

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH, JAIPUR**

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

**SHRI RAGHU NAYYAR,**  
**HON'BLE TECHNICAL MEMBER**

**IA No. 249/JPR/2021**  
**In Company Petition No. (IB)-252/10/JPR/2019**

**Under Section 10 of Insolvency and Bankruptcy Code, 2016**

**IN THE MATTER OF:**

**Kanishkdeep Stock Consultants Pvt. Ltd.**  
6A-10, Mahaveer Nagar Extension,  
Kota- 324005 (Rajasthan)

**... Applicant/Corporate Debtor**

**MEMO OF PARTIES**

**IA No. 249/JPR/2021**

**IN RE:**

**Sanjay Badrilal Punglia, Resolution  
Professional of Kanishkdeep Stock  
Consultants Pvt. Ltd.,**

has its office at 501, 5<sup>th</sup> Floor, Aalin  
Complex, Nr. Rambha Complex, Opp.  
Gujarat Vidhyapith, Ashram Road,  
Ahmedabad – 380014

**... Applicant**

**For the Applicant : Amol Vyas, Adv.**

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**Order Pronounced On: 11.03.2022**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Application is filed by Mr. Sanjay Badrilal Punglia, Resolution Professional ('RP' / 'Applicant') of M/s Kanishkdeep Stock Consultants Pvt. Ltd. ('Corporate Debtor') under Sections 31 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 ('Regulations') seeking approval of resolution plan as approved by the Committee of Creditors.
2. The insolvency application was filed by the Corporate Debtor M/s Kanishkdeep Stock Consultants Pvt. Ltd. under Section 10 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') against itself, and the same was admitted by this Adjudicating Authority vide order dated 09.02.2021. The Applicant was appointed as the Interim Resolution Professional ('IRP') to manage the affairs of the Corporate Debtor, who later on confirmed to act as RP by the CoC in the matter. The Applicant submits that on 12.02.2021, he 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., Indian Express (English) and Rashtradoot

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Kota (Hindi), thereby inviting claims from the creditors of the Corporate Debtor as envisaged in the Code.

3. Upon receipt of claims till 24.02.2021, the Applicant constituted the Committee of Creditors ('CoC') on 04.03.2021 and convened the 1<sup>st</sup> CoC meeting on 11.03.2021 wherein there was only one creditor (Operational Creditor), namely J.N. Khandelwal & Co. and therefore holding 100% voting rights. The Applicant further submits that in the 2<sup>nd</sup> CoC meeting convened on 31.03.2021, the Applicant got Form G approved from the CoC for publication and got the draft for request for Resolution Plan and approved the eligibility criteria. The RP also appointed Registered Valuer to value the Securities and Financial Assets of the Corporate Debtor. In the 3<sup>rd</sup> CoC meeting held on 10.06.2021, the CoC approved the decision of RP for extension of invitation of Expression of Interest and re-issue of Form G in the newspaper.
4. The Applicant stated that on 29.07.2021, the 4<sup>th</sup> meeting of CoC was convened, and after considering the feasibility and viability of the Resolution Plan submitted by the Resolution Applicant, it was approved with 100% voting share.
5. It is further stated that the RP, in compliance with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for

Corporate Persons) Regulations, 2016, has prepared Form H.

6. The Applicant RP has provided brief details of the Resolution Plan, which are as follows:

Sr. No.	Particular	Total Amount (in Rs.)	Total Amount of Claimed Received (in Rs.)	Amount Proposed in Resolution Plan (in Rs.)	Amount Admitted (in Rs.)
1.	IRP Cost	2,61,062/-	2,61,062/-	2,61,062/-	2,61,062/-
2.	Secured Financial Creditors	Nil	Nil	Nil	Nil
3.	Unsecured Financial Creditors	1,90,42,550/-	Nil	Nil	Nil
4.	Operational Creditors	1,65,465/-	1,50,000/-	16,000/-	16,000/-
5.	Workmen - Employees	-	-	-	-
6.	Statutory dues	-	-	-	-
	Total	1,94,69,083/-	4,11,062/-	2,77,062/-	2,77,062/-

7. It is stated in the Auditor's Report filed at Annexure F of CP No. (IB) 252/10/JPR/2019 that the company does not have any immovable properties; the inventories of the company comprise of shares and securities kept in the electronic format. Further, the company neither has any loans or borrowings from any financial institution, banks or government nor raises

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any money through an initial public offer or further public offer (including debt instruments).

