



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

**SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER**

IA (IBC) No. 91/JPR/2023
in CP No. (IB)- 35/7/JPR/2021

(Under Section 30(6) read with Section 31 and 60(5) of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF CIRP:

MR. SATYENDRA PRASAD KHORANIA, RESOLUTION PROFESSIONAL
... APPLICANT

IN THE MATTER OF

KEDIA FINANCIAL SERVICES PRIVATE LIMITED ..FINANCIAL CREDITOR
Versus
M/S AIREN METALS PRIVATE LIMITED .. CORPORATE DEBTOR

Memo of Parties

IN THE MATTER OF CIRP

MR. SATYENDRA PRASAD KHORANIA,
RESOLUTION PROFESSIONAL,
402, OK PLUS DP METRO,
OPP. METRO PILLAR NO. 94,
NEW SANGANER ROAD, JAIPUR -302019
... **APPLICANT**

IN THE MATTER OF

KEDIA FINANCIAL SERVICES PRIVATE LIMITED ..FINANCIAL CREDITOR
Versus
M/S AIREN METALS PRIVATE LIMITED .. CORPORATE DEBTOR

For the Applicant : Satyendra Prasad Khorania, RP
Ankit Jain, PSC
For the CoC : Deepak Kumar Singh, AR
For the SRA : R.P. Sharma



Order Pronounced On 31.03.2023

ORDER

[Per: Shri Prasanta Kumar Mohanty, Technical Member]

1. The present Application has been filed under Section 30(6) read with Section 31 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking approval of the Resolution Plan **submitted jointly by M/s Rajbharti Industries Rajendra Prasad Sharma & Smt. Bharti Sharma & M/s Polywin Industries & M/s Comflex Cables Industries**, which was approved by Committee of Creditors (COC) of M/s Airen Metals Private Limited (Corporate Debtor) with 85.03% voting in the 9th COC meeting, seeking the following reliefs:

- a. Pass necessary order(s)/direction(s) under Section 31 of the Code, approving the Resolution Plan submitted by the Respondent/Successful Resolution Applicant M/s Rajbharti Industries Rajendra Prasad Sharma & Smt. Bharti Sharma & M/s Polywin Industries & M/s Comflex Cables Industries (jointly), which has been approved by the COC with 85.03 % vote casted in favour of the Resolution;
- b. Pass necessary order(s)/direction(s) declaring that upon approval of the Resolution Plan by this Tribunal, the provisions of the Resolution Plan shall be binding on the Corporate Debtor, its creditors, guarantors, members, employees, statutory authorities and other stakeholders in accordance with Section 31 of the Code, and shall be given to and implemented pursuant to the order of this Tribunal;
- c. Pass necessary order(s)/direction(s) declaring upon approval of the Resolution Plan by this Tribunal the liability of the Corporate Debtor for any offence prior to the commencement of CIRP shall cease in accordance with the provisions of Section 32A of the Code.
- d. Pass appropriate orders/directions to permit Union Bank of India having voting share of 81.03 % to pursue the pending application post approval of the Resolution Plan;



- e. Pass appropriate order/directions approving the appointment of the monitoring committee as stated in the Resolution Plan and confirmed by the Committee of Creditors.
- f. Pass necessary order(s)/directions(s) vacating the moratorium on Corporate Debtor imposed under Section 14 of the Code.
- g. Pass necessary order(s)/direction(s) discharging the Resolution Professional Mr. Satyendra Prasad Khorania from the duties of the Resolution Professional of the Corporate Debtor;

True Copy of the Resolution Plan submitted jointly by M/s Rajbharti Industries Rajendra Prasad Sharma & Smt. Bharti Sharma & M/s Polywin Industries & M/s Comflex Cables Industries has been annexed.

2. Briefly stated by the Applicant that:

- 2.1 The application for Corporate Insolvency Resolution Process of M/s Airen Metals Private Limited was filed by Kedia Financial Services Private Limited under section 7 of Insolvency and Bankruptcy Code, 2016 read with rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and was admitted by NCLT, Jaipur Bench vide order dated 26.04.2022
- 2.2 Subsequently, as mandated under Section 15 of the Code and in terms of Regulation 6(1) of the CIRP Regulations, the IRP issued a public announcement on 12.05.2022 in “FORM A” for intimation of initiation of CIRP of Corporate Debtor and for invitation of claim(s) from creditor(s) and 26.05.2022 was stipulated as the last date of submission of claims. The public announcement was published on 13.05.2022 in newspaper “Economics Times” (English Language) and “Dainik Navjyoti” (Hindi Language), having wide circulation.
- 2.3 Pursuant to the public announcement, the IRP collated the claims received, and constituted the Committee of Creditors (CoC) on 02.06.2022 as in terms of Code and Regulation 17 of IBBI (CIRP of Corporate Person) Regulations, 2016 with three financial creditors namely:
 - i. Union Bank of India



