

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No.340 of 2022
In
CP(IB) No.327/Chd/Pb/2019
(Admitted)**

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

In the matter of:-

Bidar Chemo Trades ...Petitioner/Operational Creditor

Versus

RCHEM Industries Pvt. Ltd. ...Respondent/Corporate Debtor

And in the matter of:-

Harish Malhotra
Resolution Professional for
M/s. Rchem Industries Private Limited
having its registered office at
511-A, Garden Heights, Sirhind Bye Pass Road,
Near DMW, Patiala, Punjab-147001

...Applicant/Resolution Professional

Order delivered on : 22.12.2022

**Coram:HON'BLE SHRI HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SHRI SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present :-

For the Applicant/Resolution :- Mr. Anil Kumar Aggarwal, Advocate
Professional

IA No.340 of 2022
In
CP(IB) No.327/Chd/Pb/2019
(Admitted)

PER: SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

ORDER

IA No.340/2022

The present application has been filed by Mr. Harish Malhotra, Resolution Professional of M/s. Rchem Industries Private Limited, under Section 30(6) read with Section 31 (1) of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) for approval of the resolution plan in respect of the M/s. Rchem Industries Private Limited (**"the corporate debtor"**). The applicant-Resolution Professional filed the present application on 18.04.2022 for approval of the resolution plan, which was approved with a 100% voting share of the Committee of Creditors (**COC**), in its 5th meeting which was held on 28.02.2022. The present application was reserved for orders on 07.12.2022.

2. The Company Petition CP(IB) No.327/Chd/Pb/2019 was filed by the Operational creditor-M/s Bidar Chemo Trades against the corporate debtor, which was admitted into the Corporate Insolvency Resolution Process (**'CIRP'**) vide order dated 06.10.2021

3. Mr Harish Malhotra was appointed as Interim Resolution Professional (**'IRP'**), and the Committee of Creditors (CoC) in its meeting held on 06.11.2021, confirmed the appointment of Mr Harish Malhotra (Reg. No.

IBBI/IPA-001/IP-P00728/2017-18/11223) as the Resolution Professional with 100% voting.

4. The Applicant submits that the public announcement as per Regulation 6 of the CIRP Regulations in Form A as prescribed under the schedule was made on 15.10.2021 in two newspapers i.e. 'Financial Express' (English) and 'Rozana Spokesman' (Punjabi), inviting claims from the creditors of the corporate debtor as envisaged under the Code. The last date for receipt of claims was 28.10.2021.

5. The Interim Resolution Professional constituted the Committee of Creditors in accordance with section 21(2) of the Code, as amended, which comprised one financial creditor i.e. M/s Capital Small Finance Bank Limited holding 100% voting share, respectively, on 06.11.2021. The list of creditors including financial, operational, and other creditors has been attached as Annexure A-11 with the application.

6. The Applicant Submits that a total of six CoC meetings have been held during the CIRP period, details as follows:

Particulars	Date of CoC Meeting	Main points of discussion	Important decision taken
1 st CoC Meeting	06 th November 2021	1. To take note of the action taken by IRP 2. To take note of List of Creditors prepared by the IRP	CoC took note of the action taken by IRP. CoC took note of the list of creditors.

