



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI PRASANTA KUMAR MOHANTY
HON'BLE TECHNICAL MEMBER

IA(IBC) No. 122/JPR/2023
IA(IBC) No. 87/JPR/2023
In CP No. (IB)- 12/9/JPR/2022

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

**SUSHIL KUMAR AGARWAL PROPRIETOR OF M/S BANGANGA
MINERALS**

...Financial Creditor/Applicant

Versus

M/S GOTAN LIMES PRIVATE LIMITED

...Corporate Debtor/Respondent

IA (IBC) No. 122/JPR/2023:

MEMO OF PARTIES

CHANDRA PRAKASH BHATIA

R/o 245, Shailendra Nagar, Near
Navkar Hospital, Raipur,
Chhatisgarh- 492001

...Applicant



IA (IBC) No. 87/JPR/2023:

MEMO OF PARTIES

CALCIUM LIME INDUSTRIES

R/o Abhay Market, Ghana Road,
Merta, Nagaur, Rajasthan- 341510

...Applicant

VERSUS

CHAND PRAKASH BHATIA

R/o 245, Shailendra Nagar, Near
Navkar Hospital, Raipur,
Chhatisgarh- 492001

...Respondent

For the Calcium Lime Industries
For the Resolution Professional

: Rishabh Khandelwal, Adv.
: Chandra Prakash Bhatia, RP
Sandeep Bajaj, Adv. for RP
Aakanksha Nehra, Adv.

Order Pronounced On: 19.04.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Interim Application ('Resolution Application') is filed by Mr. Chandra Prakash Bhatia, Resolution Professional ('RP' / 'Applicant') of M/s Gotan Limes Private Limited ('Corporate Debtor') under Sections 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Regulation 39(4) of the Insolvency and Bankruptcy



Board of India (Insolvency Process of Corporate Persons) Regulations, 2016 ('CIRP Regulations') seeking approval of resolution plan.

2. The insolvency application was filed by the Operational Creditor M/s Banganga Minerals under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor and the same was admitted by this Adjudicating Authority *vide* Order dated 29.07.2022. The Applicant was appointed as the Interim Resolution Professional ('IRP') and on 04.08.2022, the IRP issued a public announcement as per Regulation 6 of the Regulations read with Sections 13 and 15 of the Code in Form A in two newspapers i.e., Economic Times (English) and Mahanagar Times (Hindi) thereby inviting claims from the creditors of the Corporate Debtor as envisaged in the Code. A copy of the Public Announcement dated 04.08.2022 is annexed Annexure A – 7 of the Resolution Application.
3. The Applicant upon receipt of claims till 16.08.2022, in compliance with Section 21 (1) of the Code constituted the Committee of Creditors ('CoC') on 23.08.2022 and convened the 1st CoC meeting dated 31.08.2022 wherein the Applicant was appointed as the RP. A copy of the report of constituting CoC dated 23.08.2022, Notice of First CoC Meeting and Minutes of First CoC meeting is annexed as Annexure A – 8, A – 9 and A – 10 of the Resolution Application, respectively. The agendas, as provided



in the first CoC meeting, were put to e-vote from 02.09.2022 to 09.09.2022 over a secured platform. The CoC unanimously approved and appointed IRP as Resolution Professional ('RP') with monthly fees of Rs. 75,000/- ('Rupees Seventy-Five Thousand Only'); AAA Valuation Professionals LLP and Mr. Rajiv Sahni for the determination of the fair value of the Corporate Debtor and Harsh Jain & Associates for conducting transaction audit. A copy of the e-vote is annexed as Annexure A – 12 of the Resolution Application. Subsequently, the RP conveyed the decision of the CoC, individually to AAA Valuation Professionals LLP, Mr. Rajiv Sahni and Harsh Jain & Associates *vide* Letter dated 10.09.2022.

