

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

**IA/60(AHM)2021 in CP(IB) 560 of 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 31.03.2021**

Name of the Company: Atul Mittal RP of Riddhi Siddhi Cotspin  
Pvt Ltd

Section 30(6) IBC,2016.

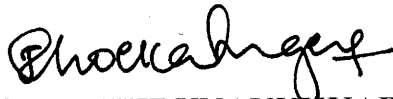
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER**

**(through video conferencing/physical)**

None appeared on behalf of Applicant.

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



**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 31st day of March, 2021



**MANORAMA KUMARI  
MEMBER JUDICIAL**

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

**I.A. No. 60 of 2021  
in  
CP(IB) No. 560 of 2018**

**In the matter of:**

Bank of Baroda

... Financial Creditor

**Versus**

M/s. Riddhi Siddhi Cotspin  
Private Limited

... Corporate Debtor

**In the matter of:**

Atul Mittal

Resolution Professional of

Riddhi Siddhi Cotspin Private Limited

... Applicant

**Order delivered on 31<sup>st</sup> March, 2021**

**Coram:**

**Hon'ble Ms. Manorama Kumari, Member (J)**

**Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

**Appearance:**

Applicant: Mr. Ketan Parikh, Advocate

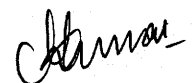
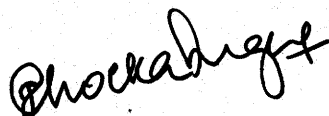
*Chockalingam*

*Manorama*

**ORDER**

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

1. The instant application is filed by the Applicant, the Resolution Professional of Riddhi Siddhi Cotspin Private Limited (hereinafter referred to as "Corporate Debtor") under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IB Code") with a prayer for approval of Resolution Plan.
  
2. The facts of the case is/are herein under:
  - 2.1 CP(IB) No. 560 of 2018 was filed by Financial Creditor viz. Bank of Baroda, 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 01.01.2020 by this Adjudicating Authority and Mr. Atul Mittal 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 31.01.2020, CoC decided for continuation of IRP as RP (Resolution Professional).



2.3 That in the Second CoC meeting held on 13.02.2020, RP published Expression of Interest (hereinafter referred as "EoI") in Form-G, which was further revised in Third CoC meeting held on 07.03.2020. However, in the Fourth CoC meeting held on 26.06.2020, CoC noted that no EoI has been received and hence, resolved for extension of further 15 days for submission of EoI. But no progress could be seen from March 2020 to August 2020.

2.4 That the Bank of Baroda, being the sole member of CoC, assigned its debts pertaining to the Corporate Debtor to M/s. Raj Radhe Finance Limited vide Assignment Agreement dated 15.09.2020 (**Annexure-J**).

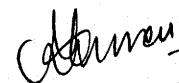
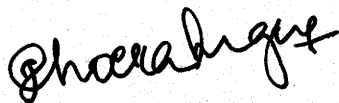
2.5 That in the Fifth CoC meeting held on 23.09.2020, CoC (M/s. Raj Radhe Finance Limited) resolved for filing an application for exclusion of lockdown period before this Adjudicating Authority, which was allowed by this Adjudicating Authority vide its order dated 24.11.2020. CoC also resolved to republish Form-G for inviting EoI.

*Phoekahgy*

*Chaman*


2.6 That in the Sixth CoC meeting held on 09.11.2020, RP received two EoIs from the Prospective Resolution Applicants. However, out of the two, one M/s V S Fibre withdrew their EoI vide email dated 30.10.2020. Thereafter, one Resolution Plan was received from M/S. Khushi Agri export vide email dated 26.11.2020 and the same was placed before the CoC in the Seventh CoC meeting held on 30.11.2020, wherein CoC asked Resolution Applicant to improve their Financial offer made in the Plan. Applicant further submitted that Transactional Audit Report was placed before the CoC and it was found that Company was not operational and no business transaction were found in cash credit and term loan. Hence, no transaction will fall within the purview of section 43, 45, 50 or 66 based on the report by transaction auditor.

2.7 That in the Eighth CoC meeting held on 04.12.2020, CoC unanimously approved the revised Resolution Plan submitted by the Resolution Applicant (M/s. Khushi Agri exports) with 100% majority voting share.



2.8 The Applicant filed Compliance Certificate in 'Form H' as reflected at page no. 387-398 as **Annexure U** of the application. Applicant has also submitted the Liquidation value and fair value from the valuers as reflected from page no. 248 of the application

3. Heard the parties, the present application has been filed for approval of the Resolution Plan under Section 30(6) of the IB Code (as amended upto date) submitted by RP in respect of the Corporate Debtor. The Applicant/ the Resolution Professional, deliberating the sequence of events right from calling of EoI up to approval of the Resolution Plan by the CoC in its Eighth meeting submitted the Resolution Plan duly approved by the CoC by 100% voting share 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, and 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 "Riddhi Siddhi Cotspin Private Limited".

5. The sources of funds for the Resolution Plan is given below:

<b>Application of Funds</b>	<b>INR</b>	<b>Sources of Funds</b>	<b>INR</b>
CIRP Cost	2,00,000	NBFC Finance (Letter attached herewith)	3,40,00,000
Financial Creditor	3,38,00,000		
Operational Creditor	Nil		
Workman & Employees Dues	Nil		

*Shoekahger*

*Chamra*

Statutory Dues	Nil		
Working Capital	Nil		
<b>Total</b>	<b>3,40,00,000</b>	<b>Total</b>	<b>3,40,00,000</b>

6. The transaction structure summary of the Resolution Plan is as follows:

<b>Particulars</b>	<b>Claims admitted</b>	<b>Proposed payment amount</b>	<b>Proposed payment structure</b>
CIRP cost	NA	2,00,000	100% of the proposed amount to be paid within 30 days of the approval of Resolution plan by AA.

*Shachin*

*Shachin*  
7 | Page

Financial Creditors	29,93,12,665	3,38,00,000	100% of the proposed amount to be paid within 30 days of the approval of Resolution plan by AA.
Operational Creditors	Nil	Nil	
Government/ statutory authorities	Nil	Nil	
Workmen compensation & employees if any	Nil	Nil	
Equity shareholders	NA	0	All equity shares held by existing shareholders

*Phoekabngf*

*Chaman*

			shall stand cancelled upon approval of resolution plan by AA, without any action required by the RA.
<b>TOTAL</b>	<b>29,93,12,665</b>	<b>3,40,00,000</b>	-

7. The proposal relating to term of the Resolution Plan, its implementation schedule and sources of fund is reproduced herein below:

<b>S. No.</b>	<b>Stakeholders Name</b>	<b>Amount Proposed</b>	<b>Timeline</b>
1.	CIRP Cost	2,00,000	100% of the proposed amount to be paid within 30 days of the approval of

*Shankar*

*Shankar* 9 | Page

			Resolution plan by AA
2.	Workman/ Employee	Nil	
3.	Financial Creditor	3,38,00,000	100% of the proposed amount to be paid within 30 days of the approval of Resolution plan by AA
4.	Operational Creditor	Nil	
5.	Statutory Dues	Nil	

\* Appointed Date

8. On perusal of the record, it is found that the Resolution Applicant has also filed Form H as **Annexure U** under regulation 39(4) of the Insolvency and Bankruptcy Board of India

*Phoeeahngz*

*Chhanna*

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 at page no. 248 of the application, which is self explanatory.

9. In view of 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 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*

*Shreehari*

*Sharma*

*(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 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*

*Sharma*

*Chatterjee*

*(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.]”*

**FINDINGS:**

10. Looking to the entire facts of the case, it is found that the CoC has approved the plan with 100% voting share in favour of the approval of the plan. Moreso, the Resolution Applicant fulfils the mandatory contents of the Resolution Plan as provided under Regulation 38 of

*Sharma*

*Chandra*

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.*

*[“(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.”]*

*Shaukat*

*Chatterjee*

(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.”