		<p>3. To take note of constituted CoC by IRP</p> <p>4. To approve the cost of CIRP</p> <p>5. To appoint IRP as RP and to fix remuneration and expenses</p>	<p>3. CoC took note of constitution of CoC</p> <p>4. "Resolved that the cost of CIRP amounting Rs. 2, 17,700/- is hereby approved"</p> <p>5. "Resolved that Mr. Harish Malhotra will continue as RP at a total fee of Rs. 5, 00,000/- plus expenses"</p>
2 nd CoC Meeting	14 th December 2021	<p>1. To table the Valuation Reports for discussion and information to members of CoC</p> <p>2. To approve the engagement of Registered Valuers and Expenses incurred by the Registered Valuers</p> <p>3. To release the remuneration and travelling expenses to RP</p> <p>4. To approve the short notice period of Second CoC.</p> <p>5. To approve the RP, if he deems fit, to call all or any future meeting of CoC with</p>	<p>1. CoC took note of the Valuation Reports.</p> <p>2. "Resolved that the appointment of valuers their respective fee and expenses of Rs. 85,340/- are hereby approved and confirmed."</p> <p>3. "Resolved that the remuneration of RP for CIRP process of Rs. 2,50,000/- are hereby approved and confirmed for payment."</p> <p>4. "Resolved that short notice for the Second CoC held on 14/12/2021 hereby approved in terms of regulation 19 (2) of the IBBI (CIRP), 2016."</p> <p>5. "Resolved that the RP can call any future meeting of CoC with Short Notice of</p>

		<p>notice of at least 24 hours or above.</p> <p>6. To discuss and approve the criteria for PRA</p> <p>7. To Authorised/ discuss to take further action in CIRP process</p> <p>8. Appoint Advocate for Professional Advocate Services</p> <p>9. To Approve and confirm the Minutes of Meeting of 1st COC of the Corporate Debtor</p>	<p>24 hours only if he deems, fit approved in terms of regulation 19(2) of IBBI (CIRP) 2016.”</p> <p>6. ”Resolved that the Committee has discussed and approved the criteria for Prospective Resolution Applicant and RP is approved to take further necessary action.”</p> <p>7. Resolved that RP will Publish Form G in two newspapers on or before 20th December 2021 for expression of interest under Regulation 36A (10) of Insolvency and Bankruptcy Regulations are hereby approved and confirm.”</p> <p>8. “Resolved that appointment of Mr. Anil Kumar Aggarwal as advocate for professional services hereby approved and confirmed.”</p> <p>9. “Resolved that the minutes of 01st Meeting of CoC of the Corporate Debtor i.e. M/s Rchem Industries Pvt. Ltd. be and are hereby adopted, approved and confirmed.”</p>
3 rd CoC Meeting	15 th January 2022	<p>1. To approve the Request for Resolution Plan (RFRP) and Evaluation Matrix</p>	<p>1. Resolved that the Request for Resolution Plan and Evaluation matrix was are</p>

			hereby approved and confirmed.”
4 th CoC Meeting	19 th February 2022	<ol style="list-style-type: none"> 1. To vote and approve the Resolution Plan out of all Resolution Plans received from the PRA’s 2. To approve cost of CIRP amounting Rs.20,000/- (Security Guard Salary) 3. To inform the prospective resolution applicants to improve resolution plan and resubmit within five working days 	<ol style="list-style-type: none"> 1. “Resolved that present Resolution Plans shall be dissented and confirmed.” 2. “Resolved that the security guard salary of Rs. 20000/- for two months are hereby approved and confirmed for payment.” 3. “Resolved that the Prospective Resolution Applicants will be asked to improve Resolution Plan and submit within five working days of communication by RP to PRAs hereby approved and confirmed.”
5 th CoC Meeting	28 th February 2022	<ol style="list-style-type: none"> 1. To discuss and vote for Revised Resolution Plan received from Mr. Abhay Kumar Gupta (PRA) 2. To discuss and vote for Revised Resolution Plan received from M/s ARCL 	<ol style="list-style-type: none"> 1. “Resolved that Resolution Plan submitted by Mr. Abhay Kumar Gupta shall be dissented and not approved.” 2. “Resolved that Resolution Plan submitted by M/s ARCL Organics Limited (PRA)