4. In the 2nd CoC, a meeting convened on 01.10.2022, CoC ratify the appointment of Mr. Rajiv Sahni as a second registered valuer along with obtaining a New GST Registration and developing a website for the Corporate Debtor. Further, in compliance with the resolution passed, the RP made a public announcement in Form G in two newspapers i.e., Economic Times (English) and Mahanagar Times (Hindi) inviting Expression of Interest ('EOI') on 05.10.2022. A copy of the Notice of Second CoC Meeting and Minutes of Second CoC meeting, publication of Form G is annexed as Annexure A – 13, A – 14 and A – 15 of the Resolution Application, respectively.



5. Consequently, the RP received only one EOI from M/s Rajshree Limes on 20.10.2022, resultantly, it published the list of Prospective Resolution Applicant(s) ('PRA') on 31.10.2022. A copy of the list of PRA(s) is annexed as Annexure A – 16 of the Resolution Application. The RP shared the Information Memorandum ('IM') *vide* Email dated 31.10.2022 and requested submitting Resolution Plan ('RFRP'). A copy of IM dated 31.10.2022 and RFRP dated 05.11.2022 is annexed as Annexure A – 17 and A – 18 of the Resolution Application, respectively. The RP received a Resolution Plan from Resolution Applicant ('RA') on 29.11.2022. Thereafter, the Applicant issued notice dated 08.12.2022 for conducting the 3rd CoC meeting on 17.12.2022. A copy of the Notice of Third CoC Meeting is annexed as Annexure A – 20 of the Resolution Application.
6. The Applicant stated that on 17.12.2022, the 3rd meeting of CoC was convened and put forth the Resolution Plan wherein the Resolution Plan was accompanied by a security deposit of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only); the RA proposed a total of Rs. 1,35,00,000/- (Rupees One Crore Thirty-Five Lakhs Only) against all demands to be paid within 30 days from the date of approval. In addition, the CoC took note of the CIRP Cost and report of the transaction auditor dated 07.12.2022. A copy of the Transaction Audit Report and Minutes of the Third CoC meeting is



annexed as Annexure A – 19 and A – 21 of the Resolution Application, respectively.

7. The Applicant further stated that he issued a notice dated 03.01.2023 for the holding of the 4th CoC meeting on 09.01.2023, wherein the CoC resolved for an extension of the CIRP period for 60 days was passed. A copy of the Notice dated 03.01.2022 is annexed as Annexure A – 22 of the Resolution Application. In view of this, the Applicant filed IA No. 68/JPR/2023 before this Adjudicating Authority and the same was allowed *vide* order dated 02.02.2023. Meanwhile, the Applicant received the Addendum dated 04.01.2023 from PRA which was duly placed before the CoC in the fourth meeting dated 09.01.2023.
8. It is further stated that the agendas, as provided in the fourth CoC meeting, were put to e-vote from 23.01.2023 to 04.02.2023 over a secured platform. The CoC duly approved the sole Resolution Plan with an addendum of M/s Rajshree Limes (Prop. Vikram Singh Rathore) by 100% voting and declaring M/s Rajshree Lime as the Successful Resolution Applicant ('SRA'). As per Resolution Plan, a settling amount of Rs. 1,50,00,000/- (Rupee One Crore Fifty Lakh Only) is agreed upon as full and final settlement of the debt owed by the Corporate Debtor.
9. However, during the course of voting on the Resolution Plan, M/s Calcium Lime Industries (Prop. Jugal Kishore Agarwal), one of the Operational



Creditor of the Corporate Debtor, filed IA No. 87/JPR/2023 *vide* Diary No. 298/2023 dated 03.02.2023 seeking acceptance of its claims as it was not aware of the admission and initiation of CIRP of the Corporate Debtor. It submitted its claim in Form B on 17.11.2022 along with its statement of account and interest calculation sheet. A copy of Form B is annexed as Annexure – 3 of the IA No. 87/JPR/2023.

