

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 132
IA/503(AHM)2021 in CP(IB) 465 of 2018

Order under Section 30(6) IBC,2016

IN THE MATTER OF:

Jigar Tarunkumar Bhatt RP of Favourite Fabtech Pvt Ltd
V/s
Central Bank of India & Anr

.....Applicant

.....Respondent

Order delivered on ..14/12/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:


For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(AJAI DAS MEHROTRA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
COURT-1**

**IA 503/NCLT/AHM/2021
In
CP (IB) 465/9/NCLT/AHM/2018**

[Application for submission of Resolution Plan under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons) for approval of resolution plan]

Through:

**Jigar Tarunkumar Bhatt
Resolution Professional of
Favourite Fabtech Private Limited**

Office at: B-101, Arvind Citadel
B/h BSNL Office
Off CG Road, Navrangpura
Ahmedabad-380009

**Applicant/
Resolution Professional**

IN THE MATTER OF:

**Jigar Tarunkumar Bhatt
Resolution Professional of
Favourite Fabtech Private Limited**

Office at: B-101, Arvind Citadel
B/h BSNL Office
Off CG Road, Navrangpura
Ahmedabad-380009


Applicant

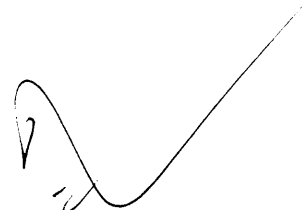
Versus

**CoC of Favourite Fabtech Private
Limited**

G/714, Lodhika GIDC Metoda
Rajkot, Gujarat-360021

Respondent





Memo of Parties

Jigar Tarunkumar Bhatt
Resolution Professional of
Favourite Fabtech Private Limited

Office at: B-101, Arvind Citadel
B/h BSNL Office
Off CG Road, Navrangpura
Ahmedabad-380009

**Applicant/Resolution
Professional**

Versus

Central Bank of India
Sole member of Committee
of Creditors

Office at: PB No.51,
Nagindas Chambers
1st Floor, Bhebar Road
Rajkot, Dist.Rajkot,
Gujarat-360001

Respondent No.1

Mr.VikramsinhBharatsinhRajjada

On behalf of:

Mrs Jyoti VikramsinhRajjada
Mr. PrafulsinhBharatsinhRajjada
Mr.NayansinhBharatsinhRajjada
As POA holder

Matrushakti, 4, Africa Colony
Near Riya Telephone Exchange
150 Feet Ring Road, Rajkot

Respondent No.2

Order Reserved on: 24/11/2021
Order Pronounced on: 14/12/2021

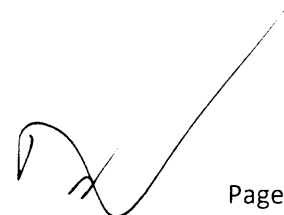
Coram: M.B. Gosavi, Member (J)
Ajai Das Mehrotra, Member (T)

Appearance:

For the Applicant: Ld. Adv Mr. Sandeep C Bhatt

ORDER

[Per Bench]



1. This application has been filed by Mr. Jigar Traunkumar Bhatt, Resolution Professional of Favourite Fabtech Private Limited under Section 30(6) read with Section 31 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **IBC, 2016**) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "**CIRP Regulations**") for approval of the Resolution Plan which is approved by the CoC.
2. The facts, in brief, are that the Corporate Debtor was admitted into CIRP by this Adjudicating Authority vide order dated 17.03.2020, in an application filed by the Operational Creditor u/s 9 of IB Code, wherein the moratorium was declared and the Corporate Insolvency Resolution Process (hereinafter referred to as **CIRP**) was initiated. Mr. Malhar Rashmikant Mehta was appointed as Interim Resolution Professional (hereinafter referred to as **IRP**), who made public announcement in Form-A on 13.01.2021 and collated claims and constituted Committee of Creditors (hereinafter referred to as CoC) comprising of 1 financial creditor, viz. Central Bank of India.




