

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH- IV

IA 85/ND/2021 & IA 265/ND/2021

IN

IB No. 742/ND/2021

IN THE MATTER OF:

JAGRITI PLASTICS LTD.

.... OPERATIONAL CREDITOR

VERSUS

PROACTIVE PLAST PVT. LTD

... CORPORATE DEBTOR

& IN THE MATTER OF:

**Sandeep Kumar Bhatt
Resolution Professional
Proactive Plast Pvt. Ltd**

Applicant

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016.

AND IN THE MATTER OF:

**Nitin Gupta
Suspended Director
Proactive Plast Pvt. Ltd**

.....Applicant

Versus

- 1. Sandeep Kumar Bhatt
Resolution Professional
Proactive Plast Pvt. Ltd**
- 2. Committee of Creditors
Proactive Plast Pvt. Ltd**
- 3. Lauls Limited**
- 4. Puneet Iron & Steel Private Limited**

5. Mahima
6. Life Sciences Private Limited
7. Jagriti Plastics Limited

.....RESPONDENTS

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

Order delivered on: 04.03.2022

CORAM:

Sh. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

Ms. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per: Sh. DHARMINDER SINGH, MEMBER (JUDICIAL)

1. The IA 265/ND/2021 is filed by the applicant, Mr. Nitin Gupta under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (the Code) seeking following prayers:
 - a. *Direct the RP to re-verify the claim of Jagriti Plastics Limited and accordingly revise the amounts;*
 - b. *Direct for the resubmission of final amounts offered by the resolution applicants to the Operational Creditors in a sealed form before this Adjudicating Authority;*
 - c. *Direct the CoC to decide over the Resolution Plans of the Ras after such incremental value is revealed under the present proceedings;*
 - d. *Pass any other orders in the facts and circumstances of the matter.*



2. The IA 85/ND/2021 has been filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016, (the Code) on behalf of the Resolution Professional (RP), seeking approval of the Resolution Plan.
3. Since the prayers of both the IAs are inter-connected to each other, we will dispose both the IAs by this Common order.
4. Brief facts in respect of IA 265/ND/2021 are that the CIRP was initiated against the Corporate Debtor vide order dated 14.10.2019 and Mr. Rakesh Kumar Jain was appointed as Interim Resolution Professional of the Corporate Debtor. Thereafter on 29.01.2020, Mr. Sandeep Kumar Bhatt was appointed as Resolution Professional.
5. Subsequently, in the last meeting of CoC held on 23.11.2020, the members of CoC and applicant were informed about revised offers of the Resolution Applicant and it was also informed that only one Resolution Applicant was allowed to revise its offer.
6. The case of the applicant, Mr. Nitin Gupta is that the applicant raised an objection against one resolution applicant, Jagriti Plastics Limited on 22.11.2020, on which the Resolution Professional replied that no such opportunity was granted, but as per the documents the offered amount was enhanced in proposed Resolution Plan of Jagriti Plastics Limited, whereas it is seen that earlier the amount proposed for Operational Creditors was Rs. 30 lacs which is enhanced to Rs. 91 lacs.
7. Applicant also raised objection to the resolution plan of Jagriti Plastics Limited in respect of clause 4.17.1, which deals with recovery on account of Section 66, 43,45 etc. which has been claimed by

Jagriti Plastics Limited, in that case Jagriti Plastics Limited will get the Corporate Debtor free.

8. The applicant also pointed out that Jagriti Plastics Limited is also an operational creditor of the Corporate Debtor and have claim of Rs. 533.71 lacs approximately and total claims of operational creditors is Rs. 1166 lacs, hence, Jagriti Plastics Limited owing 50% of the total operational debt of corporate debtor. Therefore, any amount proposed for operational creditor will be reduced to half as half will be received by Resolution Applicant itself.
9. The applicant even alleged that as per books of accounts of Corporate Debtor, nothing is due and payable to Jagriti Plastics Limited and the Resolution Professional has wrongly admitted the claim of Jagriti Plastics Limited as operational creditor of the corporate debtor.
10. The applicant also argued that grave prejudice will be caused to the other creditors and stakeholders in case of Resolution Plan of Jagriti Plastics got approved.
11. The respondents in IA 265/ND/2021 have their respective replies to the application and submitted as follows:

Reply of Respondent No. 1:

- i. It is submitted that on 06.11.2020 when all the 4 resolution plans filed by Respondent No. 3 to 6 were discussed it has been noticed that excess amounts were proposed to be paid to Financial Creditor, Canara Bank in all resolutions plans and all resolution applicants were advised to revise their plans and use

this amount for payment to the operational creditors instead. So, equal opportunities were given to all Resolution Applicants to revise their respective resolution plans. The same facts were duly recorded in minutes of 12th and 13th meeting of CoC held on 06.11.2020 and 23.11.2020. The resolution professional also placed e-mails communications in support of its claim.

- ii. It is also clarified that the claims of all the creditors were verified by erstwhile Interim Resolution Professional not by respondent no.1 and Respondent No.1 was never biased towards Jagriti Plastics Limited.
- iii. The resolution professional further mentioned that admittedly jagriti Plastics Limited will receive 50% of amount proposed to operational creditors in case of approval of any resolution plan and applicant failed to produce the fact that all the resolution applicants had revised proposed amount to be paid to operational creditor. Further, the applicant has failed to demonstrate that how benefit of one creditor can be prejudice to other creditors or the applicant.
- iv. The applicant pointed out that as per clause 1.13, it has been clarified that any amount received from the avoidance application shall be vested in Corporate Debtor only. The funds of the corporate debtor were siphoned off by the suspended directors and as per law the same should be refunded in the accounts of the corporate debtor only.


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Reply of Respondent No. 2:

- i. That subsequent to receiving the last and final resolution plans Resolution Professional had sent an email dated 03.11.20020 to the Committee of Creditors and all the RA's namely M/s. Mahima Life Sciences Private Limited, Puneet Iron & Steel Private Limited, M/s. Laul's Limited and Jagriti Plastics Limited, whereby RP acknowledge the receipt of Resolution Plans submitted by the resolution applicants.
- ii. It is submitted that on 06.11.2020 when all the 4 resolution plans filed by Respondent No. 3 to 6 were discussed it has been noticed that excess amounts were proposed to be paid to Financial Creditor, Canara Bank in all resolutions plans and all resolution applicants were advised to revise their plans and use this amount for payment to the operational creditors instead. So, equal opportunities were given to all Resolution Applicants to revise their respective resolution plans. The same facts were duly recorded in minutes of 12th and 13th meeting of CoC held on 06.11.2020 and 23.11.2020.
- iii. Further, the claim of the M/s. Jagriti Plastics was duly evaluated, examined by the Respondent No.2 (COC) and after which the plan was approved by the COC in the 13th COC meeting.


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- iv. It has been clarified that as per the Avoidance Application filed by the Resolution Professional the prayer clause of the said application states that "direction with respect to amount of Rs. 12,47,64,023/- received by the unsecured creditors of the CD be vested in the Corporate Debtor for the reasons such payment being preferential", which clearly means that the amount, if recovered, will be vested to the Corporate Debtor only.

Reply of Respondent No. 3:

The respondent no.3 had also raised objections in respect of evaluation matrix and guidelines to submit the resolution plan and also objected the rejection of its resolution plan by CoC by stating that:

- i. That the resolution professional in guidelines and evaluation matrix made it clear that no further chance to revise the resolution plan will be given and the submitted plan will be last and final resolution plan.
- ii. That the resolution professional and CoC have fixed obnoxious norms for the bidders in guidelines as well as in evaluation matrix only to aid respondent no.6, Jagriti Plastics Limited. Some of which has explained below:
- a. Criteria I of evaluation matrix regarding upfront payment shall be made within 10 days from the date of approval of plan by CoC and NCLT. It is claimed that the same is

against law and only to aid Jagriti Plastics Limited, it is stated that the language created confusions for resolution applicants in designing payment timelines.