10. Subsequently, the RP rejected the claim *vide* email dated 15.12.2022 stating that as per Regulation 12 (2) of CIRP Regulations, the claims were belatedly after the period of 90 days. A copy of the email dated 15.12.2022 is annexed as Annexure – 4 of the IA No. 87/JPR/2023. M/s Calcium Lime Industries has prayed for condonation of delay and admission of its claim under Regulation 13 of CIRP Regulations *vis-à-vis* set aside the action undertaken by the RP *vide* Email dated 15.12.2022.

11. Consequently, this Adjudicating Authority issued notice to the RP *vide* Order dated 14.02.2023. The RP filed his reply to IA No. 87/JPR/2023 *vide* Diary No. 624/2023 dated 09.03.2022 and has stated that the prayers of M/s Calcium Lime Industries are not tenable as not only the acceptance of the belated claim of the M/s Calcium Lime Industries would be in direct contravention of the CIRP Regulations but also against the letter and spirit of IBC because of unanimous acceptance of Resolution Plan in fourth CoC meeting. The public announcement was made on 04.08.2022, in which



16.08.2022 was set as the cut-off date for the submission of claims. As per Regulation 12 of the CIRP Regulation, the period of ninety days expired on 27.10.2022 whereas he received the claim on 17.11.2022.

12. Further, the RP relies on the judgment of *Mukul Kumar Resolution Professional of KST Infrastructure v. M/s RPS Infrastructure Ltd., 2021 SCC OnLine NCLAT 648* wherein the Hon'ble NCLAT has observed that '*whenever any claim is filed after extended period provided in Regulation 12 (2) of the Regulations, the RP should have rejected the claim. The Legislation has not provided any discretion to RP for admitting the claim after extended period.*' Moreover, '*when the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval, at this stage, if new claims are entertained the CIRP would be jeopardized and the Resolution Process may become more difficult. Keeping in view the object of the IBC which is resolution of Corporate Debtor in time bound manner to maximize the value, if such request of claimant is accepted the purpose of IBC would be defeated...*' This view was further upheld by the Hon'ble NCLAT in the case of *Harish Polymer Product v. George Samuel and Anr., 2021 SCC OnLine NCLAT 210; Peecon Developer Pvt. Ltd. v. Bimal Agrawal RP of Dagcon (India) Pvt. Ltd., 2021 SCC Online NCLAT 3470.*



13. In view of the directions by this Authority *vide* Order dated 06.03.2023 wherein it was directed to RP for submitting certain clarification in respect of high percentage of haircut. The CoC, RP and SRA were also directed to examine and scrutinize the periods and levels required to achieve the breakeven point, the minimum amount required towards the fixed capital and working expenditure, source of funds, personal guarantees, Preferential, Undervalued, Fraudulent and Extortionate transactions ('PUFE transaction') and claims, if any, of the workers, employees, government, including the claim of Operational Creditor in IA No. 87/JPR/2023.

14. Resultantly, the RP following Section 24 of the Code read with Regulation 18 of CIRP Regulations issued notice for conducting the 5th CoC meeting on 13.03.2023. Accordingly, the RP conducted the 5th CoC meeting. A copy of the Notice of the 5th CoC meeting, Minutes of 5th CoC meeting and Addendum dated 17.03.2023 is annexed as Annexure A – 1, A – 2 and A – 5 filed *via* an additional affidavit *vide* Diary No. 712/2023 dated 20.03.2023 and stated the following:

a. Timeline for making the business profitable

The RA has already submitted the financial projections attached as Annexure – 1 of the Resolution Plan dated 29.11.2022 wherein the



profitability of the Corporate Debtor has already been clarified specifically.

b. Timeline of breakeven point of the Corporate Debtor

Concerning the break-even point for successful implementation of the Resolution Plan, as provided in the Financial Projections attached as Annexure – 1 of the Resolution Plan dated 29.11.2022, it is expected to achieve the break-even point in the first year of the implementation of the Resolution Plan.

