for payment towards these outstanding dues.

11. INFUSION OF FUNDS

The Successful Resolution Applicant further undertook to infuse the Funds from time to time to ensure the smooth functioning of the Corporate Debtor. In that regard, the successful Resolution Applicant in the said plan has provided for infusing Funds in the following manner

- i. In the First Year an amount to the tune of Rs. Rs. 37,98,00,000/-+ Rs. 17,27,00,000/-= Rs. 55,25,00,000/-;
- ii. In the Second Year an amount to the tune of Rs.12,75,00,000;
- iii. In the Third year an amount to the tune of Rs. 10,67,00,000;
- iv. in the Fourth year an amount to the tune of Rs.10,07,00,000/-;
- v. in the Fifth year an amount to the tune of Rs.12,47,00,000/-

Accordingly, the Successful Resolution Applicant has undertaken in his Plan to infuse a total aggregating funds to

the tune of Rs.101,21,00,000 (Rupees One Hundred and One Crores and Twenty-One Lakhs Only) in the course of Five Years.

12. **SOURCES OF FUNDS**

- a. The Applicant submits that, the Successful Resolution Applicant shall raise an amount to the tune of Rs.10,00,00,000/- (Rupees Ten Crores Only) by raising Equity Share Capital. In addition, thereto, the Successful Resolution Applicant shall raise further funds to the tune of Rs. 27,98,00,000/- (Rupees Twenty-Seven Crores Ninety-Eight Lakhs Only) by way of Optionally Convertible Debentures.
- b. Thereby by virtue of these two modes the Successful Resolution Applicant shall ensure repayment of the Entire Plan amount of Rupees 37,98,00,000/- (Rupees Thirty Seven Crores Ninety Eight Lakhs Only) to the creditors with period of 30 days from the approval of the Plan.

13. **SUMMARY OF PAYMENTS (along with indicative timeline):**

The key features of the Resolution Plan are summarized as under;

Sr. No.	Particulars	Verified Claim Amount (IN INR LAKHS)	Payment as per Resolution Plan (IN INR LAKHS)	Within 30 days from Effective Date
I.	<u>PAYMENT TIMELINE</u>			
A.	<u>Settlement of Stakeholders</u>			
1	Secured Financial Creditors (Bank of Baroda)	18,213.05	3,249.00	3,249.00
2	Unsecured Financial Creditors (8 Nos.)	685	7.00	7.00
3	Employees and Workmen claims	418.57	100.00	100.00
4	Operational Creditors	2497.52	25.00	25.00
5	Other Creditors	34.95	0.00	0.00
6	Statutory dues	461.09	7.00	7.00
	Total (A)	22,310.18	3,388.00	3,388.00

Sr. No.	Particulars	Verified Claim Amount (IN INR LAKHS)	Payment as per Resolution Plan (IN INR LAKHS)	Within 30 days from Effective Date
B.	CIRP Cost	400	400.00	400.00
C.	Contingency	0.00	10.00	10.00
	Total Payment	22,710.18	3,798.00	3,798.00

14. **Distribution Matrix**

	Stakeholder	Amount
A	Total Proposed Payment under Revised Resolution Plan	37.98
1	CIRP cost -(Incurred + Likely to be incurred)	4.00#
2	MC/SC Charges & Other Contingencies	0.09
3	Claims filed by workman	1.00
B	Balance	32.89
1	Financial Creditor -IM	32.49
2	Statutory Liabilities	0.07
3	Operational creditors	0.25
4.	Financial Creditor Unsecured and related	0.07
5.	Other Creditors	0.01
C	Balance	0.00

Note - In case the actual CIRP Cost is less than the estimated CIRP Cost of Rs 4.00 Cr, the balance amount shall be paid to Financial Creditors.

15. **DISBURSEMENT OF AMOUNT:**

The Resolution Professional has submitted the following chart showing the details of the total claims received and admitted by him and amount provided for the stakeholders under Resolution plan as under:

(amount in Rs. Crores)

Sr. No	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)

1	Secured Financial Creditors	a. Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		b. Other than (a) above: (i) who did not vote in favour of the Resolution Plan (ii) who voted in favour of the resolution plan	182.13	182.13	32.49	17.84
		Total [(a) + (b)]	182.13	182.13	32.49	17.84
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	6.96	6.85	0.07	1.02
		Total[(a) + (b)]	6.96	6.85	0.07	1.02
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a): (i) Suppliers	34.19	24.97	0.25	1.00
		(ii) Government	8.50	4.61	0.07	1.52
		(iii) Workmen & Employees	4.87	4.19	1.00	23.89
	Total [(a) + (b)]	47.56	33.78	1.32	26.35	
4	Other Debts and Dues		0.74	0.35	0.00	
5	MC/SC Charges & other Contingency				0.10	
6	CIRP Cost				4.00	
Grand Total			237.39	223.10	37.98	17.02

"#amount provided over time under the Resolution plan and includes estimated value of non-cash components. It is not NPV."

