

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

**IA. No. 1415/2023**

**In**

**CP(IB)No. 1474/MB/C-II/2019**

**Application filed under section 30(6), r/w  
Regulation 39(4) of the IBBI (Insolvency  
Resolution Process for Corporate Persons)  
Regulations, 2016.**

Filed by

**Mr. Jayesh Sanghrajka,  
Resolution Professional**

**...Applicant**

*In the matter of*

**Piramal Capital and Housing Finance Limited**

**...Financial Creditor**

Versus

**S.K. Elite Industries (India) Limited**

**...Corporate Debtor**

**Order Pronounced on :- 15.05.2023**

***Coram:***

**Shyam Babu Gautam : Kuldip Kumar Kareer**

**Member (Technical) : Member (Judicial)**

*Appearances (through video conferencing)*

**For the Resolution Professional : Sr. Counsel, Mr. Vikram Nankani**

**For the Successful Resolution Applicant : Mr. Nausher Kohli, Advocate**

**ORDER**

***Per: Shyam Babu Gautam, Member Technical***

1. The present Interlocutory application is filed by **Mr. Jayesh Sanghrajka** the Applicant, Resolution Professional of **S.K. Elite Industries (India) Limited**, the Corporate Debtor by submitting a resolution plan under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking approval of the Resolution Plan submitted by Mr. Atul Richard Rawat (Metro Realty Group). The Plan was duly approved by 100% of the Committee of Creditors (CoC).
2. The Applicant submits that the Financial Creditor, Piramal Capital and Housing Finance Limited initiated the Corporate Insolvency Resolution process (CIRP) against the Corporate Debtor under Section 7 of the Code on 07.05.2021 and appointed the Mr. Arun Kapoor as the Interim Resolution Professional (IRP) of the Corporate Debtor. The Public announcement regarding the initiation of CIRP was made on 11.05.2021.
3. In the first CoC meeting held on 08.06.2021, CoC approved the

replacement of the IRP and the Applicant herein was appointed as the RP of the Corporate Debtor vide Order dated 30.06.2021. Pursuant to the appointment of the Applicant as RP, the Applicant convened 19 CoC meetings.

4. In response to Form G published on 28.08.2021, RP received EOI from three PRA's and CoC approved the draft of RFRP and Evaluation Matrix. Since no resolution plan was received from any of the PRA's, the timeline for submission of the Resolution Plan was extended up to 27.11.2021.
5. In the 12<sup>th</sup> CoC meeting held on 24.02.2022, the PRA's presented their Resolution Plans. The Applicant informed the CoC that the last date of completion of CIRP was 18.04.2022. The Applicant examined both the Resolution Plans and there were certain non-compliances and the same were informed to the PRA's. The PRA's were given an opportunity to submit revised and final resolution Plan by 16.04.2022 and in response to which one of PRA's sought time to submit the plan. Further, none of the PRA's submitted their revised plan and therefore the CoC resolved to go for liquidation of the Corporate Debtor. In view of the same a resolution was passed in the 15<sup>th</sup> CoC meeting to file an application for liquidation for the Corporate Debtor.
6. Subsequently, an email was received from a representative of the Metro Realty Group to submits its Resolution Plan. In the 16<sup>th</sup> CoC meeting held on 31.12.2022, the Applicant apprised the CoC that a proposal received from the suspended director was not concrete. Further, the sole CoC member decided to consider the proposal submitted by the Metro Realty Group. Hence, the members of the CoC decided to

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withdraw the Application of the liquidation.

7. In the 18<sup>th</sup> CoC meeting held on 16.03.2023, the Resolution Applicant was called to discuss its financial proposal of the Resolution Plan. In the 19<sup>th</sup> CoC meeting held on 25.03.2023, the CoC discussed the feasibility and viability of the Resolution Plan and the same was put to vote and the same was approved by the CoC by 100% majority.
8. Further, CoC authorized the Applicant herein to issue Letter of Intent to the Resolution Applicant and also call for performance guarantee of Rs. 5,00,00,000 (Rupees Five Crores Only) within a period of 7 days from issuance of LoI to the Resolution Applicant.

**SALIENT FEATURES OF THE APPROVED RESOLUTION PLAN**

A. The payment as proposed under the Plan is as under ;-

<b>Sr. No</b>	<b>Category of Stakeholders</b>	<b>Amount Claim (Rs.)</b>	<b>Amount Admitted (Rs.)</b>	<b>Amounts provided under the Resolution Plan (Rs.)</b>	<b>Amount provided to Amount Admitted</b>
1.	CIRP Cost	2,85,00,000		2,85,00,000	100%

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2.	Secured Financial Creditors	86,23,46,9 46	86,23,46 ,946	47,15,00,0 00	54.67%
3.	Operational Creditors	NIL	NIL	NIL	
	<b>Grand Total</b>	<b>86,23,46,9 46</b>	<b>86,23,46 ,946</b>	<b>50,00,00,0 00/-</b>	

1. The Resolution Applicant proposes to pay the total resolution amount of Rs. 50,00,00,000/- (Rupees Fifty Crores Only) for Insolvency Resolution of the Corporate Debtor.
2. As per the list of creditors as on 07.05.2021, there were no claims submitted by the Operational Creditors including workmen, employees of the Corporate Debtor and no corresponding liabilities have been disclosed in the Information Memorandum. Further, the Applicant states that there were two employees associated with the Corporate Debtor. However, they never reported to the Applicant during the CIRP nor filed any proof of claim.
3. The Resolution Applicant has liquid investment of over Rs.

