

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – 1**

CP(IBPP) NO. 02 OF 2023

A Petition under Section 54C of Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021.

In the matter of:

Garodia Chemicals Limited

Having its Registered Office at:

149/156, Garodia Shopping Centre, Garodia Nagar, Ghatkopar East, Mumbai, Maharashtra, India, 400077

CIN: L99999MH1993PLC070321

.....Corporate Debtor/Petitioner

Order Delivered On : 16.04.2024

Coram:

Hon'ble Member (Judicial) : SH. Justice Virendrasingh G. Bisht (Retd.)

Hon'ble Member (Technical) : SH. Prabhat Kumar

Appearances:

For the Petitioner : Mr. Pulkit Sharma, Mr. Kunal Kanungo,
Ms. Tanushree Sogani, Mr. Atishay Jain,
Advocates

ORDER

Per: Virendrasingh G Bisht, Member (Judicial)

1. This Company Petition is filed under Section 54C of the Insolvency and Bankruptcy Code, 2016 ("**Code**") for seeking initiation of Pre-

Packed Insolvency Resolution Process (“**PIRP**”) in respect of **Garodia Chemicals Limited** (“**Corporate Debtor**”).

2. This Tribunal had earlier, vide Order dated 08.11.2023, rejected the present Petition on the ground that the Petition was an attempt to circumvent the Takeover Regulations of SEBI by bringing M/s WZ Enterprises Private Limited in control in place of existing promoter group led by Mr. Mahesh Gordhandas Garodia. This Tribunal was of the opinion that the Base Resolution Plan has been devised as a mechanism to transfer control to Mr. Ravindra Subhash Salunkhe of a listed entity which would have otherwise attracted the rigor of the SEBI Takeover Code in respect of acquisition of shareholding in a listed entity beyond the specified threshold limit. However, the Petitioner appealed the rejection order wherein the Hon’ble NCLAT has allowed the appeal and set aside the Order dated 08.11.2023 stating that admission of the Application was refused contrary to the scheme of IBC. The present Petition has therefore been revived and is being considered afresh.

Brief Facts

3. The Corporate Debtor is a public, listed Company incorporated on 06.01.1993 vide CIN no. L99999MH1993PLC070321. The Corporate Debtor was engaged in the manufacturing and dealing in all types of dyes and chemicals, chemical products and byproducts.
4. A copy of the Base Resolution Plan submitted jointly by the Corporate Debtor and Mr. Ravindra Subhash Salunkhe was submitted by the Petitioner in the form of an Additional Affidavit on 12.09.2023.
5. The total amount of debt payable by the Corporate Debtor to its Financial Creditors is stated to be Rs. 4,41,21,594/- (Rupees Four

Crores, Forty One Lakhs, Twenty One Thousand, Five Hundred and Ninety Four Only) as on 21.08.2023, the details of which are as follows –

List of Financial Creditors (Unrelated)			
I	II	III	IV
Sr. No.	Name of the Creditor	Amount of Claim (INR)	% of Claim
1	M/s. WZ Enterprises Private Limited	9,00,528	2.04
List of Financial Creditors (Related)			
I	II	III	IV
Sr. No.	Name of the Creditor	Amount of Claim (INR)	% of Claim
1	Mr. Mahesh Gordhandas Garodia	4,10,40,598	93.02
2	Mr. Nishant M. Garodia	19,25,271	4.36
3	M/s Garodia Sons Private Limited	1,22,197	0.28
List of Operational Creditors (Unrelated)			
I	II	III	IV
Sr. No.	Name of the Creditor	Amount of Claim (INR)	% of Claim
1	M/s. Makarand M. Joshi & Co.	1,33,000	0.30
	TOTAL	4,41,21,594	100

6. The financial summary as per provisional financial statements as on 31.03.2023 annexed with the Petition is as follows –

Details of Assets and Liabilities as on 31.03.2023

Sr. No.	Particulars	Value (INR)
ASSETS		
NON -CURRENT ASSETS		
1.	Other Non-Current Assets	6,15,000
	SUB TOTAL	6,15,000
CURRENT ASSETS		
2.	Cash and Cash Equivalent	23,401
3.	Other Current Assets	4,24,509
	SUB TOTAL	4,47,910
	TOTAL ASSETS	10,62,910
EQUITY AND LIABILITIES		
4.	Equity Share Capital	7,20,02,000
5.	Other Equity	(11,55,85,744)
	SUB TOTAL	(4,35,83,744)
NON-CURRENT LIABILITIES		
6.	Non-Current Borrowings	4,34,08,552
	SUB TOTAL	4,34,08,552
CURRENT LIABILITIES		
7.	Trade Payables	7,28,720
8.	Provisions	34,000
9.	Other Current Liabilities	4,75,382
	SUB TOTAL	12,38,102
	TOTAL EQUITY AND LIABILITIES	10,62,910

