

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

**CA No.354/2018
IN
CP (IB) No.123/Chd/CHD/2017**

**Under Section 31 of the Insolvency and
Bankruptcy Code, 2016 read with
Regulation 39 of the Insolvency and
Bankruptcy Board of India (Insolvency
Resolution Process for Corporate
Persons) Regulations, 2016**

In the matter of:

Phoenix Arc Pvt. Ltd. ...Financial Creditor

Vs.

M/s. Sarbat Cotfab Private Limited ...Corporate Debtor

And in the matter of CA No.354/2018:-

Manoj Sehgal,
Resolution Professional of
Sarbat Cotfab Private Limited

...Applicant-Resolution Professional

Order delivered on: 08.06.2020

Present Through Video Conferencing: -

Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)

For the Applicant- Resolution Professional	: 1. Mr. Atul V Sood, Advocate 2. Mr. Manoj Sehgal, Resolution Professional in person
For Committee of Creditors	: 1. Mr. Manish Jain, Advocate 2. Ms. Divya Sharma, Advocate
For Resolution Applicant	: Mr. Vishav Bharti Gupta, Advocate
For Income Tax Department	: Mr. Yogesh Putney, Advocate

Per: Ajay Kumar Vatsavayi, Member(Judicial)

ORDER

The present application is filed by Resolution Professional (RP) under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the **Regulations**) seeking sanction of resolution plan as approved in the meeting of Committee of Creditors (**CoC**) held on 14.08.2018.

2. It has been submitted that the insolvency petition was filed by the Financial Creditor i.e. Phoenix Arc Pvt. Ltd. under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Sarbat Cotfab Pvt. Ltd. (**Corporate Debtor**) and the same was admitted vide order dated 15.02.2018 and the CIRP of the Corporate Debtor was initiated. It is submitted that the Mr. Manoj Sehgal was appointed as Interim Resolution Professional (**IRP**) vide order dated 15.02.2018 and within three days of the appointment order, the IRP issued a public announcement as per Regulation 6 of the Regulations read with Section 15 of the Code in Form A in two newspapers i.e. Business Standard of an English newspaper and Business Standard (Hindi) both dated 19.02.2018 thereby inviting claims from the creditors of the Corporate Debtor as envisaged in the Code.

3. It is submitted that in pursuance of the public announcement, claims were received from the Financial Creditors which were verified and after collation, the IRP constituted the CoC as per the provisions of Section 21 of the Code. It is stated that the CoC was constituted with sole Financial Creditors i.e. Phoenix Arc Pvt. Ltd. having 100% voting share. The sole financial creditor filed its claim which

was approved by the RP, in view of the unamended Regulation 12 of the Regulations and intimation in this regard was given to this Tribunal.

4. It is submitted that the applicant as IRP has also appointed two registered valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations and on the basis of these reports, the fair value and the liquidation value as assessed as per unamended Regulation 35 are ₹4,47,55,960/- and ₹1,94,20,245/- respectively.

5. It is stated that in the 1st meeting of the CoC held on 15.03.2018, the CoC resolved to continue with the IRP and appointed him as RP and further it is submitted that in the 2nd meeting of the CoC held on 26.04.2018, the CoC finalized and approved the format of Evaluation Matrix and also gave its approval for Expression of Interest (EOI) and for publication of Form G.

6. It is also stated that the Expression of Interest was called from eligible resolution applicants on 27.04.2018 as prescribed in Regulation 36 (A) of the Regulations by publishing Form G in "Business Standard" in English and Hindi Editions both dated 27.04.2018.

7. It is submitted that the CoC in its 3rd meeting was informed that after publication of Form G, EOI have been received from four prospective Resolution Applicants out of which only two prospective resolution applicants namely i.e. Ms. Akansha Gupta & Group and Mr. Tejinder Singh & Group (Mr. Tejinder Singh Kochar, Mr. Rakesh Kumar Bansal and Mr. Ashish Bansal) have also submitted their KYC, net worth and liquid assets documents as required in RPSP and after consideration the CoC approved for the submission of resolution plan by the aforesaid resolution applicants. It is further submitted that since no objections to the provisional list of Prospective Resolution Applicants had been received, the same was treated as the final list.

8. It is stated that the CoC received resolution plans from two prospective resolution applicants and the resolution plan was opened in front of CoC in the 4th meeting dated 13.06.2018 and was further analysed in 5th meeting of the CoC held on 12.07.2018.

9. It is submitted in the 6th meeting of CoC held on 14.08.2018, the revised resolution plans after incorporating the suggestions of the CoC, was presented and the resolution plan submitted by Mr. Tejinder Singh Kochar & Group got approved by 100% voting in favour of it. Copy of the complete resolution plan is at Annexure-2 of the application.

10. The RP has filed compliance certificate in Form H (Annexure A-25) as required under I&B Code (Amendment) Ordinance 2018 No.6 of 2018 dated 06.06.2018. It is certified by the RP in para 4 of Form H that the resolution plan complies with all the provisions of the Code, CIRP Regulations and does not contravene any of the provision of law for the time being in force and that the resolution plan stands duly approved by the 100% of the voting share of the financial creditors. It is also stated in para 4 (ii) of Form H that the affidavit of the successful resolution applicant regarding its eligibility under Section 29A of the Code is in order. Copy of the affidavit of the resolution applicant regarding its eligibility under 29A is attached as Annexure A-26 of the application.

11. It is also submitted that CoC while accepting the bid had taken care of all the provisions and Regulations. It is prayed that the application may be allowed and resolution as approved by the CoC in the CIRP of the Corporate Debtor be approved.

12. The learned counsel for the RP submitted that as per revised Form H (Annexure 3 of the Spl. Diary No.20 dated 26.05.2020), all the provisions of the Code and Regulations were complied with and that the approval of the resolution

plan was made by 100 % voting share of the sole financial creditor in the meeting of the CoC held on 14.08.2018 and therefore, resolution plan submitted by M/s Mr. Tejinder Singh Kochar, Mr. Rakesh Kumar Bansal and Mr. Ashish Bansal be approved.

13. We have carefully considered the submissions of the learned counsel for the RP and the learned Counsel for the resolution applicant and have also perused the record.

14. The corporate debtor was incorporated on 17.01.2005 and the CIRP proceedings were initiated against the corporate debtor by order delivered on 15.02.2018. The present application is filed for approval of the resolution plan submitted by Mr. Tejinder Singh Kochar & Group (Resolution Applicant). The approval has been sought under the provisions of joint Section 31 (1) of the Code.

15. We may first of all state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditor, the distribution of voting share among them and the position of voting for the resolution plan is as under (para No.5 of Form H):-

Sl. No.	Name of Creditor	Voting Share (%)	Assent/ Dissent/Abstain
1	Phoenix Arc Pvt. Ltd. (Trustee of Phoenix Trust FY 15-7)	100%	Voted For
	Total	100	Approved

16. The details of stakeholders under the resolution plan given in Para 7 of Form H :-

(Amount in Rs. Lakh)

Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Dissenting Secured Financial Creditors	NIL	NA	NA	NA
2	Other Secured Financial Creditors	8,497.76	8,494.07	160.00 plus 3,142.80**	38.87%**
3	Dissenting Unsecured Financial Creditors	NIL	NA	NA	NA
4	Other Unsecured Financial Creditors (Contingent as on date)	NIL	NIL	1.50	4.87%
5	Operational Creditors	6.00	6.00	11.00	4.82%
	Government	835.74	837.80	40.59	4.84%
	Workmen & Employees	NIL	NIL	47.00	25.17%
6	Other Debts and Dues (Current Government Dues)	NIL	NIL	13.13	100%
Total		9339.50	9337.87	3416.02**	

*If there are sub-categories in a category, please add rows for each sub-category.

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

**Financial Creditors shall receive "Pass-Through Amounting respect of Insurance Claim. The corporate debtor has filed consumer petition/complaint filed before Hon'ble NCDRC amounting for INR 3,142.80 lakhs plus interest, which is pending adjudication. The financial creditor will get the full amount awarded by Hon'ble NCDRC.

1. The total cash component in the Resolution Plan payable by Resolution Applicant as provided in the Resolution Plan is Rs 296.13 Lakhs. The Details are as per below:

S. No.	Particulars	Amount (Rs in Lakhs)	Payment Terms
1.	CIRP Cost	30.00	On or before closing date i.e Within 90 days of approval of plan by Hon'ble AA.
2	Secured Financial Creditor (Phoenix ARC Pvt Ltd)	30.00	Already Paid
3	Secured Financial Creditor (Phoenix ARC Pvt Ltd)	130.00	On or before closing date i.e Within 90 days of approval of plan by Hon'ble AA.