c. A detailed plan for running business

As provided in the Financial Projections attached as Annexure – 1 of the Resolution Plan dated 29.11.2022, the RA has provided a certificate issued by the Chartered Accountant certifying the Net Worth of the RA at a sum of Rs. 235.69 Lakhs, out of which a sum of Rs. 154.81 Lakhs is being utilized towards Resolution of Corporate Debtor and Rs. 50 Lakhs being additional capital for repair and maintenance of all the Kilns at the site and for the Working Capital. In case the situation demands an infusion of more funds, the RA will infuse funds accordingly. The RA also has an unutilized cash credit limit which can be infused in the resolution of Corporate Debtor.

d. Supervision of turnaround plan



It is expected to achieve the break-even point in the first year of the implementation of the Resolution Plan, the tenure of the Monitoring Committee shall be till the achievement of the break-even point by the RA or a period of one year, whichever is earlier. The Monitoring Committee will review the status of implementation quarterly.

e. Preferences for ex-employees and their claims

The RA undertakes to give preference to the ex-workmen and employees of the Corporate Debtor who had been in employment in the previous two years from the Approval Date, for giving employment. Further, no claims were received from workers and employees of the Corporate Debtor as for one year prior to the commencement of the CIRP, the business was being run through lessees and no employees/ workers were hired on the rolls of the Corporate Debtor.

f. Personal Guarantee Clause and Guarantee Retention

The RA does not have any say in the matter related to the personal guarantees issued in favour of the secured financial creditors in respect of the debt owed by the Corporate Debtor, including issues pertaining to the guarantees issued by the ex-management of the Corporate Debtor. However, the RA does not have any objection or responsibility in transferring the amount of deposits concerning the bank guarantee of the



Corporate Debtor (pertaining to the period before initiation of CIRP against the Corporate Debtor) to Axis Bank Limited by the RP.

g. Dealing with the receivable of the Corporate Debtor

The RA undertakes and confirms that any amount realised from the sundry debtors/ receivables of the Corporate Debtor as on the date of the approval of the Resolution Plan under Section 31 of the IBC, within one year from the Approval Order, shall be transferred to Axis Bank Limited in its designated account. The duty and responsibility to take steps for these recoveries shall be that of Axis Bank and the RA will extend all cooperation and assistance as may be necessary.

h. The claim of Calcium Lime Industries

The IA No. 87/JPR/2023 pertains to the claim filed by M/s Calcium Lime Industries as Operational Creditor for a sum of Rs. 57,41,729/- out of which Rs. 36,31,564/- has been admitted, the RA undertakes to increase the payment to be made to the Operational Creditors from Rs. 10,00,000/- to Rs. 13,00,000/- (maximum cap for payment to Operational Creditors) on the terms and conditions that upon IA No. 87/JPR/2023 if being allowed, the RA shall pay a sum equivalent to 8.03% of the admitted claim of the operational creditor.

i. CIRP Cost, PUFEE Transactions and Government Claims



The RP has incurred a total of Rs. 15,41,000/- as CIRP Expenses out of which Rs. 11,60,000/- has been recovered from the lease rentals. The remaining amount of Rs. 4,81,000/- would be paid by SRA and Financial Creditors. The SRA would pay Rs. 1,89,385 out of Rs. 4,81,000/-, the rest shall be borne by financial creditors in their respective percentages. Further, the RA shall pay the CIRP Cost as a priority, however, any payment made towards the CIRP Cost by the RA over Rs. 1,89,385 shall be adjusted proportionately from the payments due to the share of the secured financial creditors.

Moreover, neither any claims were received from the government departments nor any transactions that have been identified as avoided in terms of PUFEE transactions. The compliance of PUFEE transactions is undertaken to *vide* Transaction Audit Report dated 07.12.2022.

15. The Applicant RP put the aforementioned agendas for voting before the CoC wherein all the agendas were approved by the majority except the payment of the claim of M/s Calcium Lime Industries, which was rejected by a vote of 97.53%. A copy of e-voting results along with approval and acknowledgement of the financial creditors of Addendum dated 17.03.2023 is annexed as Annexure A – 4, A – 6, A – 7 and A – 8 of the Additional Affidavit, respectively.



16. Considering the aforesaid contentions and decisions of the CoC and SRA, in the interest of justice, we are inclined to allow the claim of M/s Calcium Lime Industries as provided under the Addendum dated 17.03.2023. The objective of IBC is to have the maximation value of the Corporate Debtor which is inclusive of the value maximation of all the stakeholders associated and impacted with it. Thus, IA No. 87/JPR/2023 is partially allowed to the extent of the aforesaid directions.

17. The Applicant RP has provided brief details of the Resolution Plan along with Addendums, which are as follows:

S. No.	Particular	Amount (in Rs.)	Total Amount (in Rs.)
1	IRP Cost	4,81,000*	1,89,385 [#]
2	Secured Financial Creditors		
	a. Axis Bank Limited	8,00,26,902	1,37,00,000 [^]
3	Unsecured Financial Creditors		
	a. Aditya Birla Finance Limited	20,25,501	3,00,000
4	Operational Creditors	1,60,84,273	13,00,000
5	Workmen and Employees	N/A	-
6	Statutory dues	N/A	-
	Total	9,86,17,676	1,54,89,385

* The total CIRP Expenses were Rs. 15,41,000/- out of which Rs. 11,60,000/- has been recovered through Lease Rentals.

[#] The shortfall of Rs. 4,81,000/- shall be paid by the Financial Creditors on a pro-rata basis to the extent of Rs. 2,91,615/- and the remaining by the Resolution Applicant.

[^] The FDR of Rs. 11,00,000/- will be released and credited to Axis Bank Limited.

18. Accordingly, the Applicant RP is duty bound to prefer an application under

Sections 30(6) and 31 of the Code read with Regulation 39(4) of the



Regulations seeking approval of the revised Resolution Plan which was duly accepted by the CoC, from this Authority. The Applicant has submitted the resolution plan along with a compliance certificate in Form H under Regulation 39(4) of the Regulations. In the matter of *Committee of Creditors of Essar Steel India Private Limited vs. Satish Kumar*, the Hon'ble Supreme Court held that in consonance with the provisions of Regulation 28(1A), the Resolution Plan should take care of the interest of all the stakeholders, including operational creditors of the Corporate Debtor. Therefore, the resolution plan has fulfilled the parameters of the said judgement, inter alia, the maximization of the value of the assets of the Corporate Debtor and the interest of all the stakeholders has been taken into consideration. The copy of the Resolution Plan along with the compliance certificate in Form H, Addendum dated 04.01.2023 and 17.03.2023 is annexed as Annexure A – 1 (Colly), A – 5, A – 2 of the Resolution Application and A – 5 of the Additional Affidavit, respectively.

19. The Applicant RP has stated that the revised Resolution Plan envisages the revival of the Corporate Debtor and sustains it as a going concern. In case of rejection of the revised Resolution Plan, the Corporate Debtor would be required to be liquidated and that would seriously prejudice the interest of all stakeholders.



20. Moreover, the Applicant RP states that as per Section 30 of the Code, amended vide Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (No. 6 of 2018) that came into force on 06.06.2018, the revised Resolution Plan ought to be approved by 66% of voting share of financial creditors. It is submitted that the Resolution Plan has been duly approved by the CoC by a majority of 100% of the members.
21. 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.
22. The Corporate Debtor was incorporated on 20.02.1978 and the CIRP proceedings were initiated under Section 7 of the Code against the Corporate Debtor by order delivered on 29.07.2022. The present application is filed for approval of the resolution plan submitted by M/s Raj Shree Limes (Proprietor Mr. Vikram Singh Rathore) (Successful Resolution Applicant). The approval has been sought under the provisions of Section 31 (1) of the Code.
23. 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 creditors, the distribution of voting share among them and the position of voting for the resolution plan are as under (Para No.5 of Form H) -



S. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for/Dissented/Abstained)
1	Axis Bank Limited (Secured Creditor) • Amount of claim- Rs. 61,35,036/-	97.53%	Voted For
2	Aditya Birla Finance Limited (Unsecured Creditor) • Amount of claim- Rs. 9,06,794/-	2.47%	Voted For
Total		100%	Voted For

24. The details of stakeholders under the resolution plan are given in Para 7 of

Form H:

S. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount provided to the Amount Claimed
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors (Internal Pg.03 of the Resolution Plan and page no. 111 of the Resolution Application)	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan (Axis Bank Limited)	- 8,00,26,902	- 8,00,26,902	- 1,37,00,000	- 17.12%
		Total[(i) + (ii)]	8,00,26,902	8,00,26,902	1,37,00,000	17.12%



S. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount provided to the Amount Claimed
2	Unsecured Financial Creditors Internal Pg. 03 of the Resolution Plan and page no. 111 of the Resolution Application)	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan (Aditya Birla Finance Limited)	20,25,501	20,25,501	3,00,000	14.81%
		Total[(i) + (ii)]	20,25,501	20,25,501	3,00,000	14.81%
3	Operational Creditors (Internal Pg. no. 04 of the Resolution Plan and page no. 112 of the Resolution Application)	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:	1,88,59,777.55	1,60,84,273	13,00,000.00	8.03%
		(i)Government	N. A	N. A	N. A	
		(ii)Workmen	N. A	N. A	N. A	
		(iii)Employees	N. A	N. A	N. A	
(iv)Sundry Creditors	1,88,59,777.55	1,60,84,273	13,00,000			



S. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount provided to the Amount Claimed
		Total[(a) + (b)]	1,88,59,777.55	1,60,84,273	13,00,000	8.03%
4	Other debts and dues		N. A	N. A	N. A	N. A
Grand Total			10,09,12,180.55	9,81,36,676	1,53,00,000	15.59%

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

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

25. The abovementioned amount of Rs. 1,40,00,000/- payable to the Financial Creditors (secured and unsecured) is proposed to be paid within 30 days as per the Repayment Schedule provided in the Resolution Plan.

26. The compliance aspect of the resolution plan has been given in Para No. 9 of Form H, which is as follows:

Section of the Code/Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Part – IV	Yes, RP has done Due Diligence and the Net Worth mentioned on Pg. No. 46 of the Additional Affidavit wherein the RA M.I.B as of 31.03.2022 is Rs. 235.69 Lakhs. RA also met the



			other requirements of the Minimum Eligibility Criteria.
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	An affidavit filed with the Plan	Yes, the Applicant is eligible and has submitted the Affidavit on Pg. No. 98 on the Resolution Application of Resolution Plan.
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Annexed with Resolution Plan	Yes, Affidavit on Pg. No. 98
Section 30(2)	Whether the Resolution Plan- (a) Provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors?	(a) Para C of Part 3 (Pg. 68 of Application of Resolution Plan) & Para 3 (vi) (d) of Addendum dated 17.03.2023 of Additional Affidavit (b) Para C Part 3 (Pg. 67 of Application of Resolution Plan- Rs. 13 Lakh will be paid to the Operational Creditors) & Para 3 (vi) (d) of Addendum dated 17.03.2023 of Additional Affidavit (c) Para C	(a) Yes (b) Yes (c) Yes



