



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

**IA No. 177 of 2023
In
CP(IB) 30 of 2022**

IA No. 177 of 2023

[An application under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 for approval of resolution plan]

Through:

**G. Madhusudhan Rao,
Resolution Professional of
M/s Midland Polymers Limited**
Address: 7-1-285, Flat No.103
Sri Sai Swapna Sampada Apts.
Balampet, Hyderabad-500038

Applicant

In the matter of CP(IB) 30 of 2022:

[An application under Section 7 of the Insolvency & Bankruptcy Code, 2016]

Prem Kumar Bajaj

Financial Creditor

Versus

Midland Polymers Limited

Corporate Debtor

Order Pronounced on: 18.08.2023

**Coram: Mahendra Khandelwal, Member (Judicial)
Kaushlendra Kumar Singh, Member (Technical)**

Appearance:

For the Applicant : Ld. Counsel Mr.Rajat Lohia a.w. Mr. G. Madhusudhan Rao

ORDER

1. This application is filed on 23.06.2023 under Section 30(6) of Insolvency & Bankruptcy Code, 2016 by G. Madhusudhan Rao Resolution Professional (RP) of the corporate debtor-M/s Midland Polymers Limited for approval of the Resolution Plan submitted by Mr. Gudapu Reddy Sreedar Reddy.

2. The averments made by the applicant/ resolution professional in the present application and as argued by the learned counsel are summarized as under:



(i) The corporate debtor was admitted in Corporate Insolvency Resolution Process (CIRP) on 06.01.2023. Mr. G. Madhusudhan Rao was appointed as Insolvency Resolution Professional (IRP). On 18.01.2023 the IRP made a public announcement of the CIRP of the corporate debtor thereby calling upon its creditors to submit their claim with requisite proof. The Committee of Creditors (CoC) was constituted with the following financial creditors having voting percentages based on their debt value as follows:

Sr.	Name of Creditor	Voting (%)
1.	Prem Kumar Bajaj	97.48%
2.	Centron Industrial Alliance Limited	2.52 %
Total		100%

The CoC resolved to appoint the IRP as the RP and the same was approved by this Adjudicating Authority.

(ii) The CoC instructed the RP to publish Form G calling upon the prospective resolution applicants to submit the EoI/Resolution Plans for the corporate debtor.

(iii) The RP published Form-G on 04.03.2023 in widely circulated English as well as local language newspapers. In response thereto, he received 2 resolution plans from Mr.Arun Kilash Shah and Mr.Gudapu Reddy Sreedar Reddy.

(iv) The CoC discussed the proposal, which was received in the form of Resolution Plans, in its 3rd & 4th CoC meetings. In its 4th CoC meeting held on 03.06.2023, the said resolution plans were discussed and put to vote. The resolution plan from Mr.Gudapu Reddy Sreedar Reddy was approved by the CoC with 97.48 % votes.

(v) The resolution applicant- Mr.Gudapu Reddy Sreedar Reddy has proposed to infuse a sum of Rs.2,31,75,000/- and an allotment of 10,000 equity shares of Rs.10/- each to the secured financial creditors. Further, the resolution applicant has proposed to pay a CIRP cost of

Rs.48.25 lacs in addition to the infusion of the said amount. The details of the proposed payment to the stakeholders are as follows:

SI No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Claimed %
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above: (i) who did not vote in favour of the resolution	NIL	NIL	NIL	NA
		(ii) Who voted in favour of the resolution plan	2,70,50,564	2,70,50,564	2,12,19,947 (apart from allotting 10,000 equity shares of Rs. 10/- each)	78.45% (approx)
		Total [(a)+(b)]	2,70,50,564	2,70,50,564	2,12,19,947 (apart from allotting 10,000 equity shares of Rs. 10/- each)	78.45% (approx)
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NA
		(b) Other than (a) above: (i) who did not vote in favour of the resolution plan	7,00,000	7,00,000	7,00,000	100%
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NA
		Total [(a)+(b)]	7,00,000	7,00,000	7,00,000	100



3.	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NA
		(b) Other than (a) above:				
		(i) Government	-	-	-	-
		(ii) Workmen	-	-	-	-
		(iii) Employees	-	-	-	-
	(iv) BSE Limited	7,55,053	7,55,053	7,55,053	100	
	Total [(a)+(b)]	7,55,053	7,55,053	7,55,053	100	
4	Other debts and dues- The Deputy Commissioner of Income Tax (Central)-2, Indore		26,06,41,424	26,06,41,424 (Admitted as contingent liability as appeals pending)	5,00,000	0.19 (approx)
Grand Total			28,91,47,041	2,85,05,617	2,31,75,000 (apart from allotting 10,000 equity shares of Rs. 10/- each to Secured FC).	81.30%

(vi) The RP has examined the resolution plan and the compliances required. For ready reference, the compliances examined by the RP are reproduced hereunder:

Section of the Code/Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
25 (2) (h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	EOI documents attached	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Final list attached	Yes
Section 30 (1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Notarised Affidavit attached	Yes
Section 30 (2)	(a) provides for the payment of insolvency resolution process costs?	Clause 2.1 of Resolution Plan (Sec. 30 (2) of the Code	Yes
	(b) provides for the payment to the operational creditors?	Clause 2.1 of Resolution Plan (Sec. 30 (2) (b) of the Code	Yes



	<p>(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?</p> <p>(d)provides for the management of the affairs of the corporate debtor?</p> <p>(e)provides for the implementation and supervision of the resolution plan?</p> <p>(f)contravenes any of the provisions of the law for the time being in force?</p>	<p>Clause 2.1 & of Resolution Plan {Regulation 38(1)}</p> <p>Clause 2.1 of Resolution Plan (Sec. 30 (2) (C) of the Code)</p> <p>Clause 2.1 of Resolution Plan (Sec. 30 (2) (d) of the Code & Regulation (2) (c) & Regulation 38 (1B), 38(3)</p> <p>Clause 2.1 & 4 of Resolution Plan (sec. 30 (2) (e) of the Code) Chapter XI of Page No. 34</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 2.1 of Resolution Plan (Sec. 30(2) (b) of the Code)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 2.1 and other clauses of 2 of Resolution Plan (Regulation 38 (1A), 37 (c), 37 (ca)	Yes
Regulation 38(1B)	<p>(i)Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.</p> <p>(ii)If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation</p>	<p>Clause 2.1 of Resolution Plan {Regulation 38 (1B)}</p> <p>Not Applicable</p>	<p>Yes</p> <p>NA</p>
Regulation 38(2)	Whether the Resolution Plan provides: <p>(a)the term of the plan and its implementation schedule?</p> <p>(b)for the management and control of the business of the corporate debtor during its term?</p> <p>(c)adequate means for supervising its implementation?</p>	<p>Clause 2.1 Sec 30(2) (d) & Regulation 38(2) (c)</p> <p>Clause 2.1 Regulation 38(2) (b)</p> <p>Clause 2.1 of Resolution Plan (Sec. 30 (2) (d) of the Code) & Regulation (2) (c) & Regulation 38 (1B), 38 (3).</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>



38(3)	Whether the resolution plan demonstrates 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? (e) the resolution applicant has the capability to implement the resolution plan?	Clause 2.1 of Resolution Plan (Regulation 38(3) for all the points i.e. (a) to e.	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No as nothing as found	NA
Regulation 39 (4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Clause 2.5 and Letter attached	Yes.

3. We heard the learned counsel for the RP and on perusal of records it is noted that the CoC approved the resolution plan of Mr. Gudapu Reddy Sreedar Reddy by 97.48% voting and it is not necessary for us to go into details of the commercial wisdom of CoC. We proceed to examine the plan in light of provisions contained in sections 30(2) and 31 of the IBC r.w. Regulation 38 of the IBBI (CIRP of the Corporate Debtor Regulation, 2016). The RP has placed on record the compliance certificate in Form-H. It shows that the fair value of the assets of the corporate debtor is Rs. 4,70,33,235/- whereas, the liquidation value is Rs.2,63,63,226/-. The successful resolution applicant has proposed payment of Rs.2,31,75,000/- (in addition to allotment of 10,000 equity shares of Rs.10/- each to the secured financial creditors) in the resolution plan.

4. The resolution plan should adhere to the following requirements as per Section 30(2) of the Code r.w. CIRP Regulation 38:

(i) It should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the corporate debtor.
[Section 30(2)(a)]

(ii) The repayment of the debts of operational creditors should not be less than the amount to be paid to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code, or the



amount that would have been paid to the said creditors if the amount to be distributed under the resolution plan had been distributed in accordance of section 53(1) of the Code.

Moreover, the payment to the operational creditor is to be made in priority over the financial creditor;

Further the repayment of the debts of dissenting financial creditors should not be less than the amount that would have been paid to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code and the payment to the said dissenting financial creditor is to be made in priority to the consenting financial creditors.

[Section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b)];

(iii) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan.

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

(iv) The implementation and supervision of the resolution plan.

[Section 30(2)(d) read with CIRP Regulation 38(2)(c)];

(v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e)];

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

[Section 30(2)(f)]

Such other requirements of the resolution plan as detailed in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 which are not covered above, are as under:

(a) The resolution plan should include statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors of the corporate debtor.



- (b) The resolution plan should include a statement giving details as to whether the resolution applicant or any of its related parties has at any time failed to implement or caused to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority.

[CIRP Regulation 38 (1B)]

- (c) The resolution plan should contain the term of the plan and its implementation schedule.

[CIRP Regulation 38(2)(a)]

- (d) The resolution plan should also demonstrate that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; has provisions for approvals required and timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan.

[CIRP Regulation 38(3)]

5. Taking into account the above provisions of the Code, the resolution plan submitted before us has been examined as follows:

- (i) In the plan, the provision towards CIRP costs is made for Rs.48.25 lacs to be paid immediately on approval of the resolution plan, in priority to the repayment of other debts of the corporate debtor. Thereby, section 30(2)(a) has been complied with. Further, the plan contains a provision that in case the CIRP cost is less than Rs.48.25 lacs then the difference amount would be paid to the secured financial creditors and if in case the CIRP cost is more than the said estimated amount then the same would be paid from the amount of the financial creditor .



(ii) There are no dissenting financial creditors. The resolution plan provides for payment to the operational creditors in priority to the repayment of other debts. According to section 30(2)(b), the operational creditors should not be paid less than the amount payable to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code, or the amount that would have been paid to the said creditors if the resolution plan value had been distributed in accordance of section 53(1) of the Code. As stated earlier, the liquidation value is Rs.2,63,63,226/- whereas the total admitted claim of secured financial creditors is Rs.2,70,50,564/-. As such if the said liquidation value was to be considered in the event of liquidation as a total amount to be distributed as per section 53 then the operational creditors would have got nothing. Similarly, we find that the proposed plan value is Rs.2,31,75,000/- (in addition to allotment of 10,000 equity shares of Rs.10/- each to the secured financial creditors) in the resolution plan and if that was to be distributed in accordance with section 53 then also nothing would have remained for the operational creditors. However, the resolution applicant has proposed to pay 100% of the claim to the operational creditors amounting to Rs.7,55,053/-.

As such the provisions of section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b) are complied with.

(iii) The mechanism for management and control of the affairs of the corporate debtor after approval of the resolution plan till its implementation has been provided in the resolution plan itself whereby a suitable professional will be appointed by the resolution applicant to manage the affairs of the company with the support of the Key Managerial Personnel of the company and with guidance from the new appointed board of directors. Thus, provisions of Section 30(2)(c) read with CIRP Regulation 38(2)(b) are complied with.

(iv) The resolution plan contains a provision wherein, the implementation of the said plan will be supervised by the Monitoring



Committee consisting of RP, a nominee from the lender/ financial creditor and a nominee from the resolution applicant. Thereby, Section 30(2)(d) read with CIRP Regulation 38(2)(c) have been complied with.

(v) The RP has submitted that the plan does not contravene any provisions of law. We also noted that the plan does not contravene any provisions of the law for the time being in force. Thereby, Section 30(2)(e) has been complied with.

(vi) The resolution plan also conforms to other IBBI Regulations as given hereunder:

- a) The resolution plan adequately deals with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor. Thereby, the plan is in compliance with CIRP Regulation 38 (1A).
- b) It is submitted that neither the resolution applicant nor any of its related parties have at any time failed to implement or contributed to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority. Thereby, the plan is in compliance with CIRP Regulation 38 (1B).
- c) The term of the Plan and its implementation schedule is as under:

Sr.	Particulars	Timeline
1.	Corporate Insolvency Resolution Process Cost	To pay immediately CIRP cost duly approved by CoC as on the receipt of the approval of Resolution Plan from the Hon'ble NCLT, prior to the payment to financial and operational creditors. The Resolution costs as approved by COC shall be paid and if the Resolution process Costs are revised downwards, the balance amount shall be paid to the secured Financial Creditor, i.e., Mr. Prem Kumar Bajaj and in case the resolution process costs are increased, the same shall be reduced from the amount earmarked to the secured Financial Creditor, Mr. Prem Kumar Bajaj.



2.	Financial creditors	<p>Mr. Prem Kumar Bajaj is the Secured Financial Creditor and Centron Industrial Alliance Limited is the unsecured Financial Creditor.</p> <p>To pay 25% i.e., (Rs. 54,79,987) of the proposed amount to the financial creditors within 30 days of the receipt of the approval of the Resolution Plan from the Hon'ble NCLT. Rs. 53,04,987/- to be paid to Mr. Prem Kumar Bajaj and Rs.1,75,000/- to be paid to Centron Industrial Alliance Limited.</p> <p>Balance 75% i.e., (Rs. 1,64,39,960) of the proposed amount will be paid within 60 days of the receipt of the approval of the Resolution Plan from the Hon'ble NCLT. Rs. 1,59,14,960/- to be paid to Mr. Prem Kumar Bajaj and Rs. 5,25,000/- to be paid to Centron Industrial Alliance Limited</p>
3.	Operational creditors	To pay full amount of the proposed amount to the operational creditor i.e., BSE Limited within 30 days of the receipt of the approval of the Resolution Plan from the Hon'ble NCLT.
4.	Contingent liability (The Deputy Commissioner of Income Tax (Central)-2, Indore	Though the claim was not admitted by RP, it is proposed to pay Rs. 5 lakhs to Income Tax Department within 30 days of the receipt of the approval of the Resolution Plan from the Hon'ble NCLT.
5.	Dues towards workmen/ employees	NA
Total		Rs.2,80,00,000/- (including payment to The Deputy Commissioner of Income Tax (Central)-2, Indore)