- ii. Bank of Baroda
 - iii. Kedia Financial Services Private Limited
- 2.4 Thereafter, the IRP held the 1st meeting of COC on 10.06.2022 wherein the members of the COC deferred all the resolution till next COC. Further 2nd COC meeting was held on 12.07.2022 in which COC has passed the resolution for the appointment and confirmation of IRP as RP.
- 2.5 Further, the RP, in terms of Regulation 27 of the CIRP Regulations, 2016, appointed two Registered Valuers to carry out the valuation for all asset classes, including Plant and Machinery, Land and Building and Securities and Financial Assets.
- 2.6 The Resolution Professional has received more claims from the financial creditor and operational creditors, RP re-constituted the COC and filed report of Re-constitution of Committee of Creditor. Updated list of Creditors has been annexed.
- 2.7 The RP convened the 02nd meeting of the COC on 12.07.2022 wherein an agenda for publication of FORM G inviting expression of interest for acquisition of Corporate Debtor, approval of eligibility criteria for Prospective Resolution Applicant (PRA), the Evaluation Matrix (EM) for evaluating Resolution Plan and Request for Resolution Plan (RFRP) thereto was proposed and the COC approved the resolution *qua* publication of FORM G along with the eligibility criteria. Evaluation Matrix and Request for Resolution Plan.
- 2.8 An Interlocutory Application bearing IA No. 451/JPR/2022, filed on 14.09.2022 under Section 20 & 60(5) of the Code, for seeking directions for transferring the properties purchased by suspended board of director in personal name from the funds of corporate debtor, is still pending before this Tribunal.
- 2.9 Further, in terms of Section 25(2) (h) of the Code read with Regulation 36A of the CIRP Regulation 36A of the CIRP Regulations, the IRP published Invitation for Expression of Interest in FORM G on 20.07.2022 in two leading newspapers wherein the last date for



submission for Expression of Interest (EOI) was stipulated as 10.08.2022.

- 2.10 After the last date of receipt of expression of interest and after verification of the EOI in respect of fulfilling of eligibility criteria, also of verification that applications are not in conflict with Section 29A of the Code, the RP has issued a provisional list of PRAs on 20.08.2022 and shared the IM, RPRP, EM and other related documents with the PRA on 25.08.2022. Later, the RP also issued final list of PRAs on 31.08.2022.
- 2.11 The RP thereafter convened the 5th Meeting of the COC on 22.09.2022 wherein the RP apprised the COC members that some of the PRAs have requested for extension of timeline in submission resolution plan. The COC voted in favour of the resolution to extend the date for receiving the Resolution Plan by another 15 days from 24.09.2022 to 10.10.2022.
- 2.12 The RP thereafter convened the 6th Meeting of the COC on 17.10.2022 wherein the COC was apprised that till 10.10.2022, i.e., the last date of submission of Resolution Plan, 5 (Five) Resolution Plans have been received from the following PRAs, out of total 10 PRAs included in the final list of PRAs:
- i. M/s Rajputana Construction Pvt Ltd
 - ii. AAA Capital Services Pvt. Ltd. and Ms. Seema Goel (Jointly)
 - iii. Agrasen Engineering Industries Pvt. Ltd.
 - iv. Kapish International
 - v. M/s Rajbharti Industries, Smt. Bharti Sharma, M/s Polywin Industries, M/s Comflex Cable Industries (Jointly)
- 2.13 Further, the RP undertook to examine, evaluate and share a report as to whether the Resolutions are in accordance with the Code and relevant Regulations framed thereunder and terms of RFRP.
- 2.14 The RP convened the 6th Meeting of the COC on 17.10.2022 wherein the members of the RP noted that the 180 days of the CIRP period were to expire on 08.11.2022 and it would not be possible to conclude the resolution process within the remaining period. Hence,



the COC resolved to extend the CIRP period by further 90 days. Consequently, an Application for extension of CIRP period was filed under Section 12(2) of the code and this Tribunal vide order dated 18.11.2022 was pleased to allow the said Application and extend the CIRP period by 90 days. Therefore, the CIRP period was extended till 06.06.2023.

- 2.15 Thereafter the RP convened the 7th COC meeting on 10.11.2022 wherein the RP invited the representative of each Resolution Plan. During the discussion, representatives of RA's clarified the queries of the COC members and RP has also submitted query sheet to all the RAs.
- 2.16 The RP convened the 8th meeting of the COC on 08.12.2022 wherein the Resolution Plans submitted were discussed, and it was noted that only three RAs submitted their replies through addendum with revision in the final bid amount. The COC has discussed all the Bids of the RAs and decided to have further negotiations with the RAs to maximize the value of the Corporate Debtor and to give one more chance to all RAs to submit their improved plan and the meeting was adjourned for next phase and it resumed at 04:00 p.m. on 12.12.2022. The RP apprised the COC that three RAs had submitted their revised improved financial bids. The copies of the revised financial bids received were circulated to the voting members of the COC for their consideration. The meeting was then again adjourned for evaluation of all the Resolution Plan and preparation of Evaluation Matrix and the Third phase was convened on 16.12.2022. The COC in the third Phase of this meeting evaluated all the Resolution Plan along with the improvement done by the RAs as per the evaluation Matrix and ranked all the RAs.
- 2.17 Further, the RP apprised the members of the COC that the Auditor- Pipara & Co. LLP appointed by the IRP to assist in determining as to whether any Preferential, Undervalued, Extortionate or Fraudulent transactions under the relevant provisions were committed by the Corporate Debtor within the statutory time period, has submitted the



final transaction report and not found any Preferential, Undervalued, Extortionate or Fraudulent transactions under the relevant provisions.

2.18 The RP detailed analysis of the resolution plans, placed on record the evaluation matrix score of all 5 RAs and the CoC after detailed discussion and deliberation noted the following and put up the Resolution Plans for E-voting:

- i. All Five Resolution Plans are feasible and viable
- ii. As per evaluation matrix, the Resolution Plan submitted by M/s Rajbharti Industries, Smt. Bharti Sharma, M/s Polywin Industries, M/s Comflex Cable Industries (Jointly) has obtained 66 marks and is ranked as H-1.

