

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 54 of 2020 in C.P. (I.B) No.199/NCLT/AHM/2018

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.09.2020**

Name of the Company: Hiten Mukundbhai Parikh RP For Tiger
Surgical Disposable Pvt Ltd
V/s
COC of Tiger Surgical Disposable Pvt Ltd
& Ors

Section : 30(6) r.w 39(4) of the Insolvency and Bankruptcy
Code, 2016

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.

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**ORDER
(through video conferencing)**

Advocate, Ms. Natasha Dhruvan Shah is present on behalf of the Petitioner.

Advocate, Mr. Jaimin Dave is present on behalf of the Respondent.

The order is pronounced in the open court vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 16th day of September, 2020

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

**I.A. No. 54 of 2020
in
CP(IB) No. 199 of 2018**

In the matter of:

Dr. Hiten Mukundbhai Parikh
Resolution Professional of
Tiger Surgical Disposable Private Limited ... Applicant

Versus

Committee of Creditors and Ors of
Tiger Surgical Disposable Private Limited ... Respondent

Order delivered on 16th September, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance: Advocate Ms. Natasha Dhruvan Shah for Applicant. Mr. Hiten Parikh for RP. Mr. Dhruv Chauhan for CoC and Mr. Jaimin Dave for Resolution Applicant.

ORDER

[Per se: Ms. Manorama Kumari, Member (J)]

1. The instant application bearing number as IA No. 54 of 2020 in CP(IB) No. 199 of 2018, is filed by the Applicant, the Resolution Professional of M/s. Tiger Surgical Disposable Private Limited (hereinafter referred to as "Corporate Debtor") under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IB Code") for seeking approval of Resolution Plan dated 27.12.2019 along with addendum to the plan dated 11.01.2020.





2. The facts of the case are herein under:

2.1 CP(IB) No.199 of 2018 was filed by Financial Creditor viz. J. M. Financial Asset Reconstruction Company Limited, under section 7 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor which was admitted on 24.07.2019 by this Adjudicating Authority. The Applicant was appointed as Interim Resolution Professional (hereinafter referred as "IRP").

2.2 That the Committee of Creditors (hereinafter referred as "CoC") was formed and in its First Meeting held on 30.08.2019 decided for continuation of the IRP as RP.

2.3 The RP called for Expression of Interest (hereinafter referred as "EoI"), in compliance of the resolution passed in Third CoC meeting, vide publication dated 14.10.2019. It is stated by the Applicant that only one EoI was received by the Applicant.

2.4 Pursuant to the EoI, the Resolution Plan submitted by the Prospective Resolution Applicant was approved by the CoC members with 100% voting on 28.11.2019.

2.5 The above stated plan was discussed in the Fifth CoC meeting held on 07.01.2020 amongst the CoC, wherein they negotiated with the Prospective Resolution Applicant over the financial proposal and further directed the Prospective Resolution Applicant to submit the improved Resolution Plan.



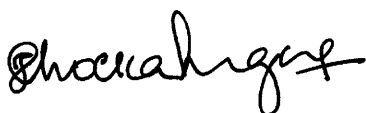
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2.6 The Applicant further stated that he has sought legal opinion with regard to the Code along with the eligibility of the Prospective Resolution Applicant as per Section 29A of IB Code.

2.7 The Applicant filed Compliance Certificate in 'Form H' as reflected at page no. 325-330 as **Annexure R** of the application. Applicant has also submitted the two Liquidation values from two different valuers as reflected from page no. 257-309 of the application. Pursuant to the approval of the Resolution Plan by the CoC under Section 30(4) of the IB Code (as amended upto date) as the successful Resolution Plan, RP filed the instant application being IA No. 54 of 2020 under Section 31 of the Code.

2.8 It is pertinent to mention herein that the Corporate Debtor is a MSME which is reflected from the additional affidavits filed by the Applicant on 14.02.2020 and 15.06.2020 respectively, wherein the Resolution Applicant has annexed the copy of Udyog Aadhaar acknowledgment issued by Government of India, Ministry of Micro, Small and Medium Enterprises showing the date of filing as 05.05.2017.

3. Heard the Applicant, CoC and Resolution Applicant, the present application has been filed for approval of the Resolution Plan under Section 31 of the IB Code (as amended upto date) submitted by RP in respect of the Corporate Debtor. The Applicant/ the Resolution



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Professional, deliberating the sequence of events right from calling of EoI up to approval of the Resolution Plan by the CoC in its Fourth meeting held on 28.11.2019 submitted the Resolution Plan duly approved by the CoC by 100% voting in favour of the Resolution Plan so submitted by Resolution Applicant, as the Resolution Plan complies with the requirements as envisaged under Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as well as Section 30 of the Code, therefore sought for approval of the Resolution Plan by this Adjudicating Authority.

4. On perusal of the records, it is found that the Resolution Applicant has taken account the interest of all stakeholders of the Corporate Debtor to the extent possible, as envisaged in this Resolution Plan for insolvency resolution of "Tiger Surgical Disposable Private Limited".
5. The Applicant stated the brief summary of the Resolution Plan submitted by the Resolution Applicant as below:

<u>Sr. No.</u>	<u>Particulars</u>	<u>Nature of Payment</u>	<u>Amount (INR in Lakhs)</u>	<u>Timeline</u>
1.	CIRP Cost	Upfront payment (unpaid part)	20	T + 30 days
2.	Operational Creditors	Upfront payment	13.74	T + 30 days
3.	Financial Creditors	Repayment schedule given in para 6.4	250	As per repayment schedule




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4.	Fresh Infusion Fund	Major Repairs & Additional capital requirements	Capital & working	50	Within 6 months
	Total			333.74	

6. The Applicant also submitted the summary of the Fair Value & the Liquidation Value by the registered valuers as given below:

(INR in Lakhs)

Particulars	Fair Value	Liquidation Value
For Plant and Machinery		
Mr. Yogesh Rasal	82.39	65.91
Mr. Naresh Kumar	50.67	35.48
For Securities and Financial Assets		
Mr. Ashutosh Dwivedi	70.34	49.38
Mr. Anoop Kumar Goyal	89.19	63.00

7. In view of the above, Section 30(2) and 30(4) is applicable in the instant case. For sake of the convenience the amended provision is reproduced herein below-

“30. Submission of Resolution Plan

(1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the

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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 debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

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

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this

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clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(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 purposes 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.]”

8. During the course of arguments, Resolution Applicant filed its affidavit stating, inter alia, that in response to the public announcement inviting claims to take over the Corporate Debtor,





Resolution Applicant submitted its Resolution Plan. He has further submitted that addendum to the plan was submitted on 07.01.2020 and the same was accepted by COC in its meeting held on 10.01.2020.

FINDINGS:

9. Looking to the entire facts of the case, it is found that the COC has approved the plan with 100% voting in favour of the approval of the plan. More so, the Resolution Applicant fulfils the mandatory contents of the Resolution Plan as provided under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. Regulation 38 is reproduced herein under-

“38. Mandatory contents of the resolution plan.

(1) A resolution plan shall identify specific sources of funds that will be used to pay the –

(a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;

(b) 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; and

(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

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["(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."*

10. It is to be mentioned herein that the Corporate Debtor is an MSME and falls under Section 240A of the IB Code. For the sake of convenience, the section is reproduced herein under:

"240A. Application of this Code to micro, small and medium enterprises. –

- (1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises.*
- (2) Subject to sub-section (1), the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—*
 - (a) not apply to micro, small and medium enterprises; or*
 - (b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification.*
- (3) A draft of every notification proposed to be issued under subsection (2), shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.*

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- (4) *If both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or shall be issued only in such modified form as may be agreed upon by both the Houses, as the case may be.*
- (5) *The period of thirty days referred to in sub-section (3) shall not include any period during which the House referred to in sub-section (4) is prorogued or adjourned for more than four consecutive days.*
- (6) *Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament.*

Explanation.— *For the purposes of this section, the expression "micro, small and medium enterprises" means any class or classes of enterprises classified as such under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006).]*

11. Further, from the object of the IBC, it is amply clear that the **“Resolution is Rule and the Liquidation is an Exception”**. Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only, if there is any surplus after satisfying the claims of a prior set of stakeholders fully. The IB Code’, therefore, does not allow liquidation of a corporate debtor’ directly. It allows liquidation only on failure of corporate insolvency resolution process’. It rather facilitates and encourages resolution in several

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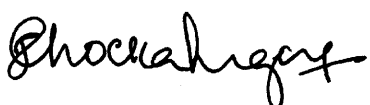
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The said objective of the Resolution Plan is affirmed in the decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors.** The Supreme Court has observed that National Company Law Tribunal has no jurisdiction and authority to analyze or evaluate the commercial decision of the Committee of Creditors (CoC) to enquire into the justness of the rejection of the Resolution Plan by the dissenting Financial Creditors.

Keeping in view such object behind the enactment of the Code, intention of the Legislature, that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for bringing Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per the apex court's decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors** as discussed above.

The Hon'ble Supreme Court in its recent judgment in Civil Appeal No. 10673 of 2018 in **K. Sashidhar Vs. Indian Overseas Bank & Ors.** comprising of Hon'ble Justice A.M. Khanwilkar and Hon'ble Justice Ajay Rastogi observed that Adjudicating Authority has no jurisdiction to interfere with the commercial wisdom of the CoC.





On the backdrop of the decision taken by Hon'ble Supreme Court, it is pertinent to note herein that in the instant case, there is no interference with commercial wisdom of CoC with regard to the implementation of the Resolution Plan. However, the observation so made is in view of the disparity caused in the distribution of the amount on the pro-rata basis as the Axis Bank is getting lesser amount as compare to other Financial Creditors.

12. However, with regards to the **Relief** sought for, by the Corporate Debtor, the Adjudicating Authority is of the opinion that not allowing the Clause 13 i.e. **Reliefs Sought** of the Resolution Plan, is not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant(s) has/have liberty to approach Competent Authorities for any concession, relief or dispensation, as the case may be, as and when required for proper and effective implementation of the Plan.

13. It is needless to mention herein that approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/own jurisdiction to pass any appropriate order, as the case may be. The Resolution Applicant(s) on approval of the Plan may approach those Competent Authorities/Courts/Legal Forums/Offices- Govt, or Semi Govt. /



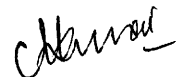
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State or Central Govt, for appropriate relief(s) sought for in "Clause 13" of the Resolution Plan.

14. Apart from the above observations and directions, it is further directed/ observed that:


- i. The approved Resolution Plan shall come into force with immediate effect.
- ii. The Resolution Plan shall be subject to the various existing laws in force and shall also conform to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.
- iii. The Resolution Applicant(s) shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws 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 section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.
- iv. 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 on its database.



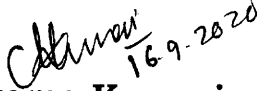


15. Under such facts and circumstances, we, the Adjudicating Authority, is of the considered opinion and also being satisfied that the Resolution Plan as approved by the Committee of Creditors (CoC) meets the requirements as referred to under section 30(2) of the Code.

16. Accordingly, IA 54 of 2020 is allowed with the above said observations and directions and stands disposed of in view of the above order.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member(Technical)

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Manorama Kumari
Adjudicating Authority
Member(Judicial)