

**IN THE NATIONAL COMPANY LAW TRIBUNAL****NEW DELHI BENCH (COURT NO. IV)**

IA No.4523/2020

IN

CP (IB) NO. 826/ND/2019

**(Under Section 31 of the Insolvency and Bankruptcy Code, 2016  
for approval of Resolution Plan)****IN THE MATTER OF:****Mr. Umesh Gupta**

...Applicant/ Resolution Professional

**AND IN THE MATTER OF****Bajaj Rubber Company Private Limited**

...Operational

Creditor

Versus

**Capital Auto Rubber Products Private Limited**

...Corporate

Debtor

Order delivered on: 08.02.2021

**Coram:****DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****MS. SUMITA PURKAYASTHA****HON'BLE MEMBER (Technical)**

**For Applicant:** Mr. R.K. Gupta, Adv., Ms. Swaralipi Debroy, Adv., Mr. Umesh Gupta

**ORDER**

**Per-Dr. Deepti Mukesh, Member (J)**

1. The instant application has been filed by the Resolution Professional, Mr. Umesh Gupta for approval of Resolution Plan under Section 30 (6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereafter referred to as Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereafter referred to as Regulations) seeking approval of the Resolution Plan. The Resolution Plan duly approved by the committee of creditors (CoC) has been placed on record.
2. The Company Petition bearing C.P. No. IB-826(ND)/2019 was filed by M/S Bajaj Rubber Company Private Limited/ Operational Creditor under Section 9 of the Code for initiating Corporate Insolvency Resolution Process of M/S Capital Auto Rubber Products Private Limited/ Corporate Debtor. This Tribunal vide order dated 06.09.2019 admitted the petition and appointed Mr. Kumud Shekhar as the Interim Resolution Professional (IRP) with necessary directions and to file regular reports of events. The Interim Resolution Professional made a public announcement in Form A as

prescribed under Regulation 6 (1) of the Regulations in English and Hindi Edition of Pioneer newspaper on 12.09.2019 for intimation of commencement of Corporate Insolvency Resolution Process of the Corporate Debtor and for calling the creditors to submit their claims along with the proof in the prescribed format.

3. Till last date for the submission of claims i.e. 23<sup>rd</sup> September 2019, the IRP received claims from one Financial Creditor, two Operational Creditors. The IRP collated the claims and constituted the CoC on 30th September 2019 and submitted the report with this Hon'ble court on 1<sup>st</sup> October 2020.
4. In the 2<sup>nd</sup> meeting of the CoC held on 1<sup>st</sup> October 2019. Approval of Mr. Umesh Gupta as RP in place of IRP was Approved.
5. It is submitted that Bank of India, sole member of CoC filed an application for appointment of Mr. Umesh Gupta as Resolution Professional (herein referred as 'RP') before this Hon'ble Tribunal. The said application was allowed by this Tribunal confirming appointment of the applicant herein as RP.
6. The RP called for the 3rd meeting of the CoC on 15<sup>th</sup> November 2019. The following matters were discussed in the meeting:
  - Appointment of Valuers for valuation of assets

- Discussion on the requirement of transaction audit as per sections 43, 45, 50 — & 66 of IBC, 2016.
  - Discussion on the CIRP cost.
  - Approval on issuance of invitation for Expression of Interest ("EOI") and eligibility criteria for prospective resolution applicants-Approved
  - Approval of evaluation matrix for evaluation of resolution plans.- Approved
  - Approval of Fee of RP-Approved
7. On 17th November, 2019 RP published Form G for inviting EOI in Financial Express (English) and Jansatta (Hindi) editions of newspapers with 1<sup>st</sup> December 2019 being the last date for submission of EOI.
8. Pursuant to publication of Form G, RPreceived EOI from following 5 parties:-
- i. Bajaj Rubber Company Private Limited
  - ii. Mr. Satish Lohia
  - iii. Mr Sudhanshu Totla
  - iv. Prudent ARC Limited
  - v. One City Infrastructure Limited
9. On 1st December 2019, RP received an email from one Mr. Vipin Kumar and on 2<sup>nd</sup> December 2019 from Mr. Amrit Agrawal & KMG Industrial

Traders Private Limited stating that they are very much interested in the corporate debtor and wish to submit EOI. RP intimated Mr. Amrit Agrawal &KMG Industrial Traders Private Limited about rejection of their EOI after the due date. RP intimated that last date of receiving EOI is over but still he can consider the same with the approval of CoC.

10.The RP called for the 4<sup>th</sup>meeting of the CoC on 9<sup>th</sup>December 2019. The following matters were discussed in the meeting:

- Extension of date of submission of EOI and submission of resolution plans and reissuance of Form G for the same-Approved
- Discussion and approval of the CIRP cost- Approved,
- Discussion and approval of opening of a new bank account to be operated by RP to make payments related to CIRP costs.-Approved
- Discussion and approval of performance guarantee to be submitted by prospective resolution applicants along with resolution plans.- Approved

11.The consequence of approval by CoC, RP re-issued Form G on 11th December 2019,Invitation for EOI in Financial Express and Jansatta. Pursuant to re-issue of Form G, RP received 3 more EOI from following parties:-

- i. Varahi Limited

- ii. Rashi Chatrath & Monisha Gupta
- iii. Consolidated Engineering Company

Therefore, including above 3, there were total 8 EOIs were received by the RP.