	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Part 3 (Pg. 68 of Application of Resolution Plan). Rs. 1.40 Crores will be paid the Financial Creditors & Para 3 (vi) (d) of Addendum dated 17.03.2023 of Additional Affidavit	
	(d) provides for the management of the affairs of the corporate debtor?	(d)Part 2 Para 6 (Pg. 56 of Application of Resolution Plan) & Para 3 (iii) of Addendum dated 17.03.2023 of Additional Affidavit	(d) Yes
	(e) provides for the implementation and supervision of the resolution plan?	(e) Para 7 Part 2 (Pg.56 of Application of Resolution Plan)	(e) Yes
	(f) contravenes any of the provisions of the law for the time being in force?	-	(f) No
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Para 11 Part 2 (Pg. 60 of Application of Resolution Plan)	(a)Yes (b)Yes, by 100% voting share. The E-voting result is on Page no. 34 of the Additional Affidavit
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation	Parts 2 and 3 of the Resolution Plan	Yes



	plan, according to the CoC		
Regulation 38 (1)	Whether the amount due to the operational creditor under the Resolution Plan has been given priority in payment over financial creditors?	Para C of Part 3 of the Resolution Plan (Pg.68-72 of Application of Resolution Plan and internal pg no. 42-46 of the resolution plan)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Part 3 (Pg.71 of Application of Resolution Plan and internal page no. 45 of the resolution plan)	Yes
Regulation 38(1B)	<p>i. Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.</p> <p>ii. If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?</p>	<p>Clause 10 of Part 2 (pg. 60 of the Application of Resolution Plan)</p> <p>Not Applicable</p>	<p>No</p> <p>Not Applicable</p>
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p> <p>(b) for the management and control of the business of the corporate debtor during its term?</p>	<p>(a) Part 5 (Pg.76-77 of Application of Resolution Plan internal page no. 50 and 51 of the resolution plan)</p> <p>(b) Part 3 (Pg.66-73 of Application of Resolution Plan internal page no. 40-47 of the resolution plan)</p>	<p>(a)Yes</p> <p>(b)Yes</p>



	(c) adequate means for supervising its implementation?	(c) Part 3 (Pg. 66-73 of Application of Resolution Plan internal page no. 40-47 of the resolution plan)	(c)Yes
Regulation 38(3)	Whether the resolution plan demonstrates that - (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Part 3 Parts 2 and 3 Parts 2 and 3 Parts 2 and 3 Parts 2 and 3	Yes Yes Yes Yes Yes
Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	9.8% of 1.53 Crores i.e. Rs. 15,00,000/- received from the resolution applicant on 29.11.2022 on the form of a security deposit which was duly placed in the third CoC meeting	Yes

27. The approval of the resolution plan has been sought under Section 31(1) of

the Code, which reads as follows:

IA No. 87/JPR/2023

IA No. 122/JPR/2023

In CP No. (IB) 12/9/JPR/2022



“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.”

28. The conditions provided in Section 31(1) of the Code for approval of the resolution plan are as follows:

- (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.

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

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

“(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 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.*

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.”

31. 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:

- a. **Section 30(2)(a):** The resolution plan (Para C Part 3 on Page 66 of the application) states that the Resolution Applicant shall provide funds for payment of CIRP Cost and the CIRP Cost shall be fully paid and discharged before any payment is made to any of the creditors.
- b. **Section 30(2)(b):** From the resolution plan (Para C Part 3 on Page 67 of the application and Page 30 of the Additional Affidavit) it could be seen that the outstanding operational creditors are Rs. 1,60,84,273/- (includes any additional claim on whatsoever account and nature would be settled by the Resolution Applicant). The Resolution Applicant has proposed to pay an amount of Rs. 13,00,000/- (after 30 days from the approval of the Resolution Plan) to the Operational Creditors against



the full and final settlement of all claims. With respect to payment to financial creditors who vote in favour of the Resolution Plan (Para C Part 3 on Page 70 of the Application), it is seen that the Resolution Applicant shall make the payment of Rs. 1,40,00,000/- in 30 days from the approval of the Resolution Plan. liquidation value due to financial creditors was not known to Resolution Applicant. Hence, in case of any claim received after the approval of the Resolution Plan, either from financial creditors or operational creditors, shall stand waived, extinguished and no longer be payable; thus, no further amount was earmarked to be paid to them over and above Rs. 1,53,00,000/-.