4.	<i>Unsecured Financial Creditor (Canara Bank)</i>	1.50	<i>On or before closing date i.e Within 90 days of approval of plan by Hon'ble AA.</i>
5.	<i>Operational Creditor for Goods & Services</i>	11.00	<i>Within one year of the closing date.</i>
6.	<i>Operational Creditor Government Dues(Customs)</i>	18.50	<i>On or before closing date i.e Within 90 days of approval of plan by Hon'ble AA.</i>
7	<i>Operational Creditor Government Dues (Tax)</i>	13.13	<i>On or before closing date i.e Within 90 days of approval of plan by Hon'ble AA.</i>
8	<i>Operational Creditor Employees & Workers</i>	47.00	<i>Within one year of the closing date.</i>
9	<i>Funds for stabilisation of Business and working Capital</i>	15.00	<i>On or before closing date i.e Within 90 days of approval of plan by Hon'ble AA.</i>
	<i>Total</i>	296.13	

2. *The Total amount in Resolution Plan payable on granting of award in favour of Secured Financial Creditor M/s Phoenix ARC Pvt Ltd by Hon'ble NCDRC is Rs 3142.80 Lakhs. This is based on the basis of claim filed by corporate debtor before the Hon'ble NCDRC in respect of Insurance Claim and actual amount payable to Secured Financial Creditor shall depend on the award granted by Hon'ble NCDRC and Resolution Applicant and Corporate Debtor have no right on the same as per Resolution Plan.*
3. *The total CIRP Cost is Rs 55.85 Lakhs. The CIRP cost stated/provisioned in the Resolution Plan is Rs 30.00 lakhs but the Resolution Applicant has undertaken to pay the entire CIRP cost on actual basis and not dispute it as per Para 4C , Chapter B of the Resolution Plan. Thus, the total cash payment of the resolution plan payable by the Resolution Applicant shall be Rs 321.98 Lakhs (Rs 296.13 Lakhs + 25.85 Lakhs) considering increased amount of actual CIRP cost.*
4. *The carry Forward Losses amounting to Rs 3085.28 Lakhs upto Assessment Year 2020-21 shall be allowed to be carried forward as per Resolution Plan and Income Tax Department has no objection on the same and have confirmed the same also to this Hon'ble Bench.*

17. The compliance of the resolution plan has been given in Para No. 9 of Amended Form H as follows:-

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)	Page No. of application
25(2)(h)	<i>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?</i>	Chapter A, Clause 1& 2 Chapter E	Yes	29-32 61-62
Section 29 A	<i>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?</i>	Chapter-A, Clause 3 Chapter C, Clause 2A(i)	Yes	32 51
Section 30(1)	<i>Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?</i>	Chapter-A, Clause 3 Chapter C, Clause 2A(i)	Yes	32 51
Section 30(2)	<i>Whether the Resolution Plan:</i> <i>(a) provides for the payment of insolvency resolution process costs?</i> <i>(b) provides for the payment of the debts of operational creditors?</i> <i>(c) provides for the management of the affairs of the Corporate debtor?</i> <i>(d) provides for the implementation and supervision of the resolution plan?</i> <i>(e) contravenes any of the provisions of the law for the time being in force?</i>	Chapter B, Clause 4 Chapter C, Clause 2A(ii) Chapter B, Clause 6 Chapter C, Clause 2A(iii) Chapter A, Clause 5(A) Chapter C, Clause 2A(v) Chapter A, Clause 6& 7 Chapter C, Clause 2A(vi) Chapter C Clause 2 (A) (vii) And Clause 4	Yes Yes Yes Yes Yes	39 51 43-46 51-52 33-34 52-53 34-35 53 53-54 55
Section 30(4)	<i>Whether the Resolution Plan (a) is feasible and viable, according to the CoC?</i>	(a) the Resolution Plan has been duly approved by the CoC.	Yes	19-20,63

	<i>(b) has been approved by the CoC with 66% voting share?</i>	<i>(b) Yes</i>	Yes	19-20,63
Section 31(1)	<i>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</i>	<i>Chapter A, Clause 6& 7 Chapter C, Clause 2A(vi)</i>	Yes	34-35 53
Regulation 35A	<i>Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?</i>	NA†	NA†	
Regulation 38 (1)	<i>Whether the Resolution Plan identifies specific sources of funds that will be used to pay the - (a) insolvency resolution process costs? (b) liquidation value due to operational creditors? (c) liquidation value due to dissenting financial creditors?</i>	<i>Chapter B, Clause 4 Chapter B, Clause 6 Chapter C Clause 2(A)(iv)</i>	Yes Yes Yes	39 43-46 52
Regulation 38(1A)	<i>Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?</i>	<i>Chapter B Statement after clause 7 of the same chapter Chapter C, Clause 2A(viii)</i>	Yes	47-48 54
Regulation 38(2)	<i>(a) Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?</i>	<i>Chapter A Clause 5(A) And Statement of payment dates after clause 7 of the same chapter Chapter A, Clause 5 Chapter C Clause 1 Chapter A Clause 6</i>	Yes Yes Yes	33-34 35 33-34 50-51 34