8. It is further stated that as per the Information Memorandum, no claims have been received concerning Financial Creditors and any liability arising after the effective date; the maximum liability of the Resolution Applicant shall not exceed Rs. 1,000/- for each case. The Resolution Applicant is not aware of the liquidation value of the Corporate Debtor; therefore, no amount shall be payable to any Operational Creditors. However, as a goodwill gesture, has proposed Rs. 16,000/- payable to the Operational Creditors for the admitted claim of Rs. 1,50,000/-.
9. Accordingly, the Applicant RP is duty-bound to prefer an application under Section 30(6), and 31 of the Code read with Regulation 39(4) of the Regulations seeking approval of the revised Resolution Plan duly accepted by the CoC from this Authority. The Applicant has submitted the resolution plan and 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 v. Satish Kumar, Civil Appeal No. 8766-67 of 2019* 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 parameters of the said judgement, inter alia, maximisation of value of the assets of the Corporate Debtor and interest of all the stakeholders has been taken into consideration. The copy of the Resolution Plan and the compliance certificate in Form H is annexed as Annexure 4.

10. The Applicant RP has stated that the Resolution Plan envisages the Corporate Debtor's revival and sustain it as a going concern. However, the RP proposes to convert Corporate Debtor into a Limited Liability Partnership. In case of rejection of the revised Resolution Plan, the Corporate Debtor would require liquidation, which would seriously prejudice all stakeholders' interests.
11. 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 Resolution Plan ought to be approved by 66% of voting share of financial creditors. It is submitted that the CoC has duly authorised the Resolution Plan by a majority of 100% of the members.
12. We have carefully considered the submissions of the learned Counsel for the RP and the learned Counsel for the resolution applicant and have perused the record.

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13. The Corporate Debtor was incorporated on 09.02.2007, and the CIRP proceedings were initiated under Section 10 of the Code against the Corporate Debtor vide order dated 09.02.2021. The present Application is filed for approval of the resolution plan submitted by Mr. Satish Chaudhary (Successful Resolution Applicant). The permission has been sought under the provisions of Section 31 (1) of the Code.
14. We may 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 is as under (Para-No.5 of Form H) –

Sr. No	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	JN Khandelwal & Co.	100%	Voted For

15. The details of stakeholders under the resolution plan are given in Para 7 of Form-H:

Sr. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount provided to the Amount Claimed
1.	Secured Financial Creditors	(a) Creditors not having a right to vote under Section 21 (2) (b) Other than (a)	NA	NA	NA	NA

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	(Internal Pg. 7 of the Resolution Plan and the Page No. 23 of the Application)	above: (i) Who did not vote in favour of the resolution plan (ii) Who votes in favour of the resolution plan				
		Total [(a) + (b)]	NA	NA	NA	NA
2.	Unsecured Financial Creditors  (Internal Pg. 7 of the Resolution Plan and Pg. No. 23 of the 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 votes in favour of the resolution plan				
		Total [(a) + (b)]	NA	NA	NA	NA
3.	Operational Creditors  (Internal Pg. 6 and 7 of the Resolution Plan and Pg. 22 & 23 of the Application)	a) Related Party of Corporate Debtor b) Other than (a) above: (i) Government (ii) Workmen (iii) Employees (iv) Others	1.5	1.5	0.16	10.67%
		Total [(a) + (b)]	1.5	1.5	0.16	10.67%
	Other debts and dues		NA	NA	NA	NA
	Grand Total		1.5	1.5	0.16	10.67%

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

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

16. The abovementioned amount of Rs. 16,000/- payable to the Operational Creditors is proposed to be paid within a period of 30 days of the effective date as per the Repayment Schedule provided in the Resolution Plan. Furthermore, the RP to buy the all-outstanding dues/liability standing in

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the books of accounts due from the Corporate Debtor without any further action the creditors for a total consideration of Rs. 1,000/- as full and final settlement of their dues, which shall be paid within 30 days of the effective date.