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 ways.*

*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*

*Shree Anand*

*Chamran*  
15 | Page

*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 brining 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 further held that "the legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority".*

*In the recent judgment of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors** delivered by the Hon'ble Supreme Court, it was strongly opined by the Hon'ble Apex Court that the Adjudicating Authority can exercise only a limited*

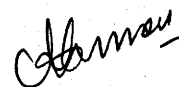
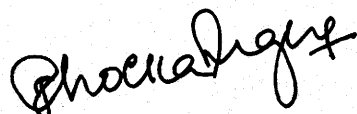
*Phalke*

*Chamari*

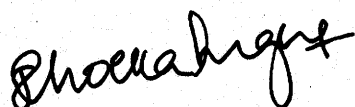
*judicial review in respect of any COC decision. NCLT/NCLAT does not have jurisdiction under the provisions of the Code to interfere in the merits of a business decision taken by the majority of COC.*

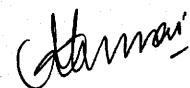
*The Hon'ble Supreme Court held that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the CoC and that the CoC is the final authority in this regard. The Hon'ble Supreme Court restricted the role of NCLT to only adjudicate whether the CoC has complied with the objects of the Code i.e. the corporate debtor needs to keep going as a going concern during CIRP, it needs to maximize the value of the assets of the corporate debtor, and interests of all stakeholders have to be taken care of.*

*The Court referred to its judgment in K Sashidhar's matter wherein it was provided that there is no provision under the Code which empowers the Adjudicating Authority to oversee the justness of the reason or the commercial decision taken by the financial creditors in approving or rejecting the proposed resolution plan. The apex court upheld the autonomy of the COC regarding the commercial matters and decisions that cannot be questioned by the AA.*



12. With regard to the **Extinguishment of claim** in **Part E (II)** (Page no. 202 of the application) and **Part J** (Page no. 211 of the application) and **Concession and Relief Sought** in **Part I** (Page no. 208 of the application), it is to be mention herein that since all the Financial Creditors, Operational Creditors and other Stakeholders have already lodged their claims during the CIRP and the same has been already considered by CoC and accordingly, Resolution Plan has been approved by CoC with majority. The claims of any Stakeholder and others, if remained unaddressed or not considered by CoC, shall not claim upon Corporate Debtor after the approval of Resolution Plan. Furthermore, if there is any proceeding pending before any competent authority(s), Resolution Applicant may approach the said authority for appropriate order.
13. Further, it is to be specifically mention herein that no claim against the Resolution Applicant will lie on and from the date of approval of the Resolution Plan by this Adjudicating Authority. However, any extinguishment, waiver or concession, if claimed, by the Resolution Applicant from any competent authority of Government/ Semi Government/ Central or Local Authority,





Resolution Applicant is required to approach them for such relief, claim and/or any waiver.

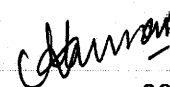
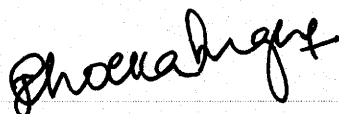
14. With regard to any pending proceeding before any competent authority(s), criminal and other penal proceedings, against the Corporate Debtor, Resolution Applicant may approach before the said competent authority for any relief as provided for Resolution Applicant in IB Code.
  
15. It is needless 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 or 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. / State or Central Govt, for appropriate relief(s) sought for in the Resolution Plan.
  
16. Thus, not allowing the above said relief and/or concession and/or waiver are not going to make any hindrance for proper

*Phoena Inge*

*Sharma*  
19 | Page

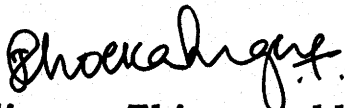
implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant(s) has/have liberty to approach Competent Authorities for any concession, relief or dispensation, as the case may be as when required for proper and effective implementation of the Plan.

17. 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

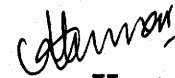


Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.

18. 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.
19. Accordingly, IA 60 of 2021 is allowed with the above said observations and directions and stands disposed of in view of the above order.
20. IA(s), if any, pending in relation to the instant Resolution Plan stands infructuous.



**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member(Technical)**



**Manorama Kumari**  
**Adjudicating Authority**  
**Member(Judicial)**

Shreya