Reasons for Losses

7. The Part II of the Base Resolution Plan provides a *Brief Background*, wherein it is stated that the Corporate Debtor availed loan in several tranches to bear the expenses incurred by the Corporate Debtor for meeting its Statutory obligations and compliances. Since the

Company is not generating any revenue, it is not able to repay the loan including the interest thereon.

Details of Base Resolution Plan

8. The Part IV of the Base Resolution Plan provides an *Executive Summary Of The Resolution Plan* as extracted below :

IV EXECUTIVE SUMMARY OF THE RESOLUTION PLAN

The Corporate Debtor jointly with the Resolution Applicant brings their unique expertise, network and financial strength and provides all the support which would enable them to successfully implement this Resolution Plan for the Corporate Debtor.

S. No.	Particulars	Key terms/ Amounts																		
1	Amount of payment to Creditors	<i>The sole Operational Creditor of the Corporate Debtor, namely M/s Makarand M. Joshi & Co. shall be paid IN FULL amounting to Rs. 1,33,000/- (Rupees One Lakhs Thirty Thousand Only) within 30 days from Effective date and shall be paid in priority over Financial Creditors.</i>																		
		<p><i>The Financial Creditors of the Company would be paid a total amount of Rs. 34,00,528/- (Rupees Thirty-Four Lakh Five Hundred Twenty-Eight Only) towards their entire outstanding (accrued or to be accrued) as full and final settlement.</i></p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Sr No.</th> <th style="text-align: center;">Name of Financial Creditors</th> <th style="text-align: center;">Full and final settlement amount</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td>Mr. Mahesh Gordhandas Garodia</td> <td style="text-align: center;">12,50,000/ -</td> </tr> <tr> <td style="text-align: center;">2</td> <td>Mr. Nishant M. Garodia</td> <td style="text-align: center;">12,50,000/ -</td> </tr> <tr> <td style="text-align: center;">3</td> <td>M/s Garodia Sons Pvt. Ltd.</td> <td style="text-align: center;">Nil</td> </tr> <tr> <td style="text-align: center;">4</td> <td>M/s WZ Enterprises Private Limited</td> <td style="text-align: center;">9,00,528/-</td> </tr> <tr> <td></td> <td style="text-align: center;"><i>Total</i></td> <td style="text-align: center;">34,00,528/ -</td> </tr> </tbody> </table>	Sr No.	Name of Financial Creditors	Full and final settlement amount	1	Mr. Mahesh Gordhandas Garodia	12,50,000/ -	2	Mr. Nishant M. Garodia	12,50,000/ -	3	M/s Garodia Sons Pvt. Ltd.	Nil	4	M/s WZ Enterprises Private Limited	9,00,528/-		<i>Total</i>	34,00,528/ -
Sr No.	Name of Financial Creditors	Full and final settlement amount																		
1	Mr. Mahesh Gordhandas Garodia	12,50,000/ -																		
2	Mr. Nishant M. Garodia	12,50,000/ -																		
3	M/s Garodia Sons Pvt. Ltd.	Nil																		
4	M/s WZ Enterprises Private Limited	9,00,528/-																		
	<i>Total</i>	34,00,528/ -																		