16. The indicative Repayment Tenure towards various creditors in the events for implementation of Resolution plan from approval date is as follows:-

Cost of Scheme	Proposed Payment/ Expenditure	Repayment Tenure						
		E+30 days	E+ 1	E+ 2	E+ 3	E+ 4	E+ 5	Total
Repayment of bank dues	32.49	32.49	-	-	-	-	-	32.49
Repayment of Financial Creditor Unsecured and related	0.07	0.07						0.07
Repayment of Operational creditors	0.25	0.25	-	-	-	-	-	0.25
Repayment of Statutory Liabilities	0.07	0.07	-	-	-	-	-	0.07
Repayment of Claims filed by workman	1.00	1.00	-	-	-	-	-	1.00
Repayment of Other Creditors	0.01	0.01						0.01
CIRP cost- (Incurred + Likely to be incurred)	4.00	4.00	-	-	-	-	-	4.00
MC/SC Charges & Other Contingencies	0.09	0.09	-	-	-	-	-	0.09
Working Capital Requirement	63.23	-	17.27	12.75	10.67	10.07	12.46	63.23
Total	101.21	37.98	17.27	12.75	10.67	10.07	12.46	101.21

17. The Resolution Applicant is eligible to submit resolution plan. The successful Resolution Applicant has given an Affidavit satisfying the eligibility criteria as per the provisions under section 29A of the Insolvency & Bankruptcy Code, 2016.

18. **OBSERVATIONS AND FINDINGS :-**

- i. As per IBC Code 30(2)(a) – A Resolution Plan 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.

- ii. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor in terms of Section 30(2)(c).
- iii. The Plan also provides for implementation of provision of the Resolution Plan as stated above as per Section 30(2)(d).
- iv. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - please include a statement to this effect in the Resolution Plan as per Section 30(2) (e)
- v. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- vi. As per Article 38(1) of CIRP Regulation the amount payable under a Revised Resolution Plan - to the operational creditors shall be paid in priority over financial creditors; Thus, Operational creditors - statutory claims shall be paid in priority to Financial Creditors in the following manner.
- vii. The Resolution Plan is in compliance of the Regulation 38 of the Regulations as under:
 - a. As per IBBI Guidelines 38(1)(b) - *A Resolution Plan shall identify specific sources of funds that will be used to pay the liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a Resolution Plan by the Adjudicating Authority.*

- b. As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
- d. Provides for the mechanism regarding management and control of the Company post the NCLT Approval Date.
- e. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
- f. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under sub-section (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favor of the plan.
- g. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- h. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.

- i.* Provides that the amount due to the Operational Creditors under a resolution plan shall be given priority in payment over Financial Creditors.
- j.* Provides for the management and control of the business of the Corporate Debtor during its term.
- k.* All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- l.* That the Resolution Applicant or any of its related parties has never 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. This is in compliance of Regulation 38(1)(b) of the Regulations.
- m.* The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).

19. The Resolution Plan has been approved in the 17th COC meeting held on 08.06.2021 with 96.38% votes in accordance with the provisions of the Code.

20. In the judgement of ***Venus Recruiters Private Limited v. Union of India and Ors.: CM Appl. 36026/2019*** the Hon'ble Delhi High Court observed that:

"74.....

The role of the RP is not adjudicatory but administrative in nature. Thus, the RP cannot continue beyond an order under Section 31 of the IBC, as the CIRP comes to an end with a successful Resolution Plan having been approved. This however subject to any clause in the Resolution Plan to the contrary, permitting the

RP to function for any specific purpose beyond the approval of the Resolution Plan.”