		Organics Limited (PRA)	shall be consented and confirmed as approved”
6 th CoC Meeting	19 th March 2022	<ol style="list-style-type: none"> 1. To discuss and Approve a plan providing for contribution U/R 39B of CIRP Regulations. 2. To discuss and recommend sale of Corporate debtor as going concern 3. To discuss and fix the fee payable to liquidator during the liquidation period under Regulation 39D of the Regulations 4. To discuss and authorised for application to adjudicating authority under 	<ol style="list-style-type: none"> 1. “Resolved that best estimate on liquidation cost (Rs. 10,00,000/-) and committee hereby approved for contribution for the meeting the difference of liquidation cost and liquid assets available shall be consented and confirmed as approved.” 2. Resolved that committee is hereby abstained from voting for recommendation of sale of Corporate debtor as going concern or sale of business of the Corporate debtor as going concern and resolution abstained and not approved.” 3. “Resolved that in terms of Regulation 39D of the CIRP Regulations, committee hereby fix the fee payable to liquidator, if an order of liquidation is passed under section 33 as Rs.50,000/- (Fifty Thousands) per month, for periods specified under sub-Regulation 39D, same is hereby consented and confirm as approved.”

		section 12 for extension of Insolvency resolution process period, if he deems fit.	4. "Resolved that committee hereby approve to file an application under section 12 of the Code for extension of CIRP period and same is hereby consented and confirmed as approved."
--	--	--	--

7. It is stated by the Applicant that as per the valuation reports, the fair value of the corporate debtor was assessed as Rs.2,13,55,000.00/-, and the liquidation value of the corporate debtor was assessed as Rs.1,60,24,000.00/- Crores in terms of Regulation 35 of the CIRP Regulations.

8. It is submitted that the CoC in its 2nd meeting which was held on 14.12.2021 discussed and approved the criteria for prospective resolution applicants. Therefore, invitation in Form 'G' for Expression of Interest("EOI") from potential resolution applicants was published twice on 17.12.2021, for submission of resolution plans for the Corporate Debtor, in terms of section 25(2)(h) of the Code read with Regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"). The last date of submission of EOI as per Form G was 01.01.2022.

9. It is stated that the final extension was granted vide order dated 01.04.2022 in IA 209/2022, whereby it was extended by 90 days from 04.04.2022 i.e, up to 03.07.2022.

10. The Applicant submits that pursuant to the publication of Form-G, the applicant received seven (7) EOIs from the interested parties. Out of this, three were found to be eligible prospective resolution applications, and the other four were found to be non-eligible. In accordance with Regulation 36A(10) of IBBI (CIRP) Regulations, 2016, the applicant issued a provisional list of eligible prospective resolution applicants on 11.01.2022. As per Regulation 36A(11) of CIRP Regulations, objections, if any, to the inclusion or exclusion of a prospective resolution applicant in the provisional list were to be filed within five days from the date of issue of the above provisional list i.e. up to 16.01.2022. However, no objection to the provisional list was received by the applicant.

11. It is submitted that in the 3rd CoC Meeting held on 15.01.2022, the Request for Resolution Plan (RFRP) and the Evaluation Matrix were approved. The applicant-Resolution Professional prepared Information Memorandum (IM) as required under section 25(2)(g) and section 29(1) of IBC, 2016, read with Regulation 36 of IBBI (CIRP) Regulations, 2016. This Information Memorandum was provided to the CoC members and prospective resolution applicants after their

execution and submission of a Confidentiality Undertaking duly stamped and notarized to the applicant. In terms of Regulation 36B of CIRP Regulations, the applicant issued the Information Memorandum, Evaluation Matrix, and Request for Resolution Plan on 16.01.2022. That in terms of provisions of sub-regulation (12) of Regulation 36A of the CIRP Regulations, the applicant issued a final list of eligible prospective resolution applicants on 25.01.2022.

12. The two resolution plans were received by the applicant from the following two prospective resolution applicants namely:-(a). Mr Abhay Kumar Gupta S/o Sh Magharmal Gupta, resident of Pathankot (Punjab); (b). M/s ARCL Organics Limited (CIN-U24121WB1992-PLC056562), having an office at Rampur, P.S. Maheshtala, Budge Budge Trunk Road, 24 Parganas (South), Kolkata-700141 (West Bengal).