Thereby CIRP Regulation 38(2)(a) has been complied with.

- d) The resolution plan addresses the cause of default; is feasible and viable; has provisions for its effective implementation; contains provisions for approvals required and the timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan. Thus CIRP Regulation 38(3) has been complied with.

6. The resolution applicant Mr. Gudapu Reddy Sreedar Reddy is a Chartered Accountant who is a certified six sigma Green Belt and a certified US GAAP & Controllership professional. Sources of funds is out of his own



funds amounting to Rs.10.755 crores (a net worth certificate of the resolution applicant certified by a Chartered Accountant is also placed on record).

7. It is also noted that the resolution applicant has sought certain reliefs & concessions such as waiver of:

- i. The statutory liabilities/ contingent liabilities incurred and accrued to statutory authorities viz. SEBI, BSE, VAT, GST, EPCG, Sales Tax, Income Tax, PF, ESI, Excise, Customs, FEMA, Export Obligations and any other labour laws etc;
- ii. Carry forward and brought forward losses, if any, for all the preceeding 8 years
- iii. Any litigations, appeals, arbitrations if any, pending before any authority in India;
- iv. Demand raised in any form including any charges, levy, duty, interest, penalties, etc by Income Tax Department, SEBI, BSE, CDSL, NSDL, Tribunals, Courts, Sales Tax/GST etc;
- v. MAT liability occurring on account of write off of loans;
- vi. Dues of the operational creditors over and above the admitted amount;
- vii. Any liability recorded/unrecorded in the books of account, claimed or not claimed for the period till the commencement of CIRP;
- viii. Any/all liabilities arising with SEBI Regulations/ Companies Act/ FEMA Regulations/ Labour Laws;
- ix. Wavier from all past liabilities incurred and accrues prior to the commencement of CIRP.

Further, the approval of the resolution plan is not conditional to the grant of reliefs & concessions sought by the resolution applicant.

8. As far as reliefs and concessions claimed by the resolution applicant with respect to the unpaid liabilities after approval of the plan and the claims not filed at all with the RP during the CIRP, the law has been well settled by the Hon'ble Supreme Court in the case of **Ghanashyam Mishra and Sons**



***Private Limited Vs. Edelweiss Asset Reconstruction Company Limited
and Ors. reported in MANU/SC/0273/2021*** in the following words:

86. *“.....The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*

87. *We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief.....”*

9. In view of the above, all unpaid liabilities and claims that are not filed with the RP before the approval of the resolution plan and those which are not included in the said resolution plan would stand extinguished. As regards relief sought with respect to carry-forward losses, on perusal of the records, it is noted that there are no losses in the previous year and therefore no direction can be given in this regard. As regards other reliefs and concessions sought by the resolution applicant, we direct the said successful resolution applicant to approach the concerned statutory authority for those concessions and those authorities will consider the same as per the provisions of law under the relevant Acts.

10. The proviso to section 31 of the Code, 2016, states that before passing any order for approval of the resolution plan, the Adjudicating Authority should also satisfy that the resolution plan has provisions for its effective implementation. We being satisfied, approve the resolution plan submitted by Mr. Gudapu Reddy Sreedar Reddy for Corporate Debtor i.e., M/s Midland



Polymers Limited and in addition to the above directions, proceed to pass the following order:

- (i) Application is allowed.
- (ii) The resolution plan of Mr. Gudapu Reddy Sreedar Reddy for Corporate Debtor i.e., M/s Midland Polymers Limited allowed as per Section 30(6) of the IBC, 2016.
- (iii) The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- (iv) The order of moratorium dated 06.01.2023 passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this order.
- (v) The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).
- (vi) The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.
- (vii) Accordingly, IA 177 of 2023 in CP(IB) 30 of 2022 is allowed and stands disposed of in terms of the above directions.
- (viii) Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-sd-

Kaushalendra Kumar Singh
Member (Technical)

-sd-

Mahendra Khandelwal
Member (Judicial)

Swati Khandelwal