

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT-II**

**IA. No. 906/2021**

**In**

**CP(IB)No. 4676/MB/C-II/2018**

**Application filed under section 30(6), r/w Section 31(1) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,**

Filed by

**Arun Kapoor,  
Resolution Professional**

**...Applicant**

*In the matter of*

**Kalyan Janata Sahakari Bank Limited**

**...Financial Creditor**

Versus

**CICIL Biochem Private Limited**

**...Corporate Debtor**

**Order Pronounced on: - 19.10.2023**

***Coram:***

**Anil Raj Chellan  
Member (Technical)**

**Kuldip Kumar Kareer  
Member (Judicial)**

***Appearances -***

**For the Resolution Professional : Counsel, Amir Arsiwala a/w Adv. Arjun Sathees**

**ORDER**

*Per Anil Raj Chellan, Member Technical*

1. The present Interlocutory application is filed by **Arun Kapoor** the Applicant, Resolution Professional of **CICIL Biochem Private Limited**, the Corporate Debtor seeking approval of the resolution plan under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 submitted by **Rikin Rameshchandra Parekh Prop. Maharashtra Oil Mill**. The Plan was duly approved by 98.34% of the Committee of Creditors (CoC) in its 9<sup>th</sup> CoC meeting held on 24.02.2021.
2. The Applicant submits that the Financial Creditor, Kalyan Janata Sahakari Bank Limited, initiated the Corporate Insolvency Resolution process (CIRP) against the Corporate Debtor under Section 7 of the Code. Vide Order dated 01.10.2019, CIRP against the Corporate Debtor was initiated and Mr. Arun Kapoor was appointed as Interim Resolution Professional. Pursuant to the said admission order, the Committee of Creditors (CoC) was constituted on 04.11.2019. The members of CoC unanimously resolved and confirmed appointment of the Applicant as the Resolution Professional (RP).
3. The Applicant published the Public Announcement for inviting claims on 08.10.2019 in Form 'A' and the last date for receipt of claims was 19.10.2019.

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4. The Applicant further appointed registered valuers to determine the Liquidation Value and Fair Value of the Corporate Debtor for each class of assets namely, Mr. Sanjeev Gupta and Mr. Puneet Tyagi for Land and Building, Mr. Kuldeep Kumar Agrawal and Mr. Dharam Pal Bhatia for Plant and Machinery, Mr. Manuj Singhal and Mr. Debashis Das for Securities and Financial Assets.
5. In the 2<sup>nd</sup> CoC meeting held on 12.12.2019, the Applicant presented and circulated the detailed invitation for Expression of Interest (EoI) of Resolution Plan to the members of the CoC. The eligibility criteria for submission of the Resolution Plan, publication of notification and advertisement in Form G was accordingly approved by the members of the CoC. Pursuant to the approval, Form G was published in the newspapers namely Free Press Journal (English) and Navshakti (Marathi) on 14.12.2019.
6. In the 3<sup>rd</sup> CoC meeting convened on 23.01.2020, the Net-Worth Eligibility Criteria was amended and the date for the submission and invitation of EoI was extended. Form G was again published on 17.01.2020 and the last date for submission of the EoI was 04.02.2020. The provisional list of Prospective Resolution Applicants (PRAs) was issued on 04.02.2020 and final list of PRAs was received on 18.02.2020.
7. In the 4<sup>th</sup> CoC meeting held on 16.03.2020, the Applicant informed the CoC that resolution plan was received only from the Resolution Applicant M/s Maharashtra Oil Mill on March 11, 2020. The Resolution Plan was opened on 13.03.2020 in the presence of the authorized representatives of Kalyan Janata Sahakari Bank Limited and Thane Bharat Sahakari Bank Limited, major members of CoC. The time for Insolvency Resolution of the

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Corporate Debtor which was due to elapse on 03.04.2020 was proposed to be extended beyond 180 days by the CoC and the Applicant was authorized to file an Application under Section 12(2) of the IBC, 2016 before the Hon'ble Tribunal for extension of time.

8. This Hon'ble Tribunal vide order dated 29.01.2021 granted exclusion of time on ground of Covid-19 lockdown and granted extension for a period of 90 days thereby extended CIRP period till 06.05.2021.
9. In the 5<sup>th</sup> meeting of the CoC on 26.06.2020, discussion about the Resolution Plan, commercial terms, etc took place and extension of 15 days was given to the Resolution Applicant for submission of revised Resolution Plan.
10. In the 6<sup>th</sup> CoC meeting held on 19.09.2020, the members of the CoC discussed the Resolution Plan along with Addendum and asked the Resolution Applicant to submit another revised Resolution Plan after incorporating the observations as discussed by the CoC in the meeting.
11. In the 7<sup>th</sup> CoC meeting held on 18.12.2020, the Applicant informed the members about the revised Resolution Plan and incorporated suggestions and observations of the members of CoC. Further, the members of CoC deliberated and discussed the Resolution Plan and suggested the PRA to improve the consideration amount of the Resolution Plan.
12. In the 8<sup>th</sup> CoC meeting held on 28.01.2021, Resolution Applicant's representative was invited to the meeting for negotiation and discussion on commercials on the Resolution Plan. Detailed discussion took place between

representative of the Resolution Applicant and CoC members regarding consideration offered and other terms of the plan. CoC suggested to Resolution Applicant to improve the financial offer. The Applicant informed CoC that Application under section 43 and 66 of the Code had been filed before this Hon'ble Tribunal against the members of suspended board of directors on preferential and fraudulent transactions on 08.01.2021.