21. In view of the above ruling of the Delhi High Court, it can be easily derived that, the Resolution Professional in case it is so proposed in the Resolution Plan will continue to discharge his duties regarding the pending applications to the main petition even though the Resolution Plan is approved.
22. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon’ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon’ble Court observed that the role of the NCLT is ‘no more and no less’. The Hon’ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
23. In ***CoC of Essar Steel (supra)*** the Hon’ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon’ble Court observed as under:

“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the

*majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

24. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.
25. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- i. The Interlocutory Application No. 2464 of 2021 is allowed. The Resolution Plan submitted by M/s. KLJ Resources Ltd., is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central

Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- iv. It is seen that the Resolution Plan seeks several dispensations, concessions and waivers. Approval of Resolution Plan does not mean automatic waivers. The Resolution Applicant on approval of the Plan may approach those competent authorities/ courts/ legal forms/ office(s) Government or Semi-Government/State or Central Government for appropriate relief(s) sought in the plan.
- v. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vi. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall

file status of its implementation before this Authority from time to time, preferably every quarter.

- vii. In line with the judgement of Hon'ble Delhi High Court in the matter of **Venus Recruiters Private Limited v. Union of India and Ors.** and as proposed by the Resolution Professional during the course of hearing of the Resolution Plan, the Resolution Professional will pursue application u/s. 43, 45, 60 & 66 with the Adjudicating Authority.
- viii. In line of the above the Bench as decided by COC approves that, even subsequent to the approval of the Resolution plan any other application under Section 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the Insolvency and Bankruptcy Code, 2016, pending would be pursued by the COC.
- ix. In terms of the judgement of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited**, *“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”*
- “95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the

adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- x. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- xi. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- xii. The Interlocutory Application No. 2464 of 2021 is accordingly allowed and disposed of.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT-III

I.A. NO. 2513 OF 2021

IN

C.P./IB/3141/MB/2018

Filed by

Sandeep Modi & Others

...Applicant

Vs.

1. Brijendra Kumar Mishra, Resolution Professional of Lakeland Chemicals (India) Limited.

....Respondents

In the matter of

Mahavir Interchem **...Operational Creditor**

Versus

Lakeland Chemicals (India) Limited

...Corporate Debtor

Reserved for order on: 19.07.2022

Order Pronounced on: 19.09.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For the Applicant: Mr. Rohan Agrawal, Advocate and Mr P.G. Sabnis counsel appearing for the Objectors.

For the Resolution Professional: Senior Counsel Mr. Gaurav Joshi a/w Counsel Rohit Gupta a/w Umang Mehta a/w Aamir Attari.

Per: *Shri H.V. Subba Rao, Member (Judicial)*

ORDER

1. This Interlocutory Application is filed by the Financial Creditors of the Lakeland Chemicals (India) Limited, Applicant against

Resolution Professional Committee of Creditor and of Lakeland Chemicals (India) Limited praying the following reliefs:

- a. *Pass an order to set aside the approval of the resolution plan of KLJ Resources Limited by the Respondent No.2; and*
- b. *Pass an order to direct the Committee of Creditors of the Corporate Debtor to approve the Resolution Plan submitted by Mr. Vijay Athalye; and*
- c. *Pending the hearing and final disposal of the present Application, the approval of the resolution plan of KLJ Resources Limited be stayed; and*
- d. *Pass an order for costs;*
- e. *Pass any such other and further relief that is in the interest of justice may please be granted.*

2. Brief submissions of the Applicant are as follows:

- i. The Applicant herein are Financial Creditors of the Corporate Debtor submitted that Having about 1.48 % voting share in the CoC. The Respondent No. 1 is the Resolution Professional of Lakeland Chemicals (India) Limited (“Corporate Debtor”). The Respondent No.2 is also a Financial Creditor of the Corporate Debtor, having about 96.38% voting share in the CoC.
- ii. The applicant states that pursuant to an order dated 23.09.2019 admitting the captioned petition under section 9 of the IBC Code Respondent No.1 appointed as the Resolution Professional of the Corporate Debtor.
- iii. Applicant submitted that, the committee of creditor of the Corporate Debtor in its 11th meeting held on 03.04.2021, requested all the prospective resolution applicants to submit their respective resolution plans by 21.04.2021, multiple

meeting of CoC were held wherein the offers received from the Prospective Resolution Applicant were negotiated and accordingly the final enhanced offer was requested to submit by 04.06.2021.