12. On 25th January, 2020 RP received resolution plans from following two prospective resolution applicants:-

- i. Varahi Limited
- ii. Rashi Chatrath & Monisha Gupta

13. The CoC in its 5<sup>th</sup> meeting held on 29<sup>th</sup> January 2020, invited both the prospective resolution applicants and the same were discussed. Resolution Applicants were also invited to attend the meeting. Both the resolution plans were opened in front of resolution applicants and participants of CoC. The following matters were discussed in the meeting..

- Both the resolution applicants were advised for considerable improvements in financial terms.
- Approval of statutory auditor of corporate debtor for F Y 2018-2019:-  
Approved
- To discuss and approve appointment of Statutory Auditor for Corporate Debtor for F.Y. 2018-2019.

CoC advised both the Resolution Applicants to improve their resolution plan in financial terms and re-submit their plans after improvement and incorporating the other observations by RP.

14. After preliminary verification of the plans, RP intimated both the resolution applicants about various shortcomings in their plans and to submit revised plans.

15. Further Regulation 40C of the CIRP Regulations prescribe relaxations with respect to the CIRP timelines under the IBC and the rules/regulations framed thereunder, in view of the difficulties being faced due to the outbreak of the COVID-19 pandemic. The said regulation is reproduced below:

*“40C. Special provision relating to time-line: Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”*

16. On 20th March 2020, RP sent an email to Mrs. Monisha Gupta & Ms. Rashi Chatrath, resolution applicants, communicating therein the observations of CoC on their resolution plan and asked them to furnish revised resolution

plan by 23rd March 2020. The email was replied by Mrs. Monisha Gupta on 20th March 2020 stating that market scenario is deteriorating due to prevailing situation of Coronavirus. She further requested to defer the matter till 15.04.2020 or till improvement in prevailing situation on Covid-19.

17. On 8th May 2020, RP sent reminder to Mrs. Monisha Gupta & Ms. Rashi Chatrath for status of revised resolution plan. Mrs. Monisha Gupta replied that due to travel restrictions between Haryana and Delhi, they are not able to meet and finalize the resolution plan. She further requested to hold on these discussions till there is improvement in situation of Covid-19.

18. Thereafter the RP called for 8<sup>th</sup> meeting of the COC on 20th May 2020. Resolution Applicants were also invited to participate in the meeting. Discussion on resolution plans received from 2 prospective resolution applicants Varahi Limited and Mrs. Monisha Gupta & Ms. Rashi Chatrath,, wherein CoC decided to grant 10 daystime to both the resolution applicants to submit their final resolution plan.

19. On 10th June 2020, RP received revised resolution plan from Varahi Limited in which they had reduced the amount of total resolution plan as well as allocation to sole financial creditor, Bank of India.

20. RP called for 9<sup>th</sup> meeting of the COC held on 24th July 2020, wherein discussion on resolution plans received from 2 prospective resolution

applicants were discussed and the CoC noted the final resolution plan submitted by Varahi Limited and decided to grant 3 days time to Mrs. Monisha Gupta & Mrs. Rashi Chatrath to furnish their resolution plan after incorporating the observations and suggestion of CoC and RP in this regard.

21. On 27th July 2020, RP received amended resolution plan from Mrs. Monisha Gupta and Mrs. Rashi Chatrath in which they reduced the offer amount of resolution plan as well as the amount provided for secured creditor, Bank of India.

22. The CoC in its 10<sup>th</sup> meeting held on 4<sup>th</sup> August 2020, discussed the following matters:

- Approval/rejection of on resolution plans received from both prospective resolution applicants: - On e-voting after circulation of minutes, CoC deferred the same in the light of letter dated 5th August 2020 sent by Mrs. Monisha Gupta that she desires to make upward revision in the resolution plan by about 50% as well as total allocation to secured creditor Bank of India will be about Rs. 5.20 Crores against Rs. 3.33 Crores provided earlier vide their resolution plan dated 27.07.2020.

- Recommending liquidation of corporate debtor, appointment of liquidator, fixation of fee of liquidator and other related agenda items- Deferred

23. Thereafter on 7th August 2020, Mrs. Monisha Gupta & Mrs. Rashi Chatrath submitted their resolution plan by raising the amount of resolution plan upwards by about 50%

24. In the 11th meeting of CoC held on 11th August 2020, CoC approved substitution of name of Mr. Bharat Chatrath in place of his wife Mrs. Rashi Chatrath to propose a resolution plan in collaboration of Mrs. Monisha Gupta. Mrs. Rashi Chatrath submitted her no objection for substitution of her name.

25. Representative of Bank of India further stated that an amount of Rs. 1 Crore should be deposited by resolution applicant in a saving bank account maintained with Bank of India under a no-lien account to show the seriousness and availability of funds with resolution applicant.