13. Subsequently, at the 9<sup>th</sup> CoC held on 24.02.2021 the Resolution Plan was put for voting and CoC, after considering the feasibility and viability, approved the Resolution Plan with 98.34% votes.
14. **Brief Background of the Corporate Debtor**
  - a. The Corporate Debtor is engaged in the business of processing of multipurpose edible oil and has one factory situated at Village Tilgaon, Wada.
  - b. The CD commenced as a small edible oil trader in APMC Market in Navi Mumbai and subsequently set up an edible oil processing company at Village Tilgaon, Wada.
  - c. Major reason for losses of the Corporate Debtor as analysed by the Resolution Applicant was Demonetization in November 2016 which lead to decline in sales, thin margin on oil sales, problems associated with the implementation of GST, losses in refinery due to volatility in prices and import duties, decrease in EBITDA margin, unsustainable interest cost and impact of sales tax/ VAT etc.

15. **Brief Background of the Resolution Applicant**

The Resolution Applicant is a trader in Edible Oil industry and had been in the industry for more than 15 years. The family background of Resolution Applicant is sound enough to organize money for business exigencies. The Resolution Applicant has sound knowledge of edible oil industry and is experienced in its Marketing, Research, Production, Procurement etc.

The Resolution Applicant is confident of reviving the business of the Corporate Debtor with strategies of re-establishing administration, governance, management process, financial system, relationship with customer base, and lengthening of supply chain etc.

16. **SALIENT FEATURES OF THE APPROVED RESOLUTION**

- A. The Resolution Applicant proposes to acquire the Corporate Debtor as a going concern through 100% stake acquisition in the Corporate Debtor. Accordingly, the Resolution Applicant proposes to infuse equity capital of Rs. 5.63 crore and working capital of Rs. 1 crore (by way of secured/unsecured loan as and when required by the Corporate Debtor).

The proposed equity capital of 5.63 crore will be used for discharging the liabilities/obligations as under :

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<b>Amount in Rupees</b>				
<b>Category of Creditors</b>	<b>Claim filed</b>	<b>Claim admitted/status</b>	<b>Amount proposed</b>	<b>% of admitted claim</b>
Approx CIRP cost			30,00,000	100.00%
Secured Financial Creditors	15,16,82,540.44	15,14,42,110.53	5,21,59,703.51	34.44%
Unsecured Financial Creditors	39,77,172.00	25,52,857.00	12,765.29	0.50%
Workmen/ Employee Dues	0.00	0.00	0.00	
Statutory Dues	21,83,86,835.00	21,64,40,576.00	10,82,202.88	0.50%
Operational Creditors/ Dues related to Trade	13,21,24,773.88	90,65,864.99	45,329.32	0.50%

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Payables				
Contingent Liabilities	-	-		
<b>TOTAL</b>	<b>50,39,89,382.82</b>	<b>37,81,19,471.37</b>	<b>5,63,00,000.00</b>	

- B.** The Resolution Applicant has deposited an amount of 5.00 lacs as EMD with the Resolution Professional vide a Demand Draft from CSB Bank (DD no. 475476) dated 11/02/2020 as per the conditions of the eligibility criteria prescribed by the Resolution Professional for participating in the bidding process of the Corporate Debtor. On approval of Resolution Plan by the Adjudicating Authority, the EMD amount shall be adjusted with the final proposed amount payable to the Financial Creditors.

In the event of increase in the unpaid CIRP cost beyond Rs. 0.30 crores, the amount available for distribution to the stakeholders will be reduced to that extent. However, in case the unpaid CIRP cost is less than the amount proposed then the remaining amount will be distributed among the Secured Financial Creditors.

- C.** The amount of Rs. 5.63 crores proposed under the Resolution Plan, which includes amount of CIRP cost, payment to secured financial creditors, Employees, Unsecured Financial Creditors, Operational



Creditors, Statutory Dues and Contingent Liabilities is to be paid out of equity infusion by the Resolution Applicant.

The entire proposed payment under this Resolution Plan shall be made within 90 days from the Effective Date (the date on which the Resolution Plan submitted by the Resolution Applicant is approved by Adjudicating Authority under Section 31(1) of IBC which is approved by the COC under Section 30(4) of IBC).