2.19 Further after deceleration of H-1 Bidder namely M/s Rajbharti Industries, Smt. Bharti Sharma, M/s Polywin Industries, M/s Comflex Cable Industries (Jointly), another bidder M/s Agrasen Engineering Industries Pvt. Ltd has filed an application before NCLT Jaipur Bench and the same was taken up by this Tribunal on 12.01.2023. M/s Agrasen Engineering Industries Pvt. Ltd has prayed in its application to stop the voting process and provide an opportunity for improvement of its submitted financial in this regards this Tribunal vide order dated 12.01.2023 directed the RP that the RP may put the revised plan of the Applicant i.e., Agrasen Engineering Industries Pvt. Ltd before the COC and the same opportunity would also be given to other RAs and the application was disposed of by this AA.

2.20 Further on 19.01.2023, the RP has received an Email from the majority COC member in which it was requested to call upon all the Resolution Applicants to submit the revised improved plan over and above existing resolution plan in a sealed envelope on or before 1.00 pm by 21.01.2023 and after that call the next phase of ninth COC meeting and thereafter, as per the request received from the majority COC member and for the maximization of the value of the assets of the CD along with the best possible spirit of the directions given by



this tribunal, RP has sent an E-mail on 19.01.2023 to all Resolution Applicants to submit revised improved plan over and above existing resolution plan in a sealed envelope and RP has sent an e-mail to COC on 20.01.2023 for calling the second phase of the ninth meeting of the Committee Of Creditors on 21.01.2023 at 01.45 PM and in the second phase of the 9th COC meeting the RP informed to the COC member that three Resolution Applicants have submitted the sealed envelope in the prescribed time. All the sealed envelope have been opened in presence of the COC and COC has evaluated all the resolution plan and ranked following:

S. No.	Name of Applicant	Score as per Approved Evaluation Matrix	Rank
1	M/s Rajbharti Industries, Smt. Bharti Sharma, M/s Polywin Industries, M/s Comflex Cable Industries(Jointly)	66	H-1
2	Agrasen Engineering Industries Pvt. Ltd.	56	H-2
3	Kapish International	41	H-3
4	Rajputana Construction Pvt. Ltd	31	H-4
5	AAA Capital Services Pvt. Ltd. and Ms. Seema Goel (Jointly)	21	H-5

The COC has evaluated the Resolution Plans as per the approved evaluation matrix including the feasibility and viability of the plan, creditworthiness and genuineness of Resolution Applicant, past record and ability to complete the plan along with the other technical & financial parameters etc., and found that plan submitted by the M/s Rajbharti Industries & its consortium is the feasible and viable Plan to revive the corporate debtor & interest of all the stake holders. Further, the Chairman informed that COC has found the updated resolution plan submitted by M/s Rajbharti Industries-Rajendra Prasad Sharma & Smt. Bharti Sarma & M/s Polywin Industries & M/s. Comflex Cables Industries (Jointly) has been declared as Highest 1 (H1) and same would be voted through E-voting .



The members of the COC considered the following resolutions *qua* resolution plans for exercising their voting rights, which is provided herein below:

S. NO	NAME OF FINANCIAL CREDITOR	VOTING SHARE (%)
1.	Union Bank of India	81.39
2.	Bank of Baroda	10.56
3.	Kedia Financial Services Private Limited	1.87
4.	Aditya Birla Finance Limited	1.77
5.	YES Bank Limited	1.08
6.	Axis Bank Limited	3.33
	TOTAL	100

2.21 The members of the COC applying their respective commercial wisdom, approved the Resolution Plan submitted by M/s Rajbharti Industries Rajendra Prasad Sharma & Smt. Bharti Sharma & M/s Polywin Industries & M/s. COMFLEX Cables Industries (Jointly) for a resolution amount of Rs. 51,50,41,701.00 (including payment of Equity Shareholders, Funds for working capital as well as for capital expenses) with 85.03% voting share in its favour. Summary of e-voting results dated 04.02.2023 *qua* approval of Resolution Plans and other Resolutions have been annexed.

2.22 Pursuant to the approval of the Resolution Plan by the COC, the RP issued a Letter of Intent dated 04.02.2023 to the Respondent being the Successful Resolution Applicant, which was unconditionally accepted by the SRA/Respondent on the same day.

3. Brief contour of the approved Resolution plan of SRA- M/s Rajbharti Industries Rajendra Prasad Sharma & Smt. Bharti Sharma & M/s Polywin Industries & M/s. Complex Cables Industries (Jointly), as provided by the Applicant is as follows:

3.1 Final offer/Plan value of Rs. 51,50,41,701/- to be paid as under:

Particulars	Amount (Rs.)	Time Line
Performance Bank Guarantee/Security, as per the terms of RFRP	5,00,00,000**	Within 7 business days of issue of Letter of Intent (LOI)
Upfront Amount	12,08,41,701	Within 30 days from the order received date (T Day).
Remaining Amount – Part -I	12,00,00,000	Within 60 days from



		the order received date (T Day).
Remaining Amount – Part -II	18,92,00,000	Within 90 days from the order received date (T Day).
Remaining Amount – Part -III	8,50,00,000	Within 120 days from the order received date (T Day).
Total	51,50,41,701	

**The amount of PBG does not include in the Total Amount.

* Effective date is the date of approval of Resolution Plan from this Tribunal.

3.2 Distribution of Resolution Plan amount will be taken as under:

Resolution Plan Value	Rs. 51,50,41,701
(Less) CIRP Cost**	Rs. (25,00,000)
Balance Amount available for distribution	Rs. 51,25,41,701

**The Resolution Applicant shall pay a sum of Rs. 25,00,000/- (Rupees Twenty-Five Lac Only) or at actual towards the entire CIRP Costs.

3.3 The CIRP Costs shall be paid by the Resolution Applicant from Upfront payment within 30 days from Trigger date.

3.4 In case the CIRP costs exceeds/lower the sum of 25,00,000.00 (Rupees Twenty-Five Lac Only) provided as aforesaid, then the upward /downward adjustments shall be made from the payment made to Secured Financial Creditor to keep proposed plan amount intact.