13. The Applicant-Resolution Professional conducted the 4th meeting of the CoC on 19.02.2022 where the resolution plans submitted by the above-named PRAs were discussed in detail, and the Prospective Resolution Applicants were asked to improve their respective plans and thereafter the negotiations had also taken place with the prospective resolution applicants. The PRAs sought time to incorporate changes and revise their plans pursuant to the above-said discussions.

14. The Applicant submits that both the prospective resolution applicants submitted their revised resolution plans which were placed before CoC in their 5th Meeting held on 28.02.2022. In terms of section 30 of the IBC, 2016, the applicant confirmed to the Committee that both the resolution plans submitted are in accordance with the clauses specified in the said section.

15. The CoC evaluated the resolution plans submitted by the PRAs in terms of Regulation 39 of the IBBI (CIRP) Regulations as per the Evaluation Matrix to identify the best resolution plan. Both the resolution plans have proposed payments in three months, but the plan proposed by M/s ARCL Organics Ltd. is having more value as per the evaluation matrix.

16. It is submitted that after due diligence and detailed deliberations on resolution plans, the CoC in its 5th Meeting held on 28.02.2022 rejected the resolution plan submitted by Mr. Abhay Kumar Gupta with 100% voting rights cast against it and approved the resolution plan submitted by M/s ARCL Organics Ltd. with 100% voting rights cast in favour of it.

17. The successful resolution applicant had duly accepted the “Letter of Intent” dated 28.02.2022 which was issued by the Resolution Professional as per the provisions of RFRP.

18. The successful resolution applicant/M/s ARCL Organics Limited had submitted a performance security performance guarantee required under sub-regulation (4A) of regulation 36B. M/s ARCL Organics Limited has paid the Performance Security amount of Rs.30,12,500/- through bank transfer in the corporate debtor's current account No.12410000010 with Capital Small Finance Bank Limited on 17.03.2022.

19. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations, which a Resolution Plan is required to adhere to, as follows:

Compliance with section 25(2)(h), 29A, 30(2) of the Code and mandatory contents of Resolution Plan in terms of Regulation 38 & 39(4) of CIRP Regulations

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 operations of business of the CD?	Notarised Undertaking – clause C	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Format IIIA-IB	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Format IIIA-IB	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?	Format VA- clause (b) Format VA-clause (c)	Yes Yes N.A.

	<p>(c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?</p> <p>(d) Provides for the management of the affairs of the corporate debtor?</p> <p>(e) Provides for the implementation and supervision of the resolution plan?</p> <p>(f) Contravenes any of the provisions of the law for the time being in force?</p>	<p>N.A.</p> <p>Format VA- Clause (g)</p> <p>Format VA- Clause (h)</p> <p>Format VA- Clause (i)</p>	<p>N.A.</p> <p>Yes</p> <p>NO</p> <p>Resolution plan not contravenes any of the provisions of the law)</p>
Section 30(4)	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	<p>NA (this can't be part of Resolution Plan)</p> <p>NA (this can't be part of Resolution Plan)</p>	<p>Yes</p> <p>Yes</p>
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Format VA- Clause (g) & Clause (h)	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	N.A.	NO (RP has not made any determination under these sections)
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Format VA- Clause (c)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Format VA- Clause (e)	Yes
Regulation 38(1B)	<p>(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.</p> <p>(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?</p>	<p>Format VA- Clause (hh) i. and ii.</p> <p>N.A.</p>	<p>NO</p> <p>N.A.</p>
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p> <p>(b) for the management and control of the business of the corporate debtor during its term?</p> <p>(c) adequate means for supervising its</p>	<p>Format VA- Clause (f)</p> <p>Format VA- Clause (g)</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	implementation?	Format VA – Clause (h)	
38(3)	Whether the resolution plan demonstrates that – (A) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Format VA – Clause (hh) iii Format VA- Clause (hh) iv Format VA – Clause (h) Format VA – Clause (k) Format VA – Clause (hh) v	Yes Yes Yes Yes Yes
39(2)(b)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NA	NO RP has not determined any amount cover under regulation 39(2)(b)
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	NA	RA has paid security amount through bank transfer of Rs. 3012500/- in Corporate Debtor current account No. 124100000010(Capital small finance bank ltd.) dated 17/03/2022