- D.** The Resolution Applicant proposes to make payment as per the timeline given as under :
- a. Rs. 1.00 crores -within 30 days from the date of receipt of NCLT Approval/Effective date.
  - b. Rs. 2.50 crores -within 60 days from the date of receipt of NCLT Approval/Effective date.
  - c. Rs. 2.13 crores -within 90 days from the date of receipt of NCLT Approval/Effective date.

**E. Monitoring Committee for Supervision and Implementation of the Resolution Plan.**

Monitoring Committee shall be appointed by Resolution Applicant in consultation with CoC for supervision and implementation of the Resolution plan in terms of Provisions of Section 30 (2)(d) of the code read with Regulation 38(2)(c) of the regulations.

**F. Liability of third parties/guarantors.**

The obligations and liabilities of third parties (including promoters) in relation to personal or corporate guarantees provided by such third parties in connection with financial debt or obligation of the Corporate Debtor at any time prior to the Insolvency Commencement Date shall, continue to be enforceable against such third parties.

**G. Recoveries from Preferential/Fraudulent Transactions.**

Any amount recovered out of preferential/ fraudulent transactions u/s. 43 and 66 of the Code shall be appropriated towards the unsatisfied claims of Secured Financial Creditors.

**H. Restructuring of share capital of Corporate Debtor.**

All the existing shares issued by the Corporate Debtor shall be extinguished and new shares shall be issued to the Resolution Applicant, without any requirement of obtaining any approval from the shareholders of the Corporate Debtor and/or obtaining the approval of Adjudicating Authority for reduction of share capital of the Corporate Debtor. The approval of the Resolution Plan by the Adjudicating Authority shall constitute adequate approval for reduction of capital, extinguishment of existing shares, and issue of fresh shares as per the terms of the Resolution Plan.

**I.** The Applicant submitted that as per RFRP and in compliance with Regulation 36B (4A) of the CIRP Regulations the Resolution Applicant has provided a performance security of Rs. 75 Lakh and has accordingly undertaken that if after approval of the Resolution Plan

under section 30(4), the performance security shall stand forfeited in that event the Resolution Applicant fails to implement or contributes to the failure of implementation of the plan in accordance with the terms of the Resolution Plan and its implementation schedule.

- J. The Resolution Applicant has submitted an affidavit dated 04.03.2020 confirming eligibility u/s. 29A of the Code to submit the Resolution Plan.
- K. The Applicant further submits that the Resolution Plan submitted is in compliance **with Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations**. The RP has provided a compliance certificate in “**FORM H**” as mandated under the Code for seeking approval of the Resolution Plan from this Tribunal.
- L. This Application for approval of the Resolution Plan has been filed before expiry of the period of CIRP (i.e., 06.05.2021) under section 12 of the Code.

### **OBSERVATIONS OF THE ADJUDICATING AUTHORITY**

- 17. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.
- 18. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law appears to have been contravened.

19. Section 30 (4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.

20. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

21. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.

- c) For Management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified u/s 30(2)(c) of the Code.
- d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
22. The Resolution Plan has been approved by the CoC in the with 98.34% votes in terms of Section 30(4) of the Code.
23. In *K Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No.10673/2018 decided on 05.02.2019)* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by 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 Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex 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.
24. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) 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 has 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).”*

25. In view of the discussions and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) 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. We are thus inclined to allow the Application in the following terms.

### **ORDER**

- (i) The Application IA No. 906 of 2021 in CP (IB) No. 4676 of 2018 is allowed.** The Resolution Plan submitted by Mr. Rikin Rameshchandra Parekh 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) No person will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which is not a part of the Resolution Plan.
- (iii) The monitoring committee as proposed in clause 6.17 of the Resolution Plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- (iv) As per the Resolution Plan, extinguishment of existing shares of the Corporate Debtor, allotment of shares to the Resolution Applicant and reduction of share capital do not require the consent of shareholders as required under the Companies Act or any other authority for implementation of the Resolution Plan.
- (v) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
- (vi) This Tribunal will not deter such authorities to deal with any of the issues arising after effecting the Resolution Plan.

- (vii) Any amount out of the action taken against other persons for Preferential/ Fraudulent Transactions u/s. 43 and 66 of the IBC, 2016 as found in the Audit Report and also Unauthorized Transaction post CIRP order, shall be appropriated towards the unsatisfied claims of Secured Financial Creditors.
- (viii) As regards the other reliefs and concessions as sought for which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP as stipulated under Section 32A of the Code, is granted to the Resolution Applicants. With regard to other concessions and reliefs, most of them shall stand subsumed in the reliefs granted above.
- (ix) The exemptions, if any, sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- (x) Further, in terms of the Judgment of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, (Civil Appeal No. 8129 of 2019 decided on 13.04.2021)** the Hon'ble Apex Court on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which are not a part of the Resolution Plan.
- (xi) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the



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concerned Registrar of Companies (RoC), for information and record. The 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.

- (xii) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (xiii) 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.
- (xiv) The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

**ANIL RAJ CHELLAN**  
**MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER**  
**MEMBER (JUDICIAL)**