Sl. No.	Stakeholders	Claim Admitted (in Rs)	Payment Offer (in Rs)	% to the claims
1.	EPFO Dues	5,418	5,418	100%
2.	Government Dues (Dy. Commissioner, State Tax, Circle A, Zone 4, Jaipur)	9,32,900	2,38,500	25.57%
3.	Government Dues - CGST	80,80,904	10,783	0.13%
4.	Operational Creditors	-	-	-
5.	Unsecured FC	45,77,52,673	5,87,000	0.13%
6.	Secured FC	2,00,13,03,054	51,17,00,000	25.57%
	TOTAL	2,46,80,74,949	51,25,41,701	20.77%



- 3.5** As per the Resolution Plan and as mentioned by the RA, 100% cash balance as on effective date of resolution plan in the bank account, which got opened during CIRP, will be transferred to secured financial creditor in addition to the amount offered in Resolution Plan / addendum of Resolution Plan. **The RA has also proposed to pay 25% of realized amount from the debtors of CD, if realized within the Resolution Plan period.**
- 3.6** As per the Resolution Plan and as mentioned by the SRA that the Immovable property situated in Kolkata except the property mentioned below as office premises in Point No 5.4 at serial No 8, RP has filed an application before NCLT. Jaipur against erstwhile Directors. For the said asset, RA will pay 115% of the liquidation value of assets to secured Financial Creditors and the same will be over and above the amount agreed in the Resolution Plan.
- 3.7** As per the resolution Plan submitted by M/s Rajbharti Industries Rajendra Prasad Sharma & Smt. Bharti Sharma & M/s Polywin Industries & M/s. Comflex Cables Industries (Jointly), the monitoring Committee shall consist of three members i.e.,
- Resolution Professional
 - One representative from RA
 - One representative from COC

4. The Applicant further submits that:

- 4.1 Throughout the CIRP process, the Applicant has received claims from different categories of creditors and the details of the claim amount by the creditors is provided below:

Sl. No.	Name of Creditor	Categories	Amount of claim accepted (Rs.)
1.	Union Bank of India	Secured Financial Creditor	2,00,13,03,054.00
2.	Bank of Baroda	Unsecured Financial Creditor	25,96,09,941.10
3.	Kedia Financial Services Private Limited	Unsecured Financial Creditor	4,60,20,800.00
4.	Aditya Birla Finance Limited	Unsecured Financial Creditor	4,35,56,523.74



5.	Axis Bank Limited	Unsecured Financial Creditor	8,20,09,198.21
6.	YES Bank Limited	Unsecured Financial Creditor	2,65,56,209.52
7.	Employee Provident Fund Organization, RPF, Jaipur	Employee	5418.00
8.	Deputy Commissioner, State Tax, Circle-A , Zone-4, Jaipur	Secured Govt. Dues	9,32,900.00
9.	Central Goods and Services Tax Commissionerate, Department of Revenue, Ministry of Finance, Govt. of India	Unsecured Govt. Dues	80,80,904.00

4.2 Further the SRA has submitted its affidavit as required under Regulation 39(1) of the CIRP Regulations confirming its eligibility in terms of Section 29A of the Code and the same is annexed with the approved Resolution Plan. Furthermore, as required under Regulation 39 (4) of the CIRP Regulations, the RP has also filed the Compliance Certificate in “Form – H” of the schedule of CIRP Regulation with the present Application. True Copy of Compliance Certificate in Form – H has been annexed.

4.3 Section 30(6) of the Code mandates the Resolution Professional to submit the Resolution Plan as approved by the committee of creditors to the Adjudicating Authority for approval under Section 31 (1) of the Code. Accordingly, as the Resolution Plan submitted by the M/s Rajbharti Industries Rajendra Prasad Sharma & Smt. Bharti Sharma & M/s Polywin Industries & M/s. Comflex Cables Industries (Jointly), being Successful Resolution Applicant has been duly approved by the COC with 85.03% vote casted in its favour, therefore the present Application is being filed by the RP before this Tribunal which is the Adjudicating Authority under the Code seeking approval of the Resolution Plan for the Corporate Debtor.

4.4 The Resolution Plan has been approved taking into consideration of all the stakeholders as well as creditors of the Corporate Debtor. It is



submitted that the Resolution Plan contained necessary provisions for its effective implementation.

5. The Applicant/RP has under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, submitted the **Compliance Certificate Form H** as stated below:

5.1 Satyendra Prasad Khorania, an Insolvency Professional enrolled enrolled with ICSI IIP and registered with the Board registered number IBBI/IPA-002/IP-N00002/2016-2017/10002, is the resolution professional for the Corporate Insolvency Resolution Process (CIRP) of CD- Airen Metals Private Limited.

5.2 The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of CD	Airen Metals Private Limited
2	Date of Initiation of CIRP	NCLT Order Passed on 28.04.2022; Copy of Order received on 12.05.2022
3	Date of appointment of IRP	NCLT Order passed on 28.04.2022; Copy of Order received on 12.05.2022
4	Date of public Announcement	13.05.2022
5	Date of Constitution of CoC	02.06.2022
6	Date of First Meeting of CoC	10.06.2022
7	Date of Appointment of RP	12.07.2022
8	Date of Appointment of Registered Valuers	21.06.2022
9	Date of Issue of Invitation for EoI	20.07.2022
10	Date of Final List of Eligible Prospective Resolution Application	04.09.2022
11	Date of Invitation of Resolution Plan	25.08.2022
12.	List of Date of Submission of Resolution Plan	24.09.2022 Extended till 10.10.2022
13	Date of Approval of Resolution Plan by CoC	04.02.2023
14	Date of filing of resolution Plan with Adjudicating Authority	06.02.2023
15.	Date of Expiry of 180 days of CIRP	08.11.2022
16	Date of Order extending the period of CIRP	18.11.2022
17	Date of expiry of extending period of CIRP	06.02.2023



18	Fair Value	548917103
19	Liquidation Value	377674580
20	Number of Meetings of CoC held	09

5.3 The RP has examined the Resolution Plan received from Resolution Applicant M/s Rajbharti Industries Rajendra Prasad Sharma & Smt. Bharti Sharma & M/s Polywin Industries & M/s. Complex Cables Industries (Jointly) and approved by Committee of Creditors (CoC) of Airen Metals Private Limited.