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20,00,00,000/- (Rupees Twenty Crores Only) largely in form of value of the marked listed equity shares and mutual funds.

4. Further, the Resolution Applicant proposes that it will either through itself or through SPV bring in and utilize an amount of Rs. 50 Crores within 30 days from the date of approval of the Resolution Plan by the NCLT in following terms :-

Sr. No.	Amount	Instruments for infusion
1.	Rs. 1 Crore	Subscription to Equity Shares of the Corporate Debtor
2.	Rs. 49 Crores	By way of debt through party lending a similar of funding at the discretion of the Resolution Applicant

5. The Applicant states that the acquisition of the Corporate Debtor is as a going concern. The Resolution Applicant shall complete the implementation of the Resolution Plan and shall acquire control of the Corporate Debtor as set out in clause 6 of the plan. The steps involved in the acquisition and implementation of the Resolution are as follows :-

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Step I	Formation of SPV and infusion of funds into the Corporate Debtor and Subscription to Equity.
Step II	Capital Reduction and Extinguishment
Step III	Settlement of Financial Creditor Debt
Step IV	Restructuring

6. The said steps shall not require the consent of any of the Creditors of the Corporate Debtor as the Resolution Plan is being approved by the NCLT.
7. Further, any recoveries from the avoidance transactions in terms of Sections 43, 45, 47, 49,50, 66 of the Code, such sums shall accrue to the benefit of the Assenting Financial Creditors in ratio of their claims admitted by the Resolution Professional. The entire cost of litigation and related expenses for pursuing such recoveries shall be funded by the Financial Creditors in ratio of their admitted claims. The Resolution Applicant shall suitably assist the Resolution Professional and the legal team representing the Resolution Professional and the Financial Creditors, in the avoidance Application matters.
8. The Resolution Plan submitted by the Resolution Applicant is in compliance with the provisions of the Code, the CIRP Regulations and does not contravene any of the provisions of law.

9. The Applicant further submits that the Resolution Plan submitted is in compliance **with Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations**. The RP has provided a compliance certificate in “**FORM H**” as mandated under the Code for seeking approval of the Resolution Plan from this Bench.

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

10. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.
11. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.
12. Further, it is observed that Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such 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

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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 - For the purpose of this section –

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and
- (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

- c) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- a) The implementation and supervision of the resolution plan;
- b) Does not contravene any of the provisions of the law for the time being in force;
- c) Confirms to such other requirements as may be specified by the Board.

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

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

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

to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

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

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
- c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified u/s 30(2)(c) of the Code.
- d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

16. The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through two registered valuers. The aggregate of the average of Fair Value of all the assets is Rs. 4,518.02 Lakhs and that of the Liquidation Value of all the assets is Rs. 3,608.28 Lakhs.

17. One of the justifications for approval of this resolution plan is that the amount proposed under the plan is higher than liquidation value of the Corporate Debtor.

18. The RP has complied with the requirements of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.
19. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of The Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.
20. The Resolution Plan has been approved by the CoC in the with 100% votes in terms of Section 30(4) of the Code.
21. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2)

when the Resolution Plan does not conform to the stated requirements.

22. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom has approved. In para 42 Hon'ble Court observed as under:

*“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

23. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. We are thus inclined to dispose of the Application in the following terms.

**ORDER**

- (i) **The Application IA No. 1415 of 2023 in CP 1474 of 2019 be and the same is allowed.** The Resolution Plan submitted by Mr. Atul Richard Rawat (Metro Realty Group) is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- (ii) no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.
- (iii) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
- (iv) This Tribunal will not deter such authorities to deal with any of the issues arising after giving effect to the Resolution Plan.

- (v) As to the Reliefs and concessions stated in Clause 13 of the Resolution Plan, the exemption as sought for in relation to the stamp duty or tax liability, registration charges, fees arising out of the implementation of the Resolution Plan is not granted.
- (vi) As regards the other reliefs and concessions as sought for which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP as stipulated under Section 32A of the Code, is granted to the Resolution Applicant. With regard to other concessions and reliefs, most of them shall stand subsumed in the reliefs granted above.
- (vii) The reliefs which are not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- (viii) Further, in terms of the Judgment of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited**, on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which are not a part of the Resolution Plan.

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- (ix) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- (x) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (xi) Further from the effective date and until the transfer date, a 3-member Monitoring Committee is to be constituted. The Committee shall consist of any professional nominated by the Resolution Applicant, one nominee of the Assenting Financial Creditor and the Resolution Professional.
- (xii) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- (xiii) The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

**Sd/-**

**SHYAM BABU GAUTAM**  
**MEMBER (TECHNICAL)**

**Sd/-**

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