- b. Criteria II- NPV Factoring (weightage-150% -15 marks): it is argued that in case of 100% upfront payment, how this criterion will help them in gaining marks.
- c. Criteria III- Initial fresh equity infusion for improving operations of the Corporate Debtor- (weightage 50%-5 marks)-it has been pointed out that the matrix is not clear about in case of upfront payment how the marks will be dealt with in this criterion.
- d. Criteria IV- definite source of liquid funds...net worth will not be considered-(weightage 150%-15)- it is stated that the said clause automatically will outcast the respondent no.3 and will be favourable to respondent no.6, Jagriti Plastics Limited.
- e. Criteria V- Term of resolution plan (weightage 50%-5 marks)- it is reiterated that in case of upfront payment how the marks under this criterion will be dealt with.
- f. Criteria VI- experience of promoters of resolution applicants in same line of business- (weightage 250%-25)- it is submitted that the resolution professional again invited resolution plans from previous Resolution Applicants only, knowing the fact that only Jagriti Plastics Limited has previous experience in same line of business.

- iii. That apart the Respondent No.3 has also raised objections in respect of guidelines for submission of resolution plan. It has been pointed out that as per guidelines no further opportunity to revise the resolution plan is to be given to any resolution applicant and Jagriti Plastics Limited was favoured by resolution professional in revising its plan.
- iv. It has been mentioned that upon asking the resolution professional failed to provide reasons for rejection of proposed resolution plan of the respondent no.3.

Reply of Respondent No. 5:

- i. The Respondent No.5 has submitted that the applicant is a director of the corporate debtor and filed the present application in connivance with the other Resolution Applicants with a motive to take the control of the corporate debtor back in his hands which is prejudice to the rights of the creditors and other stakeholders of the Corporate Debtor.
12. We have heard the arguments of Ld. Counsels for the applicant in IA 265/ND/2021 and of all the respondents and perused the case records.
13. The applicant has raised objection that only M/s Jagriti Plastics Limited was allowed to modify the Resolution Plan i.e. by changing three pages from the Resolution Plan and no such opportunity was given to other Resolution Applicants. It is seen that the facts regarding revision in proposed amount for financial creditors and operational



creditors were duly recorded in the Minutes of the 12th and 13th meeting of CoC held on 06.11.2020 and 23.11.2020. The resolution professional has also placed emails dated 17.11.2020 sent by Puneet Iron and Steels Pvt. Ltd. i.e. Respondent No.3, submitting its clarification regarding same. The Resolution Professional also placed email dated 12.11.2020 from Jagriti Plastics Limited (Respondent No. 6), email dated 17.11.2020 from Lauls Limited (respondent No. 4) and email dated 12.11.2020 from Mahima Life Sciences Private Limited (respondent no.5) regarding same clarifications. On perusal of the emails sent by all the resolution Applicants, it is revealed that the other Resolution Applicants were also given opportunities, but all the resolution applicants other than Jagriti Plastics Limited have clarified that the earlier proposed amounts are their final offers. These emails and minutes of the meetings of CoC show that the contention of the applicant, Mr. Nitin Gupta has no leg to stand. Mover over no authentic endeavour is placed on record to show that three pages were changed by Ld. Resolution Professional. Hence, the arguments on behalf of Ld. Counsel for ex-directors stands discarded.

14. Secondly, the applicant had argued that the outcome of pending application of Section 66 will give undue benefits to the Resolution Applicant Jagriti Plastics Limited. In this regard the resolution professional. The Resolution Professional vide affidavit dated 28.01.2022 has submitted that the clause 1.13 of the approved plan has been now been amended by the Resolution Applicant which now read as follows:

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“ 1.13. all amounts received by the Corporate Debtor pursuant to the exercise of powers and obligations by the Resolution professional under Section 43 to 51 (both inclusive) and Section 66 of the Code (“Avoidance Transaction Amount”) shall be utilised in payment of the outstanding amounts of the operational creditors subsequent to settlement as per Schedule-IV (OC Settlement Amount) and any amounts in excess thereof shall be vested in the Corporate Debtor, subject to any orders passed by the NCLT”

15. The Resolution Applicant M/s Jagriti Plastics Limited has also submitted the same vide affidavit dated 25.01.2022. In view of the above now the said amount will be utilized for payments of the operational creditors, therefore, the objection raised by the applicant does not survive.
16. Resultantly, the IA 265/ND/2021 stands rejected, with no order as to costs.