5.4 The RP further certifies that:

- i. The said Resolution Plan complies with all the provisions of the Insolvency and bankruptcy Code, 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force. The Resolution Applicant [M/s Rajbharti Industries Rajendra Prasad Sharma & Smt. Bharti Sharma & M/s Polywin Industries & M/s. Complex Cables Industries (Jointly)] has submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit Resolution Plan. The contents of the said affidavit are in order.
- ii. The said Resolution Plan has been approved by the COC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by COC with 85.03 % of voting share of final creditors after considering its feasibility and other requirements specified by the CIRP Regulations.
- iii. The voting was held in the meeting of the COC on 29.12.2022 where the members of the COC were present and decided to vote through electronic voting system which commenced from 31.12.2022 and ended on 04.02.2023.

5.5 The list of financial creditors of the CD-Airen metals Private Limited being members of the CoC and distribution of voting share among them is as under:



Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for/ Dissented/Abstained)
1.	Union of India	81.39	Voted for (Assent)
2.	Bank of Baroda	10.56	Dissented
3.	Kedia Financial Services Private Limited	1.87	Voted for (Assent)
4.	Aditya Birla Finance Limited	1.77	Voted for (Assent)
5.	Axis Bank Limited	3.33	Absent
6.	Yes Bank Limited	1.08	Absent

5.6 The Resolution Plan includes a statement under regulation 38(IA) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

5.7 The amounts provide for the stakeholders under the Resolution Plan is as under:

(Amount in Rs.)

#	Category of Stakeholders.	Sub-Category of Stakeholder	Amount Claimed	Amount admitted	Admitted provide 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
		(b) Other than (a) above; ²	NA	NA	NA	NA
		(i) who did not vote in favor of the resolution plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	2,52,19,69,000	2,00,13,03,054	51,17,00,000	25.57%



		Total (a)+(b)]	2,52,19,69,000	2,00,13,03,054	51,17,00,000	25.57%
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section(2) of section 21				
		(b) Other than (a) above:				
		(i) who did not voted in favor of the resolution plan (ii) who voted in favour of the resolution Plan	45,88,02,443 NA hence all payments to unsecured creditors will be made within 30 days	45,77,52,673 NA hence all payments unsecured creditors will be made within 30 days	5,87,000 NA hence all payments to unsecured creditors will be made within 30 days	0.13%
		Total[(a)+(b)]	45,88,02,443	45,77,52,673	5,87,000	0.13%
3.	Operational Creditor	(a) Related party of corporate debtor				
		(b) Other than (a) above:				
		(i) Government (ii) Workmen (iii) employees (iv)	90,40,681 NIL 5418(EPFO)	90,13,804 NIL 5418(EPFO)	2,49,283 NIL 5418(EPFO)	2.76% - 100%
		Total [(a)+(b)]	90,46,099	90,19,222	2,54,701	
4.	Other Debts and dues		NIL	NIL	NIL	
Grand Total			2,98,98,17,542	2,46,80,74,949	51,25,41,701	20.77%

5.8 The interests of existing shareholders have been altered by the Resolution Plan as under:

Sl. No.	Category of Share Holder	No. of share held before CIRP	No. of share held after the CIRP	Voting share(%) held before CIRP	Voting Share of held after CIRP
1.	Equity share	4897310	NIL	100%	NIL

5.9 The compliance of the Resolution Plan is as under:



Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
25(2) (h)	Whether the Resolution applicant meets the criteria approved by the CoC having regard to the Complexity and scale of operation of business of the CD?	EOI, Affidavit	Yes
Section 29(a)	Whether the Resolution Applicant is eligible to submit resolution plan	Undertaking dated 10.08.2022	yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit dated 10.08.2022	yes
Section 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 final creditors who did not vote in favour of their 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 force?	a) Clause 8.1 (Page No. 19) b) Clause 8.3 (Page No. 19) c) Clause 8.5.10 (Page No. 21) d) Clause 10 (Page No. 25) e) Clause 2 of Point B (Page No. 35) f) Clause 3.5 of Point B (Page No. 39)	Yes
Section 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?	As per the minutes of Ninth CoC meeting	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 2 (Page No. 35)	yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors.	At Point No. 8.2 and 8.3 at Page No. 19 as well as Point NO. 9.3 of Business Plan section at Page No. 23.	Yes
Regulation	Whether the resolution plan	At Point No. B	Yes



38 (1A)	includes statement as to how it has dealt with the interests of all stakeholders?	Clause 1.3 (Page No. 33)	
Regulation 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 giving details of such non-implementation?	At point No. B Clause 1.4 (Pages No. 34)	No
Regulation 38(2)	Whether the resolution Plan provides. (a) The terms of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) Adequate means for supervising its implementation?	a) point no. 9 of the Business Plan Section (Page No. 23) and Point No. 2 at Page No. 35) b) Point No. 10 (Page No. 25) c) Point No. 2 (Page No. 35)	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 approvals required and the timeline for the same? e) the resolution applicant has the capability to implement the resolution plan?	Point No. B Clause 1.9 (Page No. 34)	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No Transactions has been found	Not applicable
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of Regulation 36 B.]	Point No. B Clause 1.10 (Page No. 35)	Yes

