

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, BENCH-V**

I.A. No. 2724 of 2022

IN

C.P. No. 2797 of 2019

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code, 2016.

Mr. Fanendra Munot

**(Resolution professional of Greatweld
Engineering Pvt Ