



2. The facts leading to the Application are as under.
  - a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated upon admission of a Petition under Section 10 of the Code by this Bench by order dated 16.06.2017. Mrs. Jayashree Shukla Dasgupta was appointed as the Interim Resolution Professional (IRP). The IRP published public announcement on 30.06.2017, 02.07.2017 and 03.07.2017, inviting claims from the creditors of the Corporate Debtor. After receipt of claims, the IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor on 21.07.2017.
  - b. The CoC in its first meeting held on 28.07.2017, replaced the IRP with the Applicant as the Resolution Professional (RP) of the Corporate Debtor. This Bench by order dated 06.10.2017 confirmed such appointment.
  - c. The Applicant filed MA No. 674 of 2017 for extension of the period of CIRP by 90 days. This Bench however dismissed the same *vide* order dated 09.01.2018. On an Appeal before the Hon'ble NCLAT the order was set aside and the period of CIRP was extended by 90 days as per order dated 05.03.2018.
3. The advertisement for Expression of Interest (EoI) issued on 28.11.2017 and 26.04.2018 by the RP evoked no response and subsequent to the advertisement in Form G issued on 26.05.2018, the Applicant received EoIs from 2 (two) Prospective Resolution Applicants (PRAs), namely (a) Khemnani Distributors and Marketing Limited and (b) P K Hospitality Services Private Limited. The last date for submission of Resolution Plan was extended till 28.05.2018 with the approval of the CoC.
4. The CoC in its 7<sup>th</sup> meeting held on 01.06.2018 considered the Resolution Plan of the Successful Resolution Applicant (SRA) and approved the Plan with a voting share of 83.02%. The Applicant filed MA No. 524 of 2018, for approval of Resolution Plan. After hearing the Application this Tribunal *vide* its order dated

29.01.2019 held that the CIRP of the Corporate Debtor was wrongfully initiated and dismissed the Application. On Appeal against the said order, the Hon'ble NCLAT *vide* order dated 30.09.2019 allowed the Appeal and directed this Authority to consider the Resolution Plan and pass appropriate orders. Therefore, the Applicant filed an application for revival of MA 524 of 2018. However, the Resolution Applicant in MA 524 of 2018 was no more interested in pursuing the Plan and hence the RP withdrew MA 524 of 2018 on 13.03.2020.

5. The Applicant filed application IA No. 4012 of 2019 for exclusion and extension of the period of CIRP. This Tribunal *vide* order dated 20.08.2020 allowed to exclude the period from 03.06.2018 to 20.08.2020 and extended the CIRP by 90 days. Therefore, the period of CIRP stood extended till 17.11.2020.
6. The RP issued revised Form-G on 05.09.2020 inviting EoI from PRAs. The last date for submission of Resolution Plan was extended till 20.09.2020 with the approval of the CoC. The Applicant received EoIs from 6 PRAs.
7. In the meanwhile, the Applicant received a claim from the RP of Paisalo Digital Limited and accordingly the Applicant reconstituted the CoC, recognising Paisalo Digital Limited as one of the Financial Creditors.
8. On 05.11.2020 in the 12<sup>th</sup> meeting of the CoC 4 out of the 6 PRAs were finalised. However, before the last date for submission of Resolution Plan all PRAs except Om Shri Shubh Labh Agritech Private Limited (Om Shri Shubh) withdrew their EoIs. At the same time the Applicant received an email from P K Hospitality Services Private Limited (P K Hospitality) requesting time for submission of fresh Resolution Plan as Earnest Money Deposited (EMD) submitted earlier was already with the Applicant. Therefore, the CoC in its 12<sup>th</sup> meeting considered the said request and resolved to extend 7 days' time for submission of Resolution Plans by P K Hospitality and Om Shri Shubh.

9. The Applicant had filed an Application before this Tribunal for extension of two months' time to complete the CIRP which was allowed by this Tribunal *vide* order dated 08.02.2021.
10. The CoC in its 13<sup>th</sup> to 17<sup>th</sup> meetings considered the Resolution Plans received from Om Shri Shubh and P K Hospitality and suggested suitable changes.
11. After due verification of the eligibility of the PRAs in terms of Section 29A of the Code, the CoC in its 18<sup>th</sup> meeting held on 08.01.2021 considered the revised Resolution Plans and approved the plan of P K Hospitality with the voting share of 88.78%.
12. The Manner of voting by the CoC is as below:

Sr. No.	Financial Creditors	Voting Share (%)	For (%)	Against (%)	Abstained (%)
1	IDBI Bank	2.83	2.83	-	-
2	SREI	6.05	6.05	-	-
3	SIDBI	2.02	2.02	-	-
4	IFCI FATORS	4.51	-	-	4.51
5	Mr. Ketan Singhvi	0.02	-	-	0.02
6	Bhuwalka Commercial Pvt Ltd	0.05	-	-	0.05
7	Ramkumar Birendra Kumar Pvt Ltd	0.05	-	-	0.05
8	Axis Bank	6.68	6.68	-	-
9	Bank of Maharashtra	4.08	4.08	-	-
10	Edelweiss ARC	41.45	41.45	-	-
11	Mr. Neerav Sanghvi	0.03	-	-	0.03
12	Saraswat Co-op Bank Ltd	20.65	20.65	-	-
13	SBI Global Factors	3.47	3.47	-	-
14	ICICI Bank Limited	0.70	-	-	0.70
15	SICOM Limited	5.33	-	-	5.33
16	CANBANK FACTORS Limited	0.53	-	-	0.53
17	Paislo Digital Limited	1.55	1.55	-	-
	<b>Total</b>	100	88.78	-	11.22

**13. Salient features of the Resolution Plan:**

a. **SUCCESSFUL RESOLUTION APPLICANT:**

The SRA is one of the companies of the Garuda Group. The SRA has experience in the hospitality industry like food and beverages, retail of ethnic wear, hotel, infrastructure and real estate, construction, restaurants and food business. The net worth of the SRA is 188.75 Crores.

b. **TERM OF RESOLUTION PLAN:**

The date of commencement of the implementation of the Resolution Plan is termed as “Closing Date/Effective Date”. As per the Resolution Plan, the obligations of the SRA to implement the Resolution Plan shall be from the closing date i.e., the date of approval of this Resolution Plan in accordance with the code by this Tribunal.

c. **FINANCIAL TERMS:**

The following are the financial terms of the Resolution Plan:

Sr. No.	Class of Creditors	Total Amount of Claim Admitted (INR)	Amount provided under Resolution Plan (INR)
1	Corporate Insolvency Resolution Process Cost	-	2,50,00,000/-
<b>Financial Creditors (FCs) (Refer Note iii)</b>			
2	Secured FCs		
	i. Who abstained from voting	5,95,85,817/-	10,60,096/-
	ii. Who voted in favour of Resolution Plan	725,04,45,159/-	26,86,96,729/-
3	Unsecured FCs		
	i. Who abstained from voting	89,60,64,474/-	1,57,48,370/-
	ii. who voted in favour of the Resolution Plan	30,30,58,529/-	53,94,805/-
3	<b>Operational Creditors</b>		
	Government	54,00,000/-	Nil
	Workmen	-	-
	Employee	-	-
	Others	15,50,00,000/-	Nil
4	Other Debts and dues	-	-
	<b>TOTAL</b>	866,95,53,979/-	31,59,00,000/-

NOTES:

i. CIRP costs as approved by the CoC:

It shall be paid in priority within 0 to 90 days from the date of approval of Resolution Plan.

ii. Workmen/Employees of the Corporate Debtor:

No Workmen or Employees claims have been received by the Resolution Professional.

iii. Financial Creditor:

The total amount of Rs. 29.09 Crores of Financial Creditors to be paid within 180 days from the date of approval of the Resolution Plan. It shall be after the payment of CIRP costs, Labour Liabilities and payments to be made to Dissenting Financial Creditors, if any.

d. INFUSION OF FUNDS:

The total amount of Resolution Plan is Rs. 31.59 Crores, out of which the SRA will infuse Rs. 26.06 crores as Share Capital and Rs.5.53 Crores as Unsecured Loan.

e. REDUCTION of SHARE CAPITAL

It is proposed to reduce the paid-up share capital of the Company (Corporate Debtor) from Rs. 26,16,41,500/- to Rs. 10,46,570/- thereby reducing the existing paid-up share capital by approximately 99.60%. Further shares with face value of Rs.10/- to be allocated against the reduced capital of Rs.10,46,570/- which will result in 1,04,657 shares.

f. MANAGEMENT OF THE CORPORATE DEBTOR:

The SRA proposes to appoint Mr. Pravin Agarwal as Managing Director and Mr. Ram Niranjana Bhutra as Non-Executive Independent Director of the Corporate Debtor, within 90 days of approval of the Resolution Plan.

g. SUPERVISION OF THE RESOLUTION PLAN:

The Plan provides for constitution of a Monitoring Agency consisting of representative of the Edelweiss ARC (Financial Creditor) and the Applicant herein. This Agency would monitor the day to day operations of the

Company till the consideration as per the Plan is paid in full, the original documents are handed over to the SRA and a Board of Directors is in place.

h. COMPLIANCE OF MANDATORY CONTENTS OF RESOLUTION PLAN UNDER THE CODE AND CIRP REGULATIONS:

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 and 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (the Regulations) and has submitted his Form H under Regulation 39(4). It is submitted that the Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the SRA is not ineligible under Section 29A of the Code.

i. PERFORMANCE SECURITY:

The Resolution Professional has confirmed that the SRA has provided Bank Guarantee dated 16.01.2021 for Rs. 2,00,00,000/- (Rupees Two Crores only) issued by Punjab National Bank towards performance security.

14. The Applicant submits that the Resolution Plan meets the requirement of Section 30(2) of the Code in the following manner:

- A. Plan provides for the payment of CIRP cost in full and in priority from the fund to be infused by the SRA.
- B. Plan provides for payment to Operational Creditors and Abstaining Financial Creditors, the liquidation value due to them, if any, as per Section 53 of the Code. The average liquidation value of the Corporate Debtor is Rs. 17,72,53,337/- and the average fair market value is Rs. 29,54,59,986/-.
- C. It is submitted that the management of the affairs of the Corporate Debtor after approval of the Resolution Plan is with the Resolution Applicant [Section 30(2)(c)].

- D. The Plan also provides for implementation and supervision of the Resolution Plan [Section 30(2)(d)].
  - E. The SRA has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force [Section 30(2)(e)].
15. The Resolution Plan is in compliance of Regulation 38 of the Regulations in terms of Section 30(2)(f) of the Code as under:
- a. Payment to Operational Creditor will be made in priority over Financial Creditor (Regulation 38(1)(a)).
  - b. The Plan provides for payment of the liquidation value to the Financial Creditors who abstained from voting during the approval of the Resolution Plan, in priority to the assenting Financial Creditors, in compliance of Regulation 38(1)(b) of the Regulations.
  - c. Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).
  - d. Declaration by the SRA that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38(1B)).
  - e. The plan also provides for term and implementation schedule, management and control of the Corporate Debtor and adequate means for supervising its implementation (Regulation 38(2)).
  - f. The Resolution Plan also addresses the cause of default, feasibility and viability, as required under Regulation 38(3).
16. The SRA has sought certain waivers such as waiver of statutory liabilities/contingent and/or other liabilities. As far as liabilities are concerned,

the SRA is liable to the extent specified in the Plan and nothing else and the same would have to be based on clean slate principle.

17. As far as the waiver sought in the Resolution Plan in respect of Minimum Alternate Tax Liability (MAT), the SRA has to approach the jurisdictional Income Tax Authority concerned which will be decided in accordance with law. No direction in that regard can be passed.
18. The Resolution Applicant has sought certain other reliefs and concessions. We however are not inclined to grant such concessions or reliefs. The Resolution Applicant needs to approach the authorities concerned (viz. SEBI, Stock Exchanges, etc.) for permits, licenses, renewal of various facilities like electricity connections etc. as and when required. They shall have to be considered by the appropriate authorities in accordance with law.
19. It is beneficial to refer to the observation of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.:(2019) SCC OnLine SC 1478* as under:

“67. ....  
*A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.”*
20. In view of the above ruling of the Apex Court, the SRA takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject

to orders passed herein. As already indicated the Resolution Plan has been approved by the CoC in its meeting held on 08.01.2021 with 88.78% votes.

21. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon’ble Apex Court held that if the CoC had approved the Resolution Plan with requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon’ble Court observed that the role of the NCLT is ‘*no more and no less*’. The Hon’ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan “*as approved*” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

22. In ***CoC of Essar Steel (supra)*** the Hon’ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon’ble Court observed as under:

*“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar (supra)**.”*

23. In view of the discussions and the law thus settled, we are satisfied that the Resolution Plan as approved by the CoC under Section 30(4) of the Code meets the requirements of Section 30(2) of the Code and Regulations 37 to 39 of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved as provided under Section 31 of the Code. Hence ordered.

#### ORDER

- i. The Application be and the same is allowed. The Resolution Plan submitted by the P K Hospitality Services Private Limited annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, 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 is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii. The Memorandum of Association (MoA) and Articles of Association (AoA) of the Corporate Debtor shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Successful Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- iii. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in Paras supra.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.

- v. The Applicant shall supervise the implementation of the Resolution Plan and shall file periodical Status Report of its implementation before this Authority, preferably every quarter.
- vi. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the SRA respectively, for necessary compliance.

Sd/-  
V. NALLASENAPATHY  
Member (Technical)

Sd/-  
JANAB MOHAMMED AJMAL  
Member (Judicial)