IA 85/ND/2021

17. The facts mentioned in brief in IA 85/ND/2021 are as follow:
- a. The Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor, Proactive Plast Private Limited, vide order dated 14.10.2019 passed by this Adjudicating Authority, admitting the application under Section 9 of the Code filed by the Operational Creditor (OC) whereby Mr. Rakesh Kumar Jain was appointed as Interim Resolution

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Professional. Thereafter the applicant was appointed as Resolution Professional vide order dated 29.01.2020.

b. It is stated that the erstwhile IRP had completed all process of verification of claims, Publication of EOI, issuing provisional list of Resolution Applicants (RAs), Request of Resolution Plan, Sharing of Information Memorandum, Evaluation Matrix. There is only one Financial Creditor i.e. Canara Bank.

c. The Resolution Professional Received following Resolution Plans with performance security of Rs. 10 Lac by 25.02.2020:

- a. Jagriti Plastics Limited.
- b. Mahima Life Science Private Limited.
- c. Puneet iron & Steel Private Limited.
- d. Lauls Limited.

d. The analysis of all the Resolution Plans alongwith the complete resolution plans was put up to CoC again on 7th CoC meeting held on 21.02.2020. RA M/s Lauls Limited was declared as non-compliant of Section 29A. It is submitted that no final decision could take place in the 7th meeting, however, M/s Jagriti Plastics Private Limited remained H1 resolution applicant based on Evaluation Matrix.

e. In the meantime the nationwide lockdown was declared due to Covid-19 pandemic. In the 9th meeting of CoC held on 17.07.2020, the CoC decided to record, if any RA revise any terms of payment of resolution plan. M/s Jagriti Plastics revised

its payment period from 180 days to 60 days and another RA Mahima Life Science Pvt Ltd. Decreased its offer due to pandemic. RA Puneet Iron and Steel Pvt Ltd took time to revise its Plan and email was sent to all RAs to submit final resolution plan by 20.07.2020. Thereafter, M/s Puneet Iron and Steel Pvt Ltd also submitted its final offer and on 24.07.2020 all the resolution plans presented before the CoC again alongwith evaluation matrix and after Voting received by RP on 21.08.2020 it is seen that the Resolution Plan of M/s Jagriti Plastics Pvt. Ltd. was approved.

f. However, the other three RAs filed applications before this Tribunal and this Tribunal vide order dated 29.09.2020 directed the RP to take resolution plans of the all RAs again analyse and put to CoC. Thereafter, the RP invited all the RAs to submit resolution plan by 01.11.2020. The RP received following Plans:

- i) Mahima Life Science Pvt. Ltd.
- ii) Puneet Iron & Steel Pvt. Ltd.
- iii) Lauls Ltd.
- iv) Jagriti Plastics Limited.

g. It is stated that in 13th meeting of CoC held on 23.11.2020 the resolution plans were discussed in details and as per voting results obtained on 02.12.2020 the Resolution Plan of M/s Jagriti Plastics Limited was approved with 100% voting shares by CoC.



h. It is submitted that the successful resolution applicant has submitted an undertaking under Regulation 39(1)(c) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP regulations) that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code. The Applicant has also submitted that the Successful Resolution Applicant has submitted an affidavit of eligibility under section 29A of the Code.