20. Measures required for the implementation of the Resolution Plan in terms of Regulation 37 of CIRP Regulations:

Regulation 37	Relevant Page Number of the Resolution Plan dealing aforesaid compliance with Regulation (Clause wise)
(a) Transfer of all or part of assets of corporate debtor to one or more persons;	Not Applicable
(b) Sale of all or part of assets whether subject to any security interest or not;	Not Applicable
(ba) restructuring of corporate debtor, by way of merger, amalgamation and demerger;	Not Applicable
(c) the substantial acquisition of shares of corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	ARCL Organics Ltd. (Resolution Applicant) shall be sole shareholder of the corporate debtor <u>Page no. 39 of the application,</u> <u>Clause (aa) of the Resolution Plan</u>
(ca) cancellation or delisting of any shares of the corporate debtor, if applicable	Not Applicable
(d) satisfaction of modification of any security interest	Page no. 39 of the application, Clause k (vii) of the Resolution Plan
(e) Curing or waiving any breach of terms of any debt due from the corporate debtor;	Not Applicable
(f) Reduction in the amount payable to creditors ;	Page No.43 of the application, Payment Schedule (Part of Format V-A Resolution Plan).
(g) Extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor	Not Applicable

(h) Amendment of the constitutional document of the corporate debtor;	Not Applicable
(i) Issuance of securities of corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purposes;	Not Applicable
(j) Change in portfolio of goods or services produced or rendered by the corporate debtor;	Not Applicable
(k) Change in the Technology used by the corporate debtor;	Not Applicable
(l) Obtaining necessary approvals from the Central and State Governments and other authorities.	Page no. 38 and 39 of the application Clause no. (k) sub-para (i) to (v).

21. Details of Resolution Plan/Payment Schedule

The relevant information with regard to the amount claimed, amount admitted, and the amount proposed to be paid by the Resolution Applicant under the said resolution plan is tabulated as under :

(In Rupees)						
Sl. No.	Category of Stakeholder *	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	N.A.	N.A.	N.A.	N.A.
		(b) Other than (a) above:	N.A.	N.A.	N.A.	N.A.
			3,74,96,560/-	3,74,96,560/-	2,55,00,000/-	68%

		(i) who did not vote in favour of the Resolution Plan (ii) who voted in favour of the Resolution Plan				
		Total[(a) + (b)]	3,74,96,560/-	3,74,96,560/-	2,55,00,000/-	68%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	N.A.	N.A.	N.A.	N.A.
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	N.A.	N.A.	N.A.	N.A.
		(ii) who voted in favour of the resolution plan	N.A.	N.A.	N.A.	N.A.
		Total[(a) + (b)]	N.A.	N.A.	N.A.	N.A.
3	Operational Creditors	(a) Related Party of Corporate Debtor	N.A.	N.A.	N.A.	N.A.
		(b) Other than (a) above:				
		(i) Government	3,01,95,692/-	3,01,95,692/-	14,64,143/-**	4.85%**
		(ii) Workmen				
		(iii) Employees	4,71,30,297/-	4,49,40,759/-	21,79,111/-**	4.85%**
		(iv) Other than Government, Workmen and Employees				
		Total[(a) + (b)]	7,73,25,988/-	7,51,36,451/-	36,43,254/-	4.85%
4	Other debts and dues		N.A.	N.A.	N.A.	N.A.
Grand Total			11,48,22,548/-	11,26,33,011/-	2,91,43,254/-	25.87%

Summary of the Financial proposal/payment under the Resolution Plan, is as follows

Particulars	Amount
Resolution Plan Value:	Rs. 3,01,25,000/-
CIRP Cost	Rs. 9,81,746/-
Payment to Secured financial Creditors:	Rs. 2,55,00,000/-

Workmen's & Employees priority dues:	NIL
Operational Creditors	Operational Creditor will get an aggregate amount of Rs. 3643254/- (Thirty six lakhs forty three thousand two hundred and fifty four only). If any new Operational Creditor claim is admitted later on for whatever reason, in that case the aggregate amount set aside for the Operational Creditors i.e., Rs. 3643254/- (Rs. Thirty six lakhs forty three thousand two hundred and fifty four only) will be re- apportioned as per their admitted claims # Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

22. The term of the Resolution Plan will be 90 days from the date of approval of the resolution by the NCLT.

23. Details on Management/Implementation and Relief as per Resolution Plan-Salient Features

- a. Management and Control of the Corporate Debtor post approval of Resolution Plan-Monitoring Agency (Page no. 37,38 subclause g. and h.)
- b. Measures for supervision and implementation of the Resolution Plan from the effective date until the completion date (Page no. 38, sub-clause h)
- c. Management of the Corporate Debtor by Resolution Applicant after the effective date (Page no. 37,38 subclause g. and h.)
- d. Terms of Resolution Plan and its implementation Schedule (Pages no. 33 and 40, implementation schedule is 90 days from the date of approval of the resolution plan)

24. Waivers, Reliefs, and Exemptions sought in the Resolution Plan

IA No.340 of 2022
In
CP(IB) No.327/Chd/Pb/2019
(Admitted)

The applicant has submitted the following facts with regard to the Waivers, Reliefs and Exemptions sought in the Resolution plan:

Sr. No.	Relief and/ or Concessions and Approvals Sought
1.	Request for extension for Renewal of 'Consent to Operate' u/s 21 of the Air (Prevention and Control of Pollution) Act, 1981 for discharging of emission arising out of premises expiring in the month of June 2022, for six months from date of order of approval of Resolution Plan by AA or actual date of expiry, whichever is later.
2	Request for extension for Renewal of 'Consent to Operate' u/s 25/26 of Water (Prevention and Control of Pollution) Act, 1974 for discharge of effluent expiring in the month of June 2022, for six months from the date of order of approval of Resolution Plan by AA or actual date of expiry, whichever is later.
3.	Request for renewal of 'Licence to Import and store Petroleum in an Installation ' under provision of Petroleum Act, 1934 expiring on 31/12/2022, for six months from the date of order of approval of resolution plan by AA or actual date of expiry, whichever is later.
4.	Request to instruct the GST authorities to issue new GST number in the name of corporate debtor (<i>earlier GST registration was cancelled by the department</i>)
5.	Request to instruct the Punjab State Electricity Board / PSPCL to reinstate the power connection for the unit situated at Rchem Industries Pvt. Ltd, Village Bassi Kale Khan, P.O. Hariana, Hoshiarpur (144208), Punjab
6.	Request for permission to enter upon the premises once the initial payment is made within 15 days to rebuild and renovate the Plant & Machinery.
7.	Handover of the title deeds of the corporate debtor to ARCL Organics Ltd. once the total amount is settled with the financial creditor.

25. On a perusal of the reliefs etc sought above, it is seen that the same is claimed under the general reliefs under the IBC, under judicial pronouncements, and under powers pertaining to different government authorities/departments. As regards the aforementioned claims under the IBC, it is clarified that this Adjudicating Authority has powers to decide the reliefs claimed which are directly relatable to the Resolution Process and not over those pertaining to extraneous issues. Regarding the reliefs/waivers pertaining to the domain of various departments/governmental authorities, it is further clarified that this Adjudicating Authority has no power to sanction these waivers, etc. and the Successful Resolution Applicant is at liberty to approach the competent authorities/courts/legal forums/office(s) Government or Semi-Government/State or Central Government for appropriate relief(s) sought in the plan. Approval of the Resolution Plan does not mean automatic waivers.