- iv. The applicant submits that the last CoC meeting held on 08.06.2021 for presentation of resolution plan by PRA's. The revised resolution plans were received from the following resolution applicant i.e. Dharampal Satyapal Ltd. (D.S. Group), KLJ Resources Ltd., Mr. Vijay Athalye- Promotor and suspended director of Lakeland Chemicals (India) Limited.
- v. It was further stated that, as per the results of e-voting, the plan of KLJ Resources Ltd. Was approved by Respondent No.2 being the members of the CoC holding majority of voting share (96.38%). The other members either abstained from voting or did not approve the resolution plan of KLJ Resources Ltd as they offered to pay NPV of INR 3767.95 Lakhs as one time settlement amount within 30 days from the date of approval of resolution plan, whereas, Mr. Vijay Athalye promoter and suspended director of Lakeland has offered to pay at a NPV of INR 4,155.93 Lakhs as one time settlement amount within 90 days from the date of approval of resolution plan by this bench.
- vi. The applicant submits that, after allowing the promoter to bid the amount offered by the KLJ was raised from INR 21.16 to INR 37.67 crore, however, still much lesser than the offer by the promoter.
- vii. It was further submitted that to Secured Financial Creditors, Mr. Vijay Athalye offered to pay at NPV of INR 3,518 within 90days from the date of approval of Resolution Plan by this bench, whereas KLJ Resources Limited has offered to pay at

NPV of INR 3,249 within 30days from the date of approval of Resolution Plan by this Bench.

- viii. The Applicant states that, being unsecured Financial Creditors, as compared to the plan of KLJ Resources Limited which is offering to pay INR 7 lakhs, Mr. Vijay Athalye, the promoter is offering to pay an amount of INR 68 lakhs which is more than what has been offered by KLJ Resources Limited. It was further stated that the plan of Mr. Vijay Athalye also offered to pay a higher amount of INR 341 lakhs (NPV) to the operational creditors as compared to plan of KLJ Resources Limited which offered to pay only an amount of INR 25 lakhs to the operational creditors.
- ix. The Applicant submitted that as compared to the plan of KLJ Resources Limited, Mr. Vijay Athalye was offering a higher value should have been accepted to meet the objective of the code. Bank of Baroda (Respondent No. 2) being the member of CoC with majority of voting rights approved the plan of KLJ Resources Limited offering lower value and rejected the plan of Mr. Vijay Athalye offering highest value without any valid justification.
- x. The Applicants states that they being the unsecured creditors have been offered a very meagre amount by KLJ and thus passing of resolution plan by this bench, will put them to a huge loss.
- xi. Applicant also mentioned that no copies of Resolution Plan were received by the members of CoC to evaluate the plan before the meeting and only the final copy were shared with the applicants after the 17th meeting of CoC for voting purpose only. It was thus apparently said that the Resolution Professional has acted arbitrarily, and it appears that the

Resolution Plan by KLJ has been influenced and incorrectly approved.

- xii. The Applicant further submitted that under the garb of Commercial Wisdom, it cannot be so that a financial creditor can proceed to approve a resolution plan to the detriment of other financial creditors and stakeholders of the Corporate Debtor. In this case Bank of Baroda has acted unfairly and arbitrarily and approved the resolution plan of a party who is offering significantly less as compared to another resolution plan.
- xiii. The Applicant submitted the summary of votes cast by Financial Creditors:

Sr. No.	Names of the Financial Creditors	Voting %	Response(Yes/No/Abstain)
1.	Bank of Baroda	96.38	No
2.	Trade Link	0.40	Yes
3.	N.N. Sales	0.37	Yes
4.	Divine Oleo Formulations (India) LLP	0.95	Abstain
5.	Sandeep Modi	0.11	Yes
6.	Dhruvin Pharma	0.79	Yes
7.	Chemical Corp Pvt. Ltd.	0.79	Abstain
8.	Naitik Modi	0.05	Abstain
9.	Prakash Modi	0.16	Abstain

3. The Resolution Professional filed detailed reply. The Important Paragraphs of the Reply filed by the Resolution Professional are reproduced hereinbelow:

- i. The Respondent in their Affidavit in reply stated that it is a settled position in law that an approval of Resolution Plan is purely left to the Commercial Wisdom of the CoC, the only question, left with this bench is to ascertain if the Resolution Plan is legally compliant. In view thereof, this ground that the other Plan before the CoC was commercially better is itself untenable.
- ii. The Resolution Professional submitted that the Resolution Plans received from the respective Resolution Applicants were evaluated in a timely manner, The CoC has time and again advised all the Resolution Applicants to submit a modified Resolution Plans. Accordingly, on receipt of the modified Resolution Plans from the Resolution Applicants, the Resolution Professional time and again put forth the modified Resolution Plan before the CoC for its further evaluation, consideration and deliberation.
- iii. The Respondent further submits that finally, in the 17th meeting of the CoC dated 08.06.2021, it was confirmed that the RP had received the improved Resolution Plan from the members of the CoC and on completion of the evaluation of the said Resolution Plans qua the legal review by the legal experts and process advisors, the said plans were supposed to be put forth for e-voting.
- iv. The Resolution Professional states that by way of an email dated 09.07.2021 confirmed that final Resolution Plans