Regulation 38(3) (As Amended on 03.07.2018)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default</p> <p>(b) it is feasible and viable? The Resolution Plan was circulated to COC and COC members deliberated on the plan and approved the Plan with 100% voting share u/s 30(4) of the Code.</p> <p>(c) it has provisions for its effective implementation?</p> <p>(d) it has provisions for approvals required and the timeline for the same? The Plan does not envisage any special approval from any agency except for the permissions already available and required in the normal course of business. Some normal approvals are mentioned in Chapter C.</p> <p>(e) the resolution applicant has the capability to implement the resolution plan?</p>	<p>(a) Chapter Overview of the Plan</p> <p>(b) Chapter E</p> <p>(c) Chapter A, Clause 7</p> <p>(d) Chapter C, Clause 1B, 1C, Clause 1E</p> <p>(e) Chapter A, Clause 2</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>23</p> <p>61-62</p> <p>35</p> <p>50</p> <p>35</p>
Regulation 38(3) (As stood before the Amendment dated 03.07.2018)	A Resolution plan shall contain details of the resolution applicant and other connected persons to enable the committee to assess the credibility of such applicant and other connected persons to take a prudent decision while considering the resolution Plan for its approval.	Chapter A(1) Details of Resolution Applicant and other connected persons detailed in the Resolution Plan on the basis of which CoC deliberated and	Yes	29-32

		<i>approved the Resolution Plan by 100% voting share.</i>		
<i>Regulation 39(2)</i>	<i>Whether the RP has filed applications in respect of transactions observed, found or determined by him?</i>	<i>Prima facie no transaction under Section 43,45, 50 or 66 were found or determined by the RP as also confirmed by transaction audit report dated 20.05.2018 of M/s Anshul Ashish & Associates, Chartered Accountants. Therefore, no such application was filed by the RP.</i>	<i>Yes</i>	

18. The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading as follows:-

If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, 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 such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

19. The conditions provided for in Section 31(1) of the Code for approval of resolution plan are therefore:-

- (a) *The Resolution Plan is approved by the CoC under Section 30(4) of the Code;*
- (b) *The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*
- (c) *The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

20. It is submitted by the RP that the resolution plan has been approved by a vote of 100% of voting share of the sole financial creditor and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

21. The provisions of Section 30(2) of the Code are as follows:-

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 repayment 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 the 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 purposes 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
(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) confirms to such other requirements as may be specified by the Board.

22. The compliance of Section 30(2) of the Code is given in para No.9 of Form H (*supra*). The same is being further examined as under: -

Section 30(2)(a): The resolution plan (page 39 of the application and Chapter B, Clause 4 of the Resolution Plan) states that payment of insolvency resolution process cost estimated to be ₹30,00,000/-shall be paid in full towards final payment of the insolvency resolution process costs payable, within 90 days from the date of approval of resolution plan by the Adjudicating Authority. Further, it is stated in para 7(3) of Form H that the resolution applicant has undertaken to pay the entire CIRP cost on actual basis and not dispute it as per Para 4C, Chapter B of the resolution plan. Thus, the total cash payment of the resolution plan payable by the Resolution Applicant shall be ₹321.98 Lakhs (₹296.13 Lakhs + 25.85 Lakhs) considering increased amount of actual CIRP cost. Therefore, the total CIRP cost is 55.85 lakhs.

Section 30(2)(b): The resolution plan (Page 43 of the application and Chapter B Clause 6 of the Resolution Plan) states that the resolution applicant has committed to pay a total amount ₹18,50,000/- out of the claimed and verified amount to DGFT/Customs before the end of the closing date in full and final settlement of the claim. Further, it is stated that an amount of ₹11,00,000 is proposed to be paid to the trade payables of the corporate debtor within 1 year from the end of closing date in quarterly 4 instalments in full and final settlement of their claim. The resolution plan proposes payment of ₹47,00,000/- towards other dues of old workmen and employees against total outstanding dues of ₹1,86,76,000/-. Also, there is provision for payment of statutory dues to the tune of ₹13.13 lakhs including TDS of ₹0.29/- Lakhs which shall be paid before the closing date. The resolution applicant also commits to pay the dues of the current employee and workmen in full before closing date. It is submitted no amount is likely to be payable to operational creditors in the event of Liquidation. Further, there are no dissenting creditors as the resolution plan has been approved by 100% voting share of the sole Financial Creditor. Hence, Section 30(2)(b) of the Act stands complied with.