3. It is submitted by the applicant that the CoC in its 1st Meeting dated 11.02.2021 resolved to replace the IRP and filed an application before this Adjudicating Authority for the replacement of the IRP by appointing Mr. Jigar Tarunkumar Bhatt as Resolution Professional (hereinafter referred to as **RP**). The Adjudicating Authority vide Order dated 10.03.2021 appointed Mr. Jigar Tarunkumar Bhatt as RP.
4. It is submitted by the applicant that pursuant to 2nd CoC meeting dated 25.03.2021, RP issued Form-G on 06.04.2021 for submission of EOI on or before 21.04.2021. The CoC in its 3rd meeting dated 07.05.2021 resolved to extend the last date of submission of EOI by publishing the revised Form-G. Thereupon, revised Form-G was published on 09.05.2021 for inviting more EOI and the revised last date for submission of EOI was 14.05.2021.
5. It is submitted by the applicant that in the 4th COC meeting dated 19.06.2021, pursuant to publication of revised Form-G, two EOIs were received from prospective resolution applicants, viz. Members of Suspended Management of Corporate Debtor & Mr. Prakram Singh Ghanshyam Singh



Jadeja. It is further submitted by the applicant that the suspended management being MSME is not disqualified from submitting a resolution plan. It is further submitted by the applicant that the Chartered Accountant was also appointed to carry out transactions audit and accordingly the transaction audit report was submitted by the Chartered Accountant, which was discussed in the 4th meeting of COC. The report contained major observations relating to disposing of the inventory, related party transactions, and non-compliance of GST by the Corporate Debtor prior to the appointment of IRP/RP.

6. It is submitted by the applicant that the CoC in its 5th meeting held on 28-06-2021 discussed the resolution plan and requested the resolution applicants to modify the plan and submit the modified plan by 30-06-2021.
7. It is submitted by the applicant that in the 6th meeting of the COC held on 05-07-2021 the plan submitted by the Members of the Suspended Management of Corporate Debtor i.e. Mr.Vikramsinh Bharatsinh Rajjada, was approved by CoC through e-voting with 100% votes. It is further submitted by the RP that the resolution plan



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complies with provisions of Section 30(2) of IBC, 2016 and Regulation 38 (3A) of the CIRP Regulations.

8. The amount provided for the stakeholders under the Resolution Plan are as under:

Sl 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	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(a) Other than (a) above:	NA	NA	NA	NA
		(i) who did not vote in favour of the resolution plan (ii) who voted in favour of the resolution plan	185.59	185.59	185.59	100%
		Total [(a+b)]	185.59	185.59	185.59	100%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA

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		(b) Other than (a) above:	NA	NA	NA	NA
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	NA	NA	NA	NA
		Total[(a)+(b)]	NA	NA	NA	NA
3	Operational Creditors	(a) Related Party of Corporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above:	186.90	102.99	55.72	54.10%
		(i) Government	13.68	13.68	7.40	54.10%
		(ii) Workmen				
		(iii) Employees	NA	NA	NA	NA
		(iv)				
		Total[(a)+(b)]	200.58	116.67	63.12	54.10%
4	Other debts and dues		NA	NA	NA	NA
	Grand Total		386.17	302.26	248.71	64.40%


9. It is submitted by the resolution applicant that upon approval of the Resolution Plan by the Adjudicating

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Authority, exemptions shall be granted from all kinds of liabilities including pecuniary and non-pecuniary liabilities, and claims whether claimed or not, whether actual or contingent, whether existing or probable, arising out of any act done prior to the period of effective date so as to limit its liability to the extent of resolution debt amount. This exemption shall also include the liabilities, penalties, and interest on statutory payments arising out of non-compliance committed by the Corporate Debtor prior to or during CIRP.