submitted by the Resolution Applicants in 17th meeting of the CoC held on 08.06.2021, have been evaluated and reviewed. Accordingly, on the basis of the legal review and evaluations of the Resolution Plans, a summary note was prepared by the Resolution Professional and was forwarded to each of the members of the CoC in the said email including the Applicant herein.

- v. It was also clarified that information to the members of the CoC that the e-voting of the said Resolution Plans shall be conducted from 09.07.2021 and the said voting window shall remain open until 19.07.2021.
- vi. Thus, the Respondents stated that in the event the Applicants were having any objections they could have informed the Resolution Professional immediately thereafter, that is before the Plans were put to vote.

FINDINGS

Heard the submissions on both sides and perused the material available on record. The main contention of the Petitioners in this case is that the CoC has arbitrarily approved the Plan of the successful Resolution Applicant without considering the Plan of the Suspended Director which fetches a better and higher value to the Creditors. Also, that the secrecy of the Bid value is not maintained by the Resolution Professional enabling and favouring KLJ to give an optically high figure. The Applicant has also contended that the Respondent No. 2 being in dominant position has acted contrary to the Commercial Wisdom of the CoC as the amount being only Rs. 7 lakhs as unsecured financial creditor will be paid to them according to the present approved plan by the CoC.

The Respondent/RP on above contentions and in support of his argument has relied upon the following paras in the judgement passed by the Hon'ble Supreme Court in Kalpraj Dharamshi and Another Vs. Kotak Investment Advisors Ltd in Civil appeal nos. 2943-2944 of 2020:-

“It is thus clear, that the Committee was of the view that for deciding key economic question in the bankruptcy process, the only one correct forum for evaluating such possibilities, and making a decision was, a creditors committee, wherein all financial creditors have votes in proportion to the magnitude of debt that they hold. The BLRC has observed, that laws in India in the past have brought arms of the Government (legislature, executive or judiciary) into the question of bankruptcy process. This has been strictly avoided by the Committee and it has been provided, that the decision with regard to appropriate disposition of a defaulting firm, which is a business decision, should only be made by the creditors. It has been observed, that the evaluation of proposals to keep the entity as a going concern, including decisions about the sale of business or units, restructuring of debt, etc., are required to be taken by the Committee of the Financial Creditors. It has been provided, that the choice of the solution to keep the entity as a going concern will be voted upon by CoC and there are no constraints on the proposals that the resolution professional can present to CoC. The requirements, that the resolution professional needs to confirm to the Adjudicator, are: (i) that the solution must explicitly require the repayment of any interim finance and costs of the insolvency resolution process will be paid in priority to other payments; (ii) that the plan must explicitly include payment to all creditors not on the creditors committee, within a reasonable

period after the solution is implemented; and lastly 137 (iii) the plan should comply with existing laws governing the actions of the entity while implementing the solutions. 139. The Committee also expressed the opinion, that there should be freedom permitted to the overall market, to propose solutions on keeping the entity as a going concern. The Committee opined, that the details as to how the insolvency is to be resolved or as to how the entity is to be revived, or the debt is to be restructured will not be provided in the I&B Code but such a decision will come from the deliberations of CoC in response to the solutions proposed by the market”.

The RP has rightly submitted that the Applicant no.2 & 3 who hereby seek to approve the Resolution Plan submitted by the Suspended Directors have not even bothered to vote in favour of the Resolution Plan submitted by the Suspended Directors which was placed for voting along with the Resolution Plan of the successful Resolution Applicant therefore The collusion between the petitioners and the suspended members of the board also cannot be ruled out in this case. Since the Petitioners have purposefully abstained from voting.