Section 30(2)(c): In Clause 5(A) of Chapter A of the resolution plan (page 33 of the application), it is stated that the management and control of the business of the Corporate Debtor from the effective date till the completion of the term of resolution plan shall be done by the Board of Directors reconstituted by the Resolution Applicant replacing the existing board of directors and the reconstituted board will be performing its duties under the guidance of “Monitoring Committee” consisting of one representative each of Resolution Applicant, Financial Creditor and Resolution Professional.

Section 30(2)(d): In Clause 6 & 7 of Chapter A of the Resolution Plan (Page 34-35 of the application), it is stated that the Monitoring Committee (as defined in Para 5A(i) Chapter A) shall monitor and supervise the implementation of the Plan from the date of order of approval of Resolution Plan by the Adjudicating Authority.

Section 30(2) (e): In Chapter C clause 2 (a) (vii) and clause 4 of the Resolution Plan (Page No.31 of the application), it is stated that the resolution plan does not contravene any of the provisions of the law for the time being in force.

23. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan states that the Monitoring Committee as defined in Para 5A(i) of the resolution plan shall monitor and supervise the implementation of the plan from the date of order of approval of resolution plan by the adjudicating authority. The term of the plan is stated to be 365 days from the closing date of the resolution plan. Apart from upfront payment of ₹1,60,00,000/- to the secured financial creditors including ₹30 lakhs advance cash deposit and ₹1,50,000/- to unsecured financial creditors, the resolution applicant proposed to infuse ₹15,00,000 lakhs in order to successfully implement the plan and to improve & stabilize the operations of the corporate debtor. Further, it is stated that the total amount in the resolution plan payable on granting of award in favour of the secured financial creditor pertaining to the insurance claim filed before NCDRC is ₹3142.80 lakhs and the resolution applicant have no right on the same as per the plan.

24. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para 4 of Form H the RP has

certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that Mr. Tejinder Singh Kochar and group have submitted an affidavit pursuant to Section 30(1) of the Code confirming their eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The RP has submitted that the resolution plan has been approved by the CoC with 100% voting share in accordance with the provisions of the Code and CIRP Regulations made there under and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.

25. Further, as per para 7(4) of Form H, the resolution plan proposes to carry forward losses amounting to ₹3085.28 Lakhs upto Assessment Year 2020-21 which shall be allowed to be carried forward and Income Tax Department has no objection on the same and have confirmed the same also vide its report dated 15.07.2019 filed by Diary No.3484 dated 18.07.2019.

26. When the matter was listed on 22.05.2020, the learned counsel for the resolution professional was directed to submit net worth statements of the resolution applicants and to clarify the relevant date for the applicability of Regulation 38(3) of the Regulations as amended w.e.f 03.07.2018. In compliance of the aforesaid order, the learned counsel for the resolution applicant filed affidavit dated 25.05.2020 (Sp. Diary No.20 dated 26.05.2020) of the resolution professional along with the net worth certificates of the resolution applicant (Annexure-1), stating that the Regulation 38(3) was added by the Insolvency & Bankruptcy Board (Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018 w.e.f 03.07.2018 and applies to CIRP commencing on or after 03.07.2018 as per Clause 1(2). Since the CIRP in the

present case was commenced on 15.02.2018 which is prior to 03.07.2018, therefore, Regulation 38(3) being prospective in nature is not applicable to the case in hand.

27. We shall now discuss the provisions of Regulation 39(4) of the Regulations. According to the Regulation 39(4), the resolution applicant shall furnish evidence of receipt of performance security as required under sub-regulation (4A) of Regulation 36B which came into effect from 24.01.2019. In this regard the learned counsel for the applicant submitted that since the resolution plan was approved on 15.02.2018 i.e. prior to 24.01.2019, therefore, the amendment being prospective in nature is not applicable.

28. It is also stated in Form H that prima facie no transaction under Sections 43, 45, 50 and 66 of the Code were found or determined in the case of the Corporate Debtor by the RP as confirmed by the audit report dated 20.05.2018 (Sp. Diary No. 20 dated 26.05.2020).

29. In view of the above discussion, the resolution plan submitted by Mr. Tejinder Singh Kochar and group as approved by the CoC under Section 30(4) of the Code is hereby approved. The resolution plan so approved shall be binding on the corporate debtor and 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 such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

30. Under the provisions of Section 31(3) of the Code, we also direct as

under:-

- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 15.02.2018 shall cease to have effect; and
- b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

CA No. 354/2018 is disposed of.

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

June 08, 2020
Anchal