26. It is directed that any relief sought in the resolution plan, where the contract/agreement/understanding/proceedings/actions/notice etc. is not specifically identified or is for future and contingent liability, is at this moment not acceded to.

27. The Resolution Applicants shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.

28. The Resolution Professional filed a compliance affidavit pursuant to the order dated 02.06.2022, vide diary No.00662/2 dated 20.07.2022, stating that Resolution Professional has not determined any transaction covered under section 43, 45, 50, or 66 of IBC, 2016, and hence no application has been made to this Adjudicating authorities under these sections. Thus, there is compliance with respect to Regulation 35-A of CIRP Regulations, 2016.. Moreover, the undertaking to this effect has also been given by the Resolution Professional in Form H. As per the Audited Balance Sheet of the Corporate Debtor as at 31.03.2018, the outstanding amounts with regard to PF, Gratuity and Unpaid salary to workmen and employees are as under-

- a. PF - Rs.6,70,546/-
- b. Gratuity - No amount is payable towards Gratuity. However, there is a provision of Rs.7,20,068/- in the said balance sheet.
- c. Unpaid salary – Wages payable Rs.2,10,045/-
- d. Salary payable - Rs.22,142/-
- e. Salary payable to Directors – 1,27,525/-
- f. Bonus payable - Rs.3,12,374/-
- g. Labour Welfare Fund payable - Rs.4,925/-.

29. The Successful Resolution Applicant has submitted its affidavit vide diary No. 00662/3 dated 01.09.2022 to the effect that the Successful Resolution Applicant will pay the contribution and other sums due from the corporate debtor under any provision of the Employees Provident Fund and Miscellaneous Act, 1952 or the scheme or the Pension Scheme or the Insurance Scheme, and under the Payment of Gratuity Act, 1972 as the case

may be, in respect of the period upto the date of approval of the resolution plan by the Adjudicating Authority

30. The Resolution Professional vide order dated 05.08.2022 passed by this Adjudicating Authority was directed to consider the claims of the applicants in IA No. 157 of 2022 and IA No. 435 of 2022. In compliance with the above order, the Resolution Professional has filed an affidavit stating that the claims of the applicants were placed before the 7th CoC held on 20.08.2022 and admitted the same amounting to Rs. 2,41,58,288 and Rs. 3,24,40,710/- with 100% voting. A fresh list of creditors as of 21.08.2022 has been prepared including the name above applicants as operational creditors.

31. This Adjudicating Authority vide order dated 12.09.2022 directed a clarification in the context of the decision of Hon'ble Supreme Court in the matter of ***State Tax Officer (1) Vs. Rainbow Papers Limited in Civil Appeal No.1661 Of 2020 With With Civil Appeal No.2568 OF 2020 order dated 06.09.2022 Case citation: (2022) ibclaw.in 107 SC***. Pursuant to the above, Resolution Professional filed its affidavit vide diary No.01116/23 dated 20.10.2022, submitting that as per the list of creditors submitted by the Applicant/ Resolution Professional, an amount of Rs. 3,01,95,692.00 is due to be paid by the corporate debtor to Deputy/Assistant Commissioner, CGST Division, Hoshiarpur, Punjab under the Central Goods and Services Tax Act, 2017. The amount due from the corporate debtor under the CGST Act, the Central Government/ State Government has no security interest by operation of law because Section 82 of the CGST Act, 2017 saves the provisions of the

Insolvency and Bankruptcy Code, 2016. Text of Section 82 of CGST Act, 2017 is reproduced here below:-

“Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.”