The Respondent/RP has rightly contended that as per the evaluation Matrix of the Resolution Plans submitted by the respective Resolution Applicants, the successful Resolution Applicant has procured the highest score, in respect of its viability, as compared to the other Resolution Applicants (including that of the suspended directors). Therefore, the plans submitted by suspended Directors has obtained below par score, having that plan rejected and Acceptance of KLJ’s proposal plan without being arbitrary, but with the application with regards to commercial

wisdom of the CoC. Even otherwise this tribunal cannot sit as a court of appeal on every decision of CoC since evaluation of Resolution Plans and awarding scoring to such plans is the exclusive domain of CoC. Since CoC alone has the requisite commercial expertise as per the law laid down by Supreme Court in catena of cases including Kalpraj Dharamshi relied by RP in this case. Therefore, this Bench is of the view that there are no merits in the above application and the above application is filed with an ulterior objective to stall the approval of the Resolution plan and derail the process of CIRP and therefore is liable to be rejected with costs.

Accordingly, the above application is rejected by imposing costs of Rs. 50,000/- (Rupees Fifty Thousand) on each petitioner payable to the Resolution Professional which shall be paid to the Financial Creditors other than the Petitioners. If the Petitioner fail to deposit the above costs, the same shall be deducted from the respective claims by the Resolution Professional.

Sd/-
ANURADHA SANJAY BHATIA
Member (Technical)

Sd/-
H. V. SUBBA RAO
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT-III

I.A. NO. 2524 OF 2021

IN

C.P./IB/3141/MB/2018

Filed by

Bheron Corporation

...Applicant

Vs.

1. Mr. B.K. Mishra Resolution Professional of Lakeland Chemicals (India) Limited.
2. Committee of Creditors of Lakeland Chemicals (India) Limited.

...Respondents

In the matter of

Mahavir Interchem

...Petitioner/Operational Creditor

Versus

Lakeland Chemicals (India) Limited

...Corporate Debtor

Reserved for order on: 19.07.2022

Order Pronounced on: 19.09.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For the Applicant:

For the Resolution Professional:

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This Interlocutory Application is filed by Bheron Corporation, Applicant against Resolution Professional Mr. B.K. Mishra of Lakeland Chemicals (India) Ltd and its Committee of Creditors praying the following reliefs:
 - a. *Pass an order directing the Resolution Professional to furnish the Applicant with a full copy of the entire Resolution Plan for the Corporate Debtor approved by the Committee of Creditors; and*
 - b. *Pass an order to declare all the meetings of Committee of Creditors are null and void on account of non-compliance with the provisions of section 24(3)(c) and section 24(4) of the Insolvency & Bankruptcy Code and consequently reject the resolution plan purportedly approved by the Committee of Creditors*
 - c. *That pending the hearing and final disposal of the Application, this Hon'ble Tribunal may be pleased to not pass any final order for approval (or otherwise) of the Resolution Plan approved by the Committee of Creditors*
 - d. *For costs of this Application*
 - e. *Such other further relief's that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case*

2. Brief submissions of the Applicant are as follows:
 - i. The Applicant submitted that Mr. Brijendra Kumar Mishra was appointed as Resolution Professional (RP) of the present Corporate Debtor vide order dated 24.01.2020.
 - ii. The Applicant states that he had filed his claim before the IRP of which an amount of Rs. 24,65,839/- has been admitted by the IRP.

- iii. The Applicant further submitted that pursuant to the CIRP order he sometime in the month of September realised about the CoC's approved resolution plan from one of the resolution applicants.
- iv. The Applicant stated that as per claims admitted by the IRP, total claim of the Operational Creditor was in excess of 10 per cent of the total claims, and hence it was mandatory for the RP to have informed the Operational Creditor to appoint representative to participate on behalf of the Operational Creditors in the CoC meetings.
- v. The Applicant from the Corporate Debtor's website realized that the admitted claims is Rs. 218.92 crores out of which Rs. 24.62 crores is the operational debt, apart from Rs. 1.71 crores of statutory dues and Rs. 3.62 crores of employees and workmen claims which also form part of the operational debt.
- vi. On 14.09.2021 the Applicant wrote an email seeking copy of the Resolution Plan approved by the CoC, however the Respondent no. 1 neither reply to the said email nor provided with the said copy of plan, hereafter on 04.10.2021 the Applicant further wrote an email seeking details of the total operational debt as against the total debt and also inquired about representation of the operational creditors representative to attend the CoC meetings.
- vii. The Applicant on 7.10.2021 by an email through RP informed him that certain financial creditors who also happened to be Operational Creditors were treated as representatives of the Operational Creditors. The said contention of the RP is utterly incorrect inasmuch as the RP had not informed any of the Operational Creditors that their total aggregate claim was over 10% of the total debt and hence they were entitled to

appoint a representative to attend CoC meeting. Since the Operational Creditors were never informed about the same, there was no question of them having appointed any representative.