10. It is submitted by the resolution applicant that upon approval of the Resolution Plan, the resolution applicant or corporate debtor shall have no liability towards any claimant including the Government Authorities with respect to any claims relating in any manner to the period prior to approval of the Resolution Plan by this Adjudicating Authority, except payments to the creditors proposed in the resolution plan.

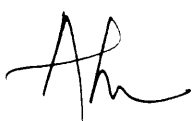
11. It is submitted by the resolution applicant that upon approval of the resolution plan waiver from any tax authorities including in terms of Section 79 & other sections



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of the Income Tax Act, 1961 and Section 16 of GST Act, 2017 & Rule 37 of CGST Rules, 2017 be granted. Tax authorities be directed to exempt the resolution applicant and the company from all taxes, levies, fees, transfer charges, transfer premiums, and surcharges that arise from or relate to the implementation of the Resolution Plan. Exemption on the applicability of and payment of all the taxes under the Income Tax Act, 1961 including any liability under the Minimum Alternate Tax which may arise on account of the transactions envisaged under this Resolution Plan be granted.


- 12.** It is submitted by the resolution applicant that upon approval of the Resolution Plan, there shall be no liability of the resolution applicant and the corporate debtor for any violations, liabilities, penalties, interest on statutory payments on account of non-compliance of applicable laws. It is further submitted by the resolution applicant that permission be granted to the applicant for drawing up the financial statements of the company for the period ending on the effective date in compliance with the applicable accounting standards and pursuant to the approval of the



Resolution Plan any debit or credit balance if any being the balancing figure shall be adjusted by the Resolution Applicant in the goodwill/bargain purchase/free (general) reserves account.

13. It is submitted by the Resolution Applicant that upon approval of the Resolution Plan the Resolution Applicant be permitted to use the licenses, approvals, registrations from the Government Authorities in respect of its business despite their expiry or lapse, till the same is not renewed by the resolution applicant and that the relevant Government Authority may consider the renewal of all licenses, consents, approvals of the Corporate Debtor without considering any of the non-compliance committed by the Corporate Debtor prior to the effective date.

14. It is further submitted by the resolution applicant that upon approval of the Resolution Plan the stamp authorities and Ministry of Corporate Affairs may exempt the resolution applicant from the levy of stamp duty and fees applicable in relation to this Resolution Plan and its implementation and on increase of authorised capital and issuance of new shares to the resolution applicant (or its nominees).



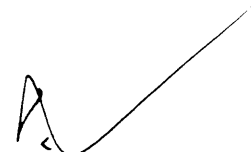
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- 15.** We have heard learned counsel for the applicant and perused the material available on record. It is noted that Form H is being filed by Resolution Professional wherein all information/details as regard to conduct of CIRP as well as process adopted for Resolution Plan have been given. The Resolution Applicant has proposed to pay the financial creditor Rs. 185.59 lakhs against its total admitted claim of Rs. Rs.1,85,59,232/- which is 100% of the admitted claim. The amount of Rs. 63.12 lakhs has been proposed in the Resolution Plan to pay the Operational Creditor against the total admitted claim of Rs. 116.67 lakhs including Government Dues which is 54.10% of the total admitted amount. Provision of Rs.15,00,000/- for payment of CIRP cost is made in the plan, thereby, the resolution applicant providing Rs. 248.71 lakhs under the Resolution Plan to all stakeholders. However, the resolution applicant agreed that the actual CIRP cost, as ratified by the CoC shall be paid by the resolution applicant within 30 business days from the effective date.
- 16.** It is also noted that the resolution applicant is providing Rs. 248.71/- lakhs under the Resolution Plan against the liquidation value of Rs. 270.68 lakhs which is less than the liquidation value, but we are of the considered view that the COC has passed the Resolution Plan with the requisite majority, hence, we are not inclined to interfere in the commercial wisdom of the COC. Moreover, the amount proposed under the Resolution Plan is slightly less than the Liquidation Value.