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

Section of the Code/Regulation No.	Requirement with respect to the Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
Section 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?	Not mentioned	Yes
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?	Not mentioned	Yes
30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Not mentioned	Yes
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? (c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) Provides for the management of the affairs of the corporate debtor? (e) Provides for the implementation and supervision of the resolution plan? (f) Contravenes any of the provisions of the law for the time being in force?	Para 8	Yes Yes NA Yes Yes No

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?	Not Mentioned	Yes
31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Para 8	Yes
Regulation 35A	Whether the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under Sections 43,45,50 or 66. Before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	Not Mentioned	NA
38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Para 10	Yes
38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all the stakeholders?	Para 10	Yes
38(1B)	(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. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Para 10	Yes
38(2)	Whether the Resolution Plan provides: (a) The term of the plan and its implementation schedule? (b) For the management and the control of the business of the Corporate Debtor during its term? (c) Adequate means for supervising its implementation?	Para 10	Yes
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 timeline for the same? (e) The resolution applicant has the capability	Para 10	Yes

	to implement the Resolution Plan		
39(2)	Whether the RP has filed Applications in respect of transaction observed, found or determined by him?	Not Mentioned	NA
39(4)	Provide details of performance security received, as referred in sub-regulation (4A) of Regulation 36B?	Not Mentioned	Yes

18. The approval of the resolution plan has been sought under Section 31(1) of the Code, which reads as follows:

*“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.”*

19. The conditions provided in Section 31(1) of the Code for approval of 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.*

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The satisfaction of the conditions is discussed below.

20. The RP submits that the committee has approved the resolution plan with 100% of the voting share of the financial creditors, and the conditions provided for by Section 30(4) of the Code are satisfied.
21. 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*

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*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.”*

22. 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 (Chapter 10 at Page 36 of the Application) states that 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.

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- b. **Section 30(2)(b):** From the resolution plan (Chapter 10 at Page 36 of the Application), it could be seen that the outstanding of operational creditors is Rs. 1,50,000/- (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. 17,000/- (within a period of 30 days of the effective date) to the Operational Creditors against full settlement of all claims. Concerning payment to financial creditors who has not made any claims to Rs. 1,91,89,825/- the Resolution Applicant is under no obligation to pay any amount for the same. Hence, any secured and unsecured financial creditors claim dues from the Resolution Applicant after the effective date, a total consideration of Rs.1,000/- shall be distributed amongst the creditors in the ratio of their outstanding dues as per books of accounts.
- c. **Section 30(2)(c):** Resolution Plan (Chapter 10 at Pg 36 of Application) provides that the management and control of the business of the Corporate Debtor shall be handed over to the nominee(s) of Resolution Applicant for proper running and operations of the business of the Corporate Debtor subject to the approval of this Adjudicating Authority.
- d. **Section 30(2)(d):** In Chapter 10 Pg.37 of Resolution Plan, it is

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stated that subject to the approval of this Adjudicating Authority, the Board of Directors of the Resolution Applicant shall supervise the implementation and execution of the Resolution Plan.

- 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.
23. The RP has also certified that Mr. Satish Chaudhary, 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.
24. As per the requirement of Regulation 39(4) of the Regulations for performance security, it is stated in the 4<sup>th</sup> Meeting of CoC that the Earnest Money Deposit (EMD) received from the Resolution Applicant should be considered as performance security and the committee approved the same with 100% of voting share. Thus, it is stated in Form H that the same has been complied with.
25. With regard to the compliance under Regulation 35A, it is stated that the same is not available/applicable and also not mentioned in any of the Clauses of the Resolution Plan.
26. A perusal of Regulation 38 would clearly show that by virtue of mandatory

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contents of 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.

27. The Resolution Plan inter-alia entails the following:
- a) No Corporate Restructuring by way of merger, amalgamation and demerger shall be allowed. However, it envisages conversion of the Company into Limited Liability Partnership whereby the Memorandum of Association and the Articles of Association of the Company shall be, automatically, without any further act or deed, be substituted and repealed with the Limited Liability Partnership Agreement.
  - b) No cancellation of any consents, approvals, licenses, concessions, authorizations, permits or the like granted to the Corporate Debtor or for which the Corporate Debtor has made an application for renewal or grant.
  - 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

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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 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 60 days.
28. In view of the above discussion, the Resolution Plan submitted by Mr. Satish Chaudhary as approved by the CoC under Section 30(4) of the Code is hereby authorised. The Resolution Plan so approved 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.

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29. 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 09.02.2021 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.

30. In view of the foregoing, IA No. 249/JPR/2021 is disposed of.

  
**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

  
**RAGHU NAYYAR,  
TECHNICAL MEMBER**