- viii. The Applicant states that the provision of Section 24(3) (c) and Section 24(4) makes it clear that representation of Operational Creditors in the CoC meeting is a mandatory provision. It is settled law that in insolvency matters, rules of procedure must be strictly complied with. The non-compliance with the mandatory provision of the law has resulted in grave prejudice to the body of Operational Creditors which are an important stakeholder in the resolution process. The Operational Creditors thus have had no opportunity of presenting their views on pros and cons of resolution plans that were put to vote.
- ix. The Applicant stated that due to the aforesaid non-compliance apart from being breach of a mandatory statutory provision, the object of having a representative of Operational Creditors in case of the Operational debt exceeding 10% is to ensure that interests of the Operational Creditors are duly represented before the CoC and their concerns are given due consideration. The representative in the CoC is not a mere formality without following the spirit and object behind the said provision.
- x. The Applicant states that on account of non-compliance with the mandatory legal provisions, the entire CIRP process has been vitiated and has to be declared null and void and it is just and equitable that fresh CoC meetings with fresh voting be ordered with due representation of Operational Creditors.

3. The Resolution Professional filed detailed reply. The Important Paragraphs of the Reply filed by the Resolution Professional are reproduced hereinbelow:

- i. The Respondent stated that it is settled position of law that the threshold of the 10% of the total debt, as contemplated under Section 24(3)(c) and section 24(4) of the IBC is only restricted to a respective individual Operational Creditor. The aggregate dues to be considered for setting up the threshold limit are not with respect to the debt owed by the Corporate Debtor to all of its Operational Creditors cumulatively. In the present scenario, the Applicant's holding is merely 0.191% of the total debts of the Corporate Debtor. The Respondent further stated that the Applicant is in no manner qualified to be provided a seat in the CoC meeting as contemplated under Section 24(3)(c) and Section 24(4) of the Code. In view thereof, it submitted that all the meetings of the CoC have been conducted in a legitimate manner and the Applicant appears to have been misinterpreting the provisions of the IBC to suit its convenience.
- ii. The Resolution Professional is duty bound to ensure and maintain confidentiality of the information relating to the CIRP. The Resolution Plan is a confidential document which can only be presented to the members of the CoC during the process of its approval. Thus, the Applicant not being a member of the CoC would be not be entitled to the copy of the Resolution Plan or be privy to the contents thereof. It is prudent to note that the statutory mandate requires that the Resolution Plan can only be presented to the CoC for its approval and presented before the Adjudicating Authority for its satisfaction in approving the same.

- iii. The Respondent submitted that the Applicant does not come within the parameters of the persons entitled to peruse a Resolution Plan or being privy to it before the Adjudicating Authority approves the same. Hence, the question of seeking the copy of the Resolution Plan at present stage cannot and does not arise.
- iv. The Resolution Professional further submitted that certain parties who are Unsecured Financial Creditors are also the Operational Creditors of the Corporate Debtor. By virtue of them being the Unsecured Financial Creditors, they are a part of the Committee of Creditors and have been duly sent notices of each of the meetings of committee of creditors.
- v. It was stated by virtue of above Financial Creditors being Operational Creditors as well, there has been an adequate representation of Operational Creditors in the Committee of Creditors. It is pertinent to note that, in view of the aforesaid submission, it cannot be construed that the “unsecured financial creditors” were treated as representatives of “Operational Creditors”. It is only by virtue of certain Operational Creditors being Unsecured Financial Creditors, there have been a de-facto/automatic/by default representation of Operational Creditors.
- vi. It was further stated by the Respondent through a Note that Five Operational Creditor out of Six Operational Creditors (except the Applicant all OC were members of CoC). They have been joined as member being Creditors of the Company. However, their voting right being to the extent of their Financial Debt. The list of Members of CoC was produced as below:

Sr No	Members of CoC
1.	Bank of Baroda
2.	Tradelink
3.	Sandeep Modi
4.	Divine Oleo Formulations (India) LLP
5.	Dhruvin Pharma
6.	N.N. Sales.
7.	Chemical Corp Pvt Ltd.
8.	Naitik Modi
9.	Prakash Modi

- vii. The Respondent without prejudice submitted that in any event, the entire process of voting and submission of the Resolution Plans by various Resolution Applicants has been going on since September 2020, however such a demand of copy of the Resolution Plan and/or being inducted as Member of CoC has been raised by the Applicant only recently i.e. on 14th September, 2021 and 4th October, 2021 which is after the Approval of the Resolution Plan. This conduct itself shows that the Applicant was either negligent of his rights or is purposely trying to create hurdles in getting the said plan approved.
- viii. Therefore, the Resolution Professional in taking the cognizance of the aforesaid, was right in maintaining the secrecy and confidentiality of the Resolution Plan and has conducted the CIRP of the Corporate Debtor in a fair and meritorious manner.