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- 17.** The sources of funds for making payments to various stakeholders by the resolution applicant provided at clause 5.1 of the resolution plan for the total outstanding amount of Rs.275,00,000/- is funded in the form of Rs.1,00,000/- as equity and Rs.274,00,000/- as unsecured loan against total amount committed in the Resolution Plan of Rs.248,71,000/-.
- 18.** It is further noted that affidavit as regard to the eligibility of resolution applicant under Section 29A along with undertaking of the resolution applicant to this effect has been filed along with the MSME certificate. We have also perused the contents of resolution plan, we are of the view that Regulation 36 to 39 of CIRP Regulations, 2016 have been complied with. We further noted that resolution plan complies with all requirements under Section 30(2)(b) of IBC, 2016. We also found that the resolution plan addresses the cause for failure and also contains measures to run the Corporate Debtor in future and that the resolution plan is both feasible and viable as held by CoC and it also contains provisions for its effective implementation.



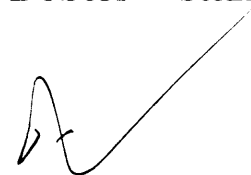
19. Though the amount provided to the stakeholders under the resolution plan is less than the liquidation value, we are of the considered view that since the object of the IB Code is to revive a company and liquidation being the last resort, we hereby keeping in view the object of the IB Code, deem fit to approve the resolution plan. Accordingly, we being satisfied, approve the resolution plan and pass following order:

- I.** The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- II.** The order of moratorium dated 17.03.2020 passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of this order.
- III.** The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.
- IV.** The monitoring committee as proposed in clause 7 of the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- V.** The Resolution Professional, Mr. Jigar Tarunkumar Bhatt shall be released from the duties of the resolution professional of the Corporate Debtor as per the provisions of the IBC, 2016 and rules/regulations made thereunder.



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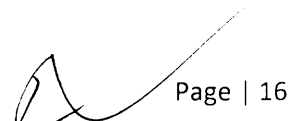
- VI.** The Resolution Professional shall forthwith send a copy of this Order to the participants and the resolution applicant(s).
- VII.** The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.
- VIII.** As regard to various reliefs and concessions which are being sought, we hereby grant following reliefs and concessions only as against reliefs and concessions claimed by resolution applicant:
- i.** After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders shall stand permanently extinguished and that other claim including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;
 - ii.** From the date of this order, all claims except provided in the plan of the Corporate Debtor stand extinguished.



- iii.** From the date of this order, all encumbrances on the assets of the Corporate Debtor prior to the plan shall stand permanently extinguished.
- iv.** For reliefs and concessions sought from the Government/Statutory Authorities, we direct the resolution applicant to approach the concerned Authorities. The concerned Authorities are directed to decide the matter as per applicable provisions of law for effective implementation of the Resolution Plan.
- v.** As regard to reliefs prayed under various provisions of Income Tax Act, 1961, the corporate Debtor/ resolution applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the resolution applicant in accordance with the provisions of Income Tax Act, 1961.
- vi.** The resolution applicant shall be entitled to review, revise or terminate any appointments/agreements entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements/MoUs/contracts;



- vii.** The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the resolution applicant for proper running operations of the business of the Corporate Debtor;
- viii.** The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;
- ix.** The resolution applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;
- x.** All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the resolution plan as regard to the restructuring of capital shall be binding on them. For concession of stamp duty as



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prayed in the resolution plan for enhancement of share capital, the resolution applicant may approach the concerned Government Authority.

- xi.** In respect to grant of license/ Government approval if license or approval is terminated, suspended and revoked. The resolution applicant may approach to the concerned Department/ Authorities for such approval/ renewal and Government Authorities may consider the request of resolution applicant as per applicable provisions of law for effective implementation of the resolution plan.

20. Accordingly, IA 503 of 2021 is allowed with the above said observations and directions and stand disposed of.

21. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.



**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



**MADAN B. GOSAVI
MEMBER (JUDICIAL)**