26. In 11th meeting, CoC also resolved filing an application with Hon'ble NCLT for grant of additional 60 days for completion of CIRP. Further, on 14th August 2020, RP filed an interim application for grant of additional 60 days' time to complete the CIR process. The IA was allowed by this Hon'ble

Tribunal vide its order dated 25.08.2020 and 60 further days w.e.f. 16.08.2020 were granted to complete the CIRP.

27.The CoC in its 12<sup>th</sup> meeting held on 13th October 2020, considered resolution plan of Mrs. Monisha Gupta and Mr. Bharat Chatrath and decided to approve resolution plan submitted by them by recording following reasons:-

- a) Resolution Applicant is offering total resolution plan amount of Rs. 5.80 Crores which is more than 125% of the liquidation value. Their proposal to pay Rs. 5.20 Crores to Bank of India, sole secured creditor is also acceptable to them.
- b) Since corporate debtor is an MSME, promoters are eligible to submit the resolution plan u/s 29 A read with Section 240A.
- c) Approval of resolution plan will result in revival of an MSME corporate debtor.

Hence, the CoC comprising the sole Bank approved the resolution plan submitted by Mrs. Monisha Gupta and Mr. Bharat Chatrath and were declared as Successful Resolution Applicant.

28.On 13.10.2020, after approval of resolution plan by CoC, resolution professional sent an email to successful resolution applicant intimating them about the approval of their resolution plan and advised them to submit

performance security to the tune of 10% of the resolution plan amount at the earliest as period of CIR process is going to expire on 15.10.2020. In response, successful resolution applicant has submitted a letter addressed to Bank of India for marking a lien of Rs 60 Lakhs over the fixed deposit lying with them. The same has been confirmed by Bank of India, sole member of CoC stating that the lien has been marked and copy of fixed deposit is being held with them as security.

29. The RP states that the said Resolution Plans submitted by Mrs. Monisha Gupta & Mr. Bharat Chatrath was duly approved by CoC in its 12 meeting dated 13.10.2020 with 100% voting, which complies all the requirements of the IBC, 2016. The Compliance Certificate in Form H as prescribed under Regulation 39 (4) as amended by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018, is also filed by the RP.

30. The RP further states that the CoC constitute monitoring committee comprising of Representative of corporate debtor and Resolution professional to monitor the implementation of the resolution plan as permitted herein and execute all required tasks after the order of this bench approving the resolution plan is passed.

Number of Members	Comprising of
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1	Representative of corporate debtor
1	Resolution professional

31. The parameters for approval of resolution plan are set out in the IBC, 2016 read with IBBI (CIRP) Regulations, 2016. Which are briefly set forth herein below:

<b>Section/Regulation</b>	<b>Compliance made</b>
Section 30(1) of the IBC, 2016	Corporate debtor is exempted from conditions of Section 29A(clause c and h) as corporate debtor was registered as a SSI unit.
Section 30(2)(a) of the IBC, 2016  And  Regulation 38(1A) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	Resolution applicant proposes the payment of CIRP cost in priority to payment of other debts.  The Resolution Plan provides for the interest of all stakeholder, including Financial Creditors and Operational Creditors, of the Corporate Debtor.
Section 30(2)(b) of the IBC, 2016  And  Regulation 38(2)(c) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	Resolution Plan proposes to make payment to operational creditors in priority to payment over financial creditors.  Monitoring committee will be responsible for supervising implementation of the plan as proposed by resolution applicant.
Section 30(2)(c) and Section 30(2)(d) of the	A committee consisting of one Representative of corporate debtor and Resolution

IBC, 2016	professional, shall manage the Corporate Debtor during the implementation of Resolution Plan.
Section 30(2)(e) of the IBC, 2016	The Resolution Plan does not contravene any of the provisions of law for the time being in force
Section 30(4) of the IBC, 2016	Resolution Plan is approved by 100%

32. It is submitted that the date of expiry of 180 days of CIRP was 03.03.2020.

The date of order extending the period for 90 days was 05.03.2020, which was expiring on 16.08.2020 excluding lockdown period from 23.03.2020 to 08.06.2020. CIRP was extended further for 60 days in order to avail 330 days as per section 12(3) which expired on 15.10.2020. The resolution plan was filed on 14.10.2020 prior to the expiration of 330 days.

33. In view of the above discussion that resolution plan, as approved by the CoC, is in accordance with the sub-section 2 of Section 30 read with Section 31 of the Code and as the Resolution Applicant is not disqualified under Section 29A of the Code; we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.

34. It is hereby declared that the Resolution Plan is binding on the corporate debtor, members, employees of the corporate debtor, creditors of the corporate debtor and other stakeholders involved in the Resolution Plan.

35. It is also declared that the moratorium order passed by this bench under Section 14 of the Code shall cease to have effect.
36. The Resolution Professional shall forward all records relating to the CIRP process and the resolution plan to IBBI to be recorded at its data base in terms of Section-31(3)(b) of the Code.
37. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
38. I.A. No. 4523/2020 is disposed of accordingly.

Let the copy of the order be served to the parties.

**Sd/-**  
**(MS. SUMITA PURKAYASTHA)**  
**MEMBER (T)**

**Sd/-**  
**(DR. DEEPTI MUKESH)**  
**MEMBER (J)**