i. It is stated that As per RFRP the RA was required to deposit the Performance Bank Guarantee of 2% of the Resolution amount within 7 days of approval of the plan by CoC. The RA has already deposited 18.63% of the Resolution Amount directly to the account of the Corporate Debtor amounting to Rs. 2,41,61,395/-. That apart the RA also submitted Bank Guarantee 2% of the resolution amount i.e. Rs. 26,00,000/-.

j. It is submitted that the applicant issued Letter of Intent ('LOI') to the successful Resolution Applicant as the pre-requisite of the Resolution Plan submitted by the Successful Resolution Applicant is satisfied. The Successful Resolution Applicant received and accepted the LOI along with contents. In compliance of sub-regulation (4A) of regulation 36 B of CIRP

Regulations, 2016 and Request For Resolution Plan (RFRP) issued thereon. The copy of the LOI issued to Successful Resolution Applicant and the PBG security submitted by Successful Resolution Applicant has been placed on record.

18. We have heard the parties and perused the case records.

19. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code. Section 30 (2) is quoted below: -

“(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,

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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 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

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(f) conforms 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.]”

20. Further, as per Regulation 38 of the CIRP Regulations, a Resolution Plan is required to contain a statement how it will deal with the interest of all the stakeholders including Financial Creditors and the Operational Creditors and if these are sufficiently provided in the Resolution Plan, the Adjudicating Authority may approve the Resolution Plan.
21. In respect of compliance of Section 30(2) (a) of the Code, it is seen that there is a provision in the Resolution Plan in Part II, clause 1 read with Part-III provides for payment of CIRP costs.
22. As regards compliance of clause (b) of Section 30 (2) of the Code, the applicant has certified in Form H that Part-II, clause 2 read with Part-III of the Resolution Plan provides for the payment of the debts of operational creditors which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the Corporate Debtor under Section 53.

23. In terms of Section 30 (2)(c), management of the affairs and control of the business of the Corporate Debtor has been provided in clause 5.1 Part-II, page 22 of the Resolution Plan.
24. The next requirement envisaged by Section 30 (2)(d) is that it must provide for the implementation and supervision of the Resolution Plan. Clause 5.1.1 Part-II of the Resolution Plan provide for the Monitoring Committee consisting of equal representation of FC, RA and Resolution Professional.
25. Other conditions in terms of Section 30 (2) (e) (f) of the Code provide to ensure that the Resolution Plan does not contravene any of the provisions of the law and conforms to such other requirements as may be specified by the Board. In this regard a declaration has been made at clause 7 Part-II of the resolution plan.
26. Ld. Counsel appearing for the Resolution Applicant submitted that the Resolution Plan is as per the provisions contained in the Code and so, the same may be approved. In terms of Regulation 39(4) of the CIRP Regulations, the Resolution Professional has filed compliance certificate in Form-H which is annexed as Annexure-A-9 at page 139. It has been submitted in the application and in Form H duly certified by Resolution Professional that the final Resolution Plan meets the requirements as laid down in various clauses of Section 30 (2) of the Code.
27. As a sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30 (2) are fulfilled. In respect of compliances regarding CIRP Regulations especially Regulations 38 and 39, the

Resolution Professional has certified in Form-H and explained in details that the Resolution Plan has complied with all the required Regulations.

28. For the reasons discussed above, in our considered view, the Resolution Plan fulfils the requirement as referred in Section 30 (2) of the Code and there are sufficient provisions in the Plan for its effective implementation as required under the proviso of Section 31 (1) of the Code. The Resolution Plan has been approved by CoC with 100% favourable voting.

29. Hon'ble Supreme Court of India in the matter of ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019*** has observed as follows:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”

30. Accordingly, we hereby approve the Resolution Plan, which was earlier approved by the CoC by the majority vote of 100%.

31. It is clarified that Section 30 (2) (f) of the Code mandates that the Resolution Plan should not be against any provisions of the existing law. The Resolution applicant therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein.
32. It is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.
33. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code.
34. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.

Let the copy of the order be served to the parties.

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(SUMITA PURKAYASTHA)

MEMBER (T)

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(DHARMINDER SINGH)

MEMBER (J)