FINDINGS

Heard the submissions on both sides and perused the material available on record. The main contention of the Petitioner in this case is that no notice was served on him for attending the meetings of the CoC which is in contravention to Section 24(3) of the Code and any decision taken by CoC becomes null and void without notice. In support of his argument he has relied upon the order dated 08.04.2021 of the Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 1029 of 2020 in the matter of Amit Suresh Bhatnagar Vs. Bhuvan Madan.

In order to examine the above contention of the Petitioner, it is important to read Section 24 of the Code that reads as follows:

Meeting of committee of creditors

24. (1) The members of the committee of creditors may meet in person or by such electronic means as may be specified.

(2) All meetings of the committee of creditors shall be conducted by the resolution professional.

(3) The resolution professional shall give notice of each meeting of the committee of creditors to-

a) Members of [Committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of Section 21 and sub-section (5)];

b) Members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

c) Operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.

(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings;

Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

(5) [Subject to sub-sections (6), (6A) and (6B) of section 21, any creditor] who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors;

Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

(6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

(7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified.

It is very clear from the plain reading of Clause (c) of the above Section that a creditor be it a Financial or Operational or the representative in order to claim seat in the CoC shall fulfil the aggregate dues of 10% of the debt. As per the reply filed by the RP, the Applicant is having merely a claim of 0.191% of the total debt of the Corporate Debtor. Therefore, as rightly contended by the Resolution Professional the question of giving any notice to the Petitioner does not arise in this case as he is not entitled to.

In addition to the above, as rightly contended by the Resolution Professional, the Petitioner filed the present Application after approval of Resolution Plan as an afterthought to stall the CoC proceedings even though the Operational Creditor is having knowledge about the CIRP process of the Corporate Debtor from the beginning. Therefore, the demand of the Operational Creditor for a notice even without fulfilling the eligibility criteria has to be rejected at the outset.

The Resolution Professional further contends that, though the provision contemplates only one operational creditor to be represented in the CoC, in present case there are 5 OC's who were part of CoC and represented the interest of the Creditors. It is also very clear from the above provision that OC would not have right to vote and the absence of the OC does not invalidate the meetings, clearly indicate the intention of the lawmakers that the non-representation ought not be a ground to set-aside resolutions passed in meetings. Further the Operational Creditor failed to disclose the Prejudice caused to the Applicant and failed to disclose what difference this Applicant's presence in CoC could have made.

In so far as the above order of NCLAT relied upon by the Petitioner is concerned, the impugned appeal before the NCLAT was preferred by a suspended member of the Board of the Corporate Debtor who is having the required percentage of claim in the debt of Corporate Debtor and the NCLAT having observed that notice was not given to any of the members of the suspended board held like that in the above appeal and the above order passed by NCLAT is clearly distinguishable from the facts of the present case on hand and is not helpful to the Petitioner in any way.

In so far as non-furnishing of resolution plan to OC is concerned, the Resolution Professional is duty bound to ensure and maintain

confidentiality of the information relating to the CIRP. The Resolution Plan is a confidential document which can only be presented to the members of the CoC during the process of its approval. Thus, the Applicant not being a member of the CoC would not be entitled to the copy of the Resolution Plan or be privy to the contents thereof. It is prudent to note that the statutory mandate requires that the Resolution Plan can only be presented to the CoC for its approval and presented before the Adjudicating Authority for its satisfaction in approving the same. Therefore, there are no merits in the above application and the above application is filed with an ulterior objective to stall the approval of the Resolution Plan and therefore is liable to be rejected with costs.

Accordingly, the above application is rejected by imposing costs of **Rs. 1,00,000/- (Rupees One Lakh)** on the Petitioner payable to the Resolution Professional which shall be paid to Financial Creditors. If the Petitioner fail to deposit the above costs, the same shall be deducted from the claim of the Petitioner by the Resolution Professional.

Sd/-
ANURADHA SANJAY BHATIA
Member (Technical)

Sd/-
H. V. SUBBA RAO
Member (Judicial)