5.10 The CIRP has been conducted as per the timeline indicated as under:

Section of the Code/Regulation No.	Description of Activity	Latest timeline under Regulation 40A	Actual date



Section 16(1)	Commencement of CIRP and Appointment of IRP	T	12.05.2022
Regulation 6 (1)	Publication of Public Announcement	T+3	13.05.2022
Section 15(1) (e) Regulation 12(1)	Submission of Claims	T+14	26.05.2022
Regulation 13(1)	Verification of Claims	T+21	02.06.2022
Section 26(6A)/ Regulation 15A	Application for appointment of Authorized Representative, if necessary	T+23	NA
Regulation 17(1)	Filing of Report certifying constitution of CoC	T+23	04.06.2022
Section 22 (1) and Regulation 17(2)	First meeting of the CoC	T+30	10.06.2022
Regulation 35A	Determination of fraudulent and other transactions	T+115	NA
Regulation 27	Appointment of Information Memorandum to CoC	T+47	21.06.2022
Regulation 36 (1)	Submission of Information memorandum to CoC	T+54	NA
Regulation 36A	Invitation of EoI	T+75	21.07.2022
	Publication of Form G	T+75	20.07.2022
	Provisional List of Resolution Applications	T+100	20.08.2022
	Final List of Resolution applicants	T+115	31.08.2022
Regulation 36 (B)	Issue of Request for Resolution Plan. Which includes Evaluation Matrix and Information Memorandum to resolution Applicants	T+105	25.08.2022
Section 30 (6)/Regulation 39(4)	Submissions of CoC approved resolution Plan	T+165	04.02.2023 due to negotiation with the RAs done by the CoC for maximization of the Value of Assets of CD
Section 31(1)	Approval of Resolution Plan	T=180	
	Extension sought on T+180	T=270	04.02.2023 (T+268)



* Extended actual days, with the approval of CoC

5.11 The time frame proposed for obtaining relevant approval is as under:
NA

5.12 The resolution Plan is not subject to any contingency. Yes

5.13 Following are the deviations/non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, Regulations, made or Circulars issued thereunder (if any deviation/non-compliances were observed, please state the details and reasons for the same):

SL. No.	Deviation / Non-compliance observed	Section of the Code regulation No./Circular NO	Reasons	Whether Rectified or not
1	Submission of CoC approval resolution Plan	Section 30(6)/Regulation 39(4)	Due to negotiation with the RAs done by the CoC for maximization of the Value of the assets of CD And extension of time period by NCLT by 90 days	Yes

5.14 The Resolution Plan is being filed 2 days before the expiry of the period of CIRP provided in Section 12 of the Code.

14A. whether the resolution Professional has, in accordance with Regulation 35A:

a. Applied to the Adjudicating Authority on or before the One Hundred and Thirty-Fifty Day of the Insolvency Commencement Date: Not applicable due to nil transactions has been found.

b. Filed Form CIRP 8 with the Board on or before the One Hundred and Thirty-Fifty Day of the Insolvency Commencement Date: Not applicable due to nil transactions has been found.

5.15 Provide details of Section 66 or avoidance application filed/ pending:
Not applicable due to nil transaction has been found.

However, the property situated at Kolkata which is in the personal name of Director of CD Company, an IA No. 451/JPR/2022 for reversal of the Transaction has been filed by the RP before NCLT,



Jaipur Bench on 14.09.2022 U/s 20 and 60(5) of IBC, 2016 which is pending before the Adjudicating Authority.

- 15A. The committee has approved a plan providing for contribution under regulation 39B as under.
- a. Estimated Liquidation: On Actual Basis
 - b. Estimated Liquid Asset available: Rs. 0.00
 - c. Contributions required to be made: On Actual Basis
 - d. Financial Creditor wise contribution is as under: In the Voting share of FC.
- 15B. The committee has recommended under regulating 39C as under:
- a. Sale of corporate debtor as a going concern: No
 - b. Sale of business of corporate debtor as a going concern: No

The details of recommendation are available with the resolution professional.

- 15C. The committee has fixed, in consultation with the Resolution Professional, the fee payable to the liquidator during the liquidation period under regulation 39 D: The CoC has decided in case the liquidation, the fees will be decided at the time of liquidation.

6. In accordance with our order dated 02.03.2023, Union Bank of India being Majority member of the COC vide its Affidavit dated 09.03.2023 submits that:

- 6.1** The present Resolution Plan submitted by the Successful Resolution Applicant namely Rajbharti Industries Rajendra Prasad Sharma & Smt. Bharti Sharma & M/s Polywin Industries & M/s. Comflex Cables Industries (Jointly) has been approved by our competent higher authority namely the **committee of the Board of Directors of the Bank after consideration of all the aspects including haircut, present valuation of the assets, other assets of guarantors, capability of resolution applicants, viability of the plan and the said resolution plan was approved for the maximization of value of assets of the corporate debtor in the best interest of all the stakeholders.**



- 6.2 All the Resolution Applicants have explained their resolution plan in detail and COC has enquired each aspect of resolution plans and also given sufficient opportunities to each applicant to revise their plan.
- 6.3 The Successful Resolution Applicant has proposed the sufficient value in its resolution plan for capital expenditure as well as to run the business of Corporate Debtor and as per its Resolution Plan, Resolution Applicant is creating backward integration and the final product produced by the Corporate Debtor will be utilized as raw material in the business of Resolution Applicant so the shortage of working capital will not arise and the Resolution Applicant are also ready to infuse more fund for working capital & capital expenses if required. The Resolution Applicant has also made necessary provision to appoint/deploy necessary man power required for operations.
- 6.4 **The plan does not release the personal and other guarantors and bank will continue take further actions as per the provisions of the applicable of laws to recover remaining amount**
- 6.5 During the CIRP Process and with the approval of COC, an audit has been conducted by an independent agency and on the basis of his report no PUFÉ transaction was found during the period under investigation and said report was also discussed in the 9th COC meeting itself.