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		<i>The above payment shall be paid within 30 days of the Effective Date.</i>
2	<i>Balance repayment obligation to creditors (other than 1 above)</i>	<i>Operational Creditor is being repaid with 100% payout. All the dues of the Financial Creditors are being settled with one-time payment as provided in Point 1 of the table.</i>
3	<i>Proposed instruments for repayment</i>	<i>Since, the amount is paid in cash, there are no securities which are being issued for repayment</i>
4	<i>Interest rate/coupon and frequency of payment</i>	<i>Since no securities are being issued therefore no interest will be paid to the creditors</i>
5	<i>Repayment schedule</i>	<i>Since no securities are being issued therefore no specific repayment schedule is provided. For utmost clarity, the creditors are being paid provided in Point 1 of the table.</i>
6	<i>Security</i>	<i>Not Applicable</i>
7	<i>Conversion terms for quasi equity instruments if any</i>	<i>Not Applicable</i>
8	<i>Terms of equity being offered to lenders, if any</i>	<i>Not Applicable</i>
9	<i>Amount of fresh equity proposed to be infused</i>	<i>The Resolution Applicant plans to infuse Rs. 50,00,000 (Rupees Fifty Lacs only) towards subscription of 50,00,000 Equity Shares of Re. 1 each.</i>
10	<i>Corporate Guarantee or additional collateral/security being offered by the Resolution Applicant pursuant to section 54K (13) of the Code.</i>	<i>The Resolution Applicant has deposited title documents of Land Admeasuring 0.79 Sq Mtrs situated at Survey No.213/1, Sasane, Murbad, District Thane with the Resolution Professional. The Market value of the property is Rs. Rs. 61,06,100/- as arrived on the basis of valuation report dated 7th February 2023.</i>
11	<i>Details of management personnel of the Resolution Applicant with a brief description of experience in the relevant industry/business</i>	<i>As detailed Below in point V</i>
12	<i>Details of prior experience of the Resolution Applicant in managing similar business</i>	<i>As detailed Below in point V</i>
14	<i>Credit Rating of the Resolution Applicant</i>	<i>Since the Resolution Applicant is an individual, CIBIL Report representing credit history and records of running credit transaction of Resolution Applicant is appended as Exhibit C</i>
15	<i>Brief of proposed business plan for the Company:</i>	<i>At the outset, with payment of the Operational Creditor of the Company in FULL and with full and final settlement of the Financial Creditors of the Company, the Resolution Applicant will first achieve a DEBT</i>

		<p><i>FREE status for the Company.</i></p> <p><i>Thereafter the Resolution applicant shall propose to carry out the list of business activities as set out in point VI.</i></p> <p><i>Financial projections of the proposed activities are appended in Exhibit D</i></p>
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9. The Part XI of the Base Resolution Plan provides for *Source of Funds* as extracted below:

<i>Description of Source of Funds</i>
<i>Pre- packaged Insolvency Resolution Process Costs</i>
<i>By Resolution Applicant</i>
<i>Recovery to Financial Creditors and claims being paid to operational creditors</i>
<i>By Capital infusion by the Resolution applicant</i>

10. The Part XIII of the Base Resolution Plan provides for *Treatment of Various Stakeholders* as extracted below :

XIII TREATMENT OF VARIOUS STAKEHOLDERS

A. Pre-Packaged Insolvency Resolution Process Costs

The Outstanding Pre- Packaged Insolvency Resolution Process Costs borne by the Resolution Professional shall be paid on actual as approved by the Member of the CoC and NCLT for the period up to effective date in priority over payments to all Creditors within 15 days of effective date. Pre- Packaged Insolvency Resolution Process Costs, to the extent that it remains outstanding, shall be paid by the Resolution Applicant.

B. Financial Creditors

The Resolution Applicant is proposing to pay the Financial Creditors the amounts stated under point IV (1), which is higher than the recoveries that the Financial Creditors are likely to make in case of liquidation.

C. Operational Creditor

The Resolution Applicant is proposing to pay the Operational Creditor the amounts stated under point IV (1).

Statutory Compliances

11. The Corporate Debtor is a duly registered MSME (Micro, Small & Medium Enterprise) under the MSME Development Act, 2006 in the category “**Micro Enterprise**” and the copy of the UDYAM (Udyog Aadhar Memorandum) Registration Certificate dated 29.07.2020 is annexed as Annexure D with the Petition. The Corporate Debtor is eligible to file this Petition as per Section 54A(1) of the Code.
12. A copy of the special resolution by the Members of the Corporate Debtor to initiate the PPIRP under Section 54A(2)(g) of the Code was passed on 17.09.2021 and the same is annexed as Annexure F with the Petition.
13. A copy of the declaration given by majority of the directors of the Corporate Debtor pursuant to their meeting held on 09.08.2021 as per Section 54A(2)(f) of the Code in Form P6 is annexed as Annexure B with the Petition.
14. The Financial Creditor i.e. M/s. WZ Enterprises Private Limited holding 100% voting share has approved the decision of the directors to file this Petition as contemplated under Section 54A(3) of the Code after considering the formalities completed by the Corporate Debtor including submission of Base resolution Plan. The Form P4 duly signed by the authorised signatory of WZ Enterprises Private Limited along with Form P2 is annexed as Annexure G & J with the Petition.
15. The Financial Creditor approved the appointment of Insolvency Professional, Manish Motilal Jaju having Registration No. IBBI/IPA-001/IP-P00034/2016-17/10087, holding AFA Certificate No. AA1/10087/02/170124/105393, email: mmjaju76@gmail.com and the proposed Insolvency Professional has filed his written consent in form P1. It is annexed as Annexure H

with the Petition, thereby complying with the provisions of Section 54A(2)(e) of IBC, 2016 read with Regulation 14(5) of IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021. The said Insolvency Professional is proposed to be appointed as Resolution Professional to conduct the PPIRP and to discharge duties before initiation of PPIRP. The resolution for appointment of Insolvency Professional was voted by 100% vote.

16. The Resolution Professional's Report dated 21.08.2023 under Section 54B (1)(a) of the Code read with Regulation 17 of IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021 in Form-P8 is annexed as Annexure Q with the Petition.
17. Compliance with Provisions of Section 54C -
 - a. The declaration regarding non-existence of avoidance transactions relating to the company and its directors as per Section 54C(3)(c) of the Code read with Regulation 16(2) of IBBI (Pre-packed Insolvency Resolution Process) Regulations, 2021 in Form P7, is annexed as Annexure P with the Petition.
 - b. The affidavit stating that the Corporate Debtor is eligible under Section 29A of IBC, 2016 to submit Resolution Plan has also been annexed as Annexure O with the Petition as an affidavit dated 23.01.2023, thus complying with the provisions of Section 54A (2)(d) of the Code.
 - c. The Corporate Debtor has also annexed the audited financial statements of the company for the Year 2021-2022 and 2022-2023 and provisional financial statements as on 17.08.2023 which are annexed as Annexures M & N with the Petition, thus complying with the provisions of Section 54C(3)(d) of the Code.

- d. The Corporate Debtor has furnished name of Insolvency Professional to be appointed as Resolution Professional as per the provision of Section 54C(3)(b) of the Code and the consent of such Insolvency Professional has also been filed.
18. On perusal of the proceedings, we find that the Corporate Debtor has produced all the required documents and materials in order to comply with the provisions of the Code. The application is complete in all respects and meets all requirements of the Law. Therefore, we are inclined to admit this application under Section 54C of the Code.
19. We admit this application and pass the following orders –
- i. The application for the Pre-Packaged Insolvency Resolution Process of **Garodia Chemicals Limited** stands **admitted** under Section 54C of the Code.
 - ii. In view of the commencement of the "PPIRP", the moratorium is declared, under Section 14 of Code for prohibiting all of the following in terms of Section 14(1) of the Code.
 - a. the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b. transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c. any action to foreclose, recover or enforce any

security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate Debtor.
- iii. The Resolution Professional as proposed by the financial creditor namely, Manish Motilal Jaju having Registration No. IBBI/IPA-001/IP-P00034/2016-17/10087, holding AFA Certificate No. AA1/10087/02/170124/105393 is appointed as a Resolution Professional to conduct "PPIRP" as per the Provisions of Chapter III-A of the Insolvency Regulations. Further, the Resolution Professional shall also perform his duties and functions as per the provisions given under Section 54F of the Code.
- iv. This Adjudicating Authority directs the RP to make a public announcement of "PPIRP" of the Corporate Debtor as per Section 54A of the Code and invite and collate the claim of the creditors.
- v. As mentioned under Section 54F(5), the personnel of the Corporate Debtor shall extend all assistance and cooperation to RP.
- vi. In case of non-cooperation, the RP can approach this Adjudicating Authority under Section 19(2) of the Code. The management of the Corporate Debtor shall remain vested with the Board of Directors of the Corporate Debtor as per the

provisions of Section 54H subject to action under Section 54J of the Code, if any. The Board of Directors shall discharge their duties as specified under Section 54H(b) and Section 54H(c) of the Code.

- vii. We direct Resolution Professional to file an interim report within thirty days to this Authority.
- viii. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.
- ix. The Registry is further directed to send a copy of the order to the IBBI also for their record.
- x. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all the requisite formalities.

Sd/-

Prabhat Kumar
Member (Technical)

/SP/

Sd/-

Justice V.G. Bisht
Member (Judicial)