- c. **Section 30(2)(c):** Resolution Plan (Para C Part 3 at Pg. 56 of Application) provides that the management and control of the business of the Corporate Debtor shall be handed over to the Board of Directors of Resolution Applicant for proper running and operations of the business of the Corporate Debtor subject to the approval of the CoC and this Adjudicating Authority.
- d. **Section 30(2)(d):** In Para C Part 3 Pg.56 of the Resolution Plan, it is stated that subject to the approval of the CoC and this Adjudicating Authority, a Monitoring Committee shall stand constituted for the management, control and supervision of the implementation of the Resolution Plan. On and from the Implementation Date or in the event



of prepayment of settlement amounts to the creditors under the Resolution Plan, the Monitoring Committee shall dissolve.

e. **Section 30(2)(e)**: In Form H Para 4, the RP has certified that the Resolution Plan does not contravene any of the provisions of the law for the time being in force.

32. The RP has also certified that M/s Raj Shree Limes (Prop. Vikram Singh Rathore), the resolution applicant has submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order.

33. As per the requirement of Regulation 39(4) of the Regulations for performance security, it is stated in Form H that 9.8% of 1.53 Crores i.e. Rs. 15,00,000/- received from the resolution applicant on 29.11.2022 on the form of security deposit which was duly placed in third CoC meeting and acknowledge by the CoC.

34. With regard to compliance under Regulation 35A, it is stated that there are no transactions that have been identified in respect of the Corporate Debtor which is required to be avoided under Sections 43, 45, 50 or 66 of the Code. This is further substantiated through Transaction Audit Report dated 07.12.2022 and its approval by the CoC.



35.A perusal of Regulation 38 would clearly show that by virtue of the mandatory contents of the resolution plan as discussed in the preceding paragraphs in relation to Section 30 and Section 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Thus, the resolution plan fulfils all the requirements of Regulation 38 of the CIRP Regulations.

36.The Resolution Plan *inter-alia* entails the following:

- a. Corporate Restructuring through the cancellation of the present share capital of the Corporate Debtor and issuance of new share capital in favour of the Resolution Applicant and its/ his/ their associates.
- b. Cancellation of any other equity-linked securities whether convertible or exchangeable and extinguishment of the same without any payment or further action.
- c. Reset financial debt and operational debt as per the parameters of the Resolution Plan.
- d. Extinguishment of any/ all claims against the Corporate Debtor along with related legal proceedings, including criminal proceedings and other proceedings which shall stand abated, settled and extinguished.
- e. Change of Board of Directors and handing over of management to the Resolution Applicant upon sanction of the Plan from the effective date, the effective date being the date of handover by the RP to the Resolution Applicant.



- f. Continuity of business wherein the Resolution Applicant has requested that any required business permits that may not have been granted or cancelled/ terminated/ revoked/ suspended may be granted/ restored/ renewed/ reinstated. In this respect, the Resolution Applicant is directed to follow up with the concerned authorities, for maintaining/ sustaining operations as a going concern, following applicable laws, rules and procedures.
- g. The term of the Plan and its implementation schedule is envisaged to be a period of 35 days.

37. In view of the above discussion, the Resolution Plan submitted by M/s Raj Shree Limes (Prop. Vikram Singh Rathore) 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, and 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.

38. 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 29.07.2022 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.

39. In view of the foregoing, IA No. 122/JPR/2023 and IA No. 87/JPR/2023 is disposed of.

**DEEP
CHANDR
A JOSHI** Digitally signed
by DEEP
CHANDRA JOSHI
Date: 2023.04.19
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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

**PRASANTA
KUMAR
MOHANTY** Digitally signed by
PRASANTA KUMAR
MOHANTY
Date: 2023.04.19
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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**