7. In accordance with our order dated 02.03.2023, the SRA vide Affidavit dated 10.03.2023 submits that:

- 7.1 The present Resolution Plan submitted is qualifying all the necessary & mandatory points as per the provisions of Insolvency & Bankruptcy Code 2016 as well as the judgment passed by the Hon'ble Apex Court in the matter of Rainbow Papers Limited regarding the payment allocation to government dues having status as secured dues as well as secured financial creditor dues.



7.2 The Resolution Plan submitted is to revive the sick unit namely Airen Metals Pvt. Ltd and given best value in the resolution plan for maximization of the value of assets of the corporate debtor.

7.3 The Resolution Applicant, has done proper due diligence and proposed the sufficient value in the resolution plan to run the business of corporate debtor and as per the resolution plan, the RA will do backward integration and the final product produce by the Corporate Debtor will be utilized as raw material in the business of Resolution Applicant so the shortage of working capital will not arise and the Resolution Applicant is also ready to infuse more fund for working capital & capital expenses, if required.

8. In accordance with our order dated 02.03.2023, the RP/Applicant vide Additional Affidavit dated 11.03.2023 submits that:

8.1 On the basis of documents scrutinized, the present Resolution Plan submitted by the Resolution Applicant, is qualifying all the necessary & mandatory points as per the provisions of Insolvency & Bankruptcy Code 2016 as well as the judgment passed by the Hon'ble Apex Court in the matter of Rainbow Paper payment allocation to government dues having status as secured financial creditor dues.

8.2 Due to changes restrictions in the FORM H, the RP has clubbed the total claim of government dues (secured & unsecured portions) and clubbed the amount offered by the Resolution Applicant to them. The Resolution applicant in its Resolution Plan clearly bifurcated both the amount offered to Secured Government Creditor as well as Unsecured Government Creditor as per the judgment passed by the Hon'ble Apex Court in the matter of Rainbow Papers Limited. The Details of bifurcation of Government dues are as follows:

Sl. No.	Stakeholders	Claim Admitted (In Rs.)	Payment Offer (In Rs.)	% to the claims
1.	Government Dues (Dy. Commissioner, State Tax, Circle A,	9,32,900	2,38,500	25.57% Same as offered to



	Zone 4, Jaipur)			Secured FC
2.	Government Dues- CGST	80,80,904	10,783	0.13% Same as offered to Unsecured FC

8.3 During the CIRP process no claim of employee as well as labor has been filed by the RP.

9. IA No. 451/JPR/2022 has been filed by the RP under Section 20 & 60(5) of the Code, for transferring the properties purchased by Suspended Board of Director in personal name from the funds of corporate debtor, seeking the following reliefs:

- a. Necessary directions or orders be passed to District Sub-Registrar of Howrah, Government of West Bengal to record the necessary entries in the name of the Corporate Debtor in respect of the immovable properties mentioned in Para 6.
- b. Necessary directions or orders be passed in favour of the Corporate Debtor that they may be allowed to utilize the immovable property for the interest of the Corporate Debtor.

The Respondent vide his reply dated 11.11.2022 have submitted that though the transferor Mr. Alok Singhania as well as the buyer Mr. Sudhir Agarwal have been holders of the properties in terms of the title deeds, yet the physical allotment of the property has never been made by the Howrah Chamber of Commerce and Industry (HCCI) to the Respondent, nor there has been any sub division or demarcation in the form of plots of land over the subject agricultural land has taken place on the spot till date. M/s Almetal Industries Pvt. Ltd. was indebted to the CD Company for Rs. 7.47,76,49.00 as on 31.12.2012 out of which Rs 2,72,76.493/- was the unsecured amount. The properties transferred by Mr. Alok Singhania to the CD M/s Airen Metals P. Ltd., reduced the debt by Rs. 24.00 lakhs only. Hence the CD Airen Metals P. Lid, has filed an application U/s 9 of IBC, 2018 before the NCLT Kolkata for recovery of its dues, as Operational



Creditor, which application has been registered at No. CP(IB)/84/(KB)/2021, which is still pending.

The Respondent further submits that though the title deeds of the properties are in the name of the erstwhile Director Mr. Sudhir Agarwal, the ownership and possession of the property has always been that of the CD- Airen Metals Private Limited. He has no objection as to recording the properties in the name of the CD Company, provided that the expenses for such transfer be borne by the RP or the Financial Creditors of the CD.

ORDER

10. The Insolvency and Bankruptcy Code, 2016, defines Resolution Plan as a plan for Insolvency Resolution of the Corporate Debtor as a going concern. **The Resolution Plan must resolve insolvency (rescue a failing, but viable business); should maximize the value of assets of the Corporate Debtor, and should promote entrepreneurship availability of credit and balance the interests of all the stakeholders.**

11. In the backdrop of the object of the IBC, it is amply clear that the **Resolution is Rule and the Liquidation is an Exception.** Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. **IBC therefore, does not allow liquidation of a corporate debtor' directly.** It allows liquidation only on failure of corporate insolvency resolution process. It rather facilitates and encourages resolution in several ways.

12. Keeping in view such object behind the enactment of the Code, and the intention of the Legislature, priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the employees of the corporate debtors. In the interest of justice and in order to achieve the object of the Code, liquidation of a company can be only as a last resort, wherein, all efforts for bringing a Resolution Plan were failed or it



cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per the apex court's decision in the matter of ***K. Saahidhar Vs. Indian Overseas Bank & Ors.***

13. On perusal of the records, **it is found that the Resolution Plan confirms to the criteria as provided under clauses (a) to (f) in section 30(2) of the Code and the CoC approved the Resolution Plan by 85.03% voting. The value offered by the Resolution Plan is higher than the value of liquidation.** The Resolution Plan also confirms to such other requirements as may be specified by the Board. **The Resolution Professional has also certified that the Final Resolution Plan is in conformity with the provisions of the IBC.**

14. The RP has filed **IA No. 451/JPR/2022** under Section 20 & 60(5) of the Code, with regards to for transferring the Kolkata properties bought by Erstwhile Suspended Board of Director in personal name from the funds of Corporate Debtor. **During the hearing on 03.02.2023, the counsel appeared for the Suspended Director in whose name the property stands confirmed that he would transfer the property to the SRA/CD and on the other hand the SRA has confirmed to pay 115% of the liquidation value of the assets to the secured Financial Creditors within three months from today. The same transaction has to be completed within three months and the amount shall be distributed in the same percentage as approved in the Resolution Plan. Hence this IA No. 451/JPR/2022 stands disposed of.**

15. The RP as well as the CoC appeared and have submitted that they have not found any Preferential, Undervalued, Extortionate or Fraudulent transactions under **Sec. 43, 45, 49, 50, 66 of IBC.** Hence no IA is filed under these Sections of IBC and the same is taken on record.



16. **Personal guarantees not be waived:** Personal Guarantors are not to be discharged by virtue of the approval of this Resolution Plan. FC retains its right to proceed against the Guarantors.

17. During the hearing of this matter on 02.03.2023, this bench sought certain clarifications from the main Financial Creditor in the CoC with regard to the acceptance of such percentage of the haircut but it has been submitted by them that they have accepted such haircut considering several aspects and the decision is a commercial decision. The Plant/CD is closed now but the SRA has confirmed that they have sufficient funds to start the operations of the CD. If the amount earmarked in the Plan is not sufficient, they shall infuse the required funds for starting operations.

18. On perusal of the Resolution Plan, we are of the considered view that the Resolution Plan meets the requirement of Section 31 r/w Section 30(2) of the Code. Therefore, the present application IA (IBC) No. 91/JPR/2023 is allowed and the Resolution Plan is approved with the certain observations and compliances of the following Conditions:

18.1 Approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/ Corporate Debtor as those are the subject matters of the concerned Competent Authorities having their proper/ own jurisdictions to pass any appropriate order as the case may be. The Resolution Applicant on approval of the Plan may approach those Competent Authorities/ Courts /Legal Forums/ Offices — Govt. or Semi Govt./State or Central Govt. for appropriate reliefs sought for in the plan. This is not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant has liberty to approach Competent Authorities for any concession, relief or dispensation as the case may be.



18.2 The Monitoring Committee would be of three members consisting of one representative of the SRA, (ii) one representative of the Financial Creditor having highest voting share in the CoC and (iii) Mr. Satyendra Prasad Khorania Resolution Professional, as Head of the Monitoring Committee. The Resolution Professional is the Chairman of the monitoring Committee for supervision of the implementation of the Resolution Plan. Fees of the RP as the Chairman of the Monitoring Committee is to be the same as being paid to the RP during the CIRP period, on monthly basis till the full implementation of the Resolution Plan and the same shall be borne by SRA.

19. The monitoring committee is advised to submit the progress report every quarter till the plant touches the breakeven point. The erstwhile employees may be given preference in service when the plant starts operations The monitoring committee **needs to be wound up at an early date on implementation of the Resolution Plan may be within One year.**

20. **The affidavits submitted by the SRA, RP and Union Bank of India-Major Member of COC in accordance with our order dated 02.03.2023 are taken on record and the same now form the part of the Resolution Plan submitted.**

21. It is further directed that:

21.1 The approved Resolution Plan shall come into force with immediate effect.

21.2 The Resolution Plan shall be subject to the various existing laws in force and shall also conform to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.

21.3 The Successful Resolution Applicant shall, pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws 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(1) or



within such period as provided for in such law, whichever is later or as the case may be.

- 21.4 All relevant parties in relation to the Final Resolution Plan are to be bound by the terms and conditions mentioned therein in accordance with Section 31(1) of the IBC 2016.
- 21.5 All relevant parties are directed to extend full cooperation to carry out the terms and conditions of the Resolution Plan. If there is any deviation in implementing the Resolution Plan, the concerned parties/entity will be liable for punishment as per Chapter 7 (Offences and penalties) of the IBC, 2016.
- 21.6 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 for their recorded on its database.

22. We, the Adjudicating Authority, are of the considered opinion that the Resolution Plan along with affidavits filed by the RA and the CoC meets the requirements as referred to under section 30(2) of the Code. Accordingly, the moratorium on Corporate Debtor imposed under Section 14 of the Code is vacated; the RP is discharged from his duties as RP of the CD, however he is to act as the Chairman of the Monitoring Committee and ensure that the plan is implemented successfully. Hence, IA (IBC) No. 91/JPR/2023 in CP No. (IB)-35/7/JPR/2021 is hereby allowed and the Resolution Plan is approved with the above Observations and Directions.

PRASANTA
KUMAR
MOHANTY

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MOHANTY
Date: 2023.03.31
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**(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority**

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CHANDRA
JOSHI

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by DEEP
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Date: 2023.03.31
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**(Deep Chandra Joshi)
Member (Judicial)
& Adjudicating Authority**