32. It is further submitted that in case any Government/ Government Authority dues are found to be having security interest created by operation of law, the amount payable to the secured creditors under the resolution plan will be distributed as per the provisions of Section 53 (1)(b)(ii) of IBC, 2016.

33. In this context, we make a reference to the decisions of the Hon'ble NCLAT in the case of ***Jet Aircraft Maintenance Engineers Welfare Association Vs Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd. & Ors. Company Appeal (AT) (Insolvency) No. 752 of 2021*** wherein, the Hon'ble NCLAT has analysed the provisions of Section 82 of the Maharashtra GST Act, 2017 which contains an exception with regard to Code, hence, on the strength of dues under Maharashtra GST Act, 2017, no charge can be claimed on the assets of the Corporate Debtor. It held;

*“Hon'ble Supreme Court in **State Tax Officer vs. Rainbow Papers Limited (2022) ibclaw.in 107 SC** had occasion to consider Section 48 of the Gujarat Value Added Tax Act, 2003. The Hon'ble Supreme Court held that Section 48 of the Gujarat Value Added Tax, 2003 is not contrary to Section 53 of the Code and the State was held to be secured creditor on the strength of the charge under Section 48.(p125-126)*

The above judgment of the Hon'ble Supreme Court was passed on the strength of Section 48 of Gujarat Value Added Tax Act and the reason for holding the State Tax Officer as secured creditor was clearly mentioned, which judgment also does not come to any aid to the Appellant before us in view of the specific exclusion of the Code under Section 82 of the Maharashtra GST Act, 2017, as noticed above. We, thus, are of the view that Department of State Tax, the Appellant, is an Operational Creditor and its liquidation value being nil, on the ground raised by the Appellant, no interference is called for in approval of the Resolution Plan”.

In view of the above discussion, we hold that the dues towards CGST in the present case are operational dues and would be treated as such in the distribution under the waterfall mechanism as per section 53(1) of IBC.

Findings

34. On hearing the submissions made by the learned counsel for the Resolution Professional and perusing the records, we find that the Resolution Plan has been approved at a total Resolution Value of Rs. 3,01,25,000/- .The resolution applicant proposes to make payment to secured financial creditors Rs. 2,55,00,000/- Lakhs. The Resolution Applicant proposes to pay Rs. 3643254/- Lakhs to the Operational Creditors as per Financial Proposal.

35. As per the CoC, the Resolution Plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.

36. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the Code and complies with Regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Orders

37. Therefore, subject to the observations made in this order, we hereby accord our approval to the Resolution Plan.

38. It is further directed that the Resolution Applicant, on taking control of the corporate debtor, shall ensure compliance under all applicable laws for the time being in force. As far as the question of granting time to comply with the statutory obligations or seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under Section 31(4) of the Code.

39. The Resolution Plan as approved shall be binding on the corporate debtor and its employees, members, and creditors, including the Central Government, State Government, or Local Authority, to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

40. The Moratorium imposed under Section 14 shall cease to have effect from the date of this order.

41. The Resolution Professional shall stand discharged from his duties with effect from the date of this order. However, he shall perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.

42. The Resolution Professional is further directed to hand over all records and properties to the Resolution Applicant and shall finalize the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Resolution Professional to finalize the further line of action required for starting the operation.

43. In case of non-compliance with this order or withdrawal of the Resolution Plan, the performance security amount already paid by the Resolution Applicant shall be liable to be forfeited, in addition to such further action as may be permitted under the law.

44. Liberty is hereby granted for moving any application if required in connection with the implementation of this Resolution Plan.

45. The Resolution Professional shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

46. The Resolution Professional shall file a copy of this order with the Registrar of Companies, Punjab & Chandigarh, inter alia, for updating the status of the corporate debtor.

47. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, Punjab and Chandigarh.

48. The application bearing IA No. 340 of 2022 and the main Company Petition i.e., CP (IB) No. 327/Chd/Pb/2019, shall stand disposed of accordingly.

49. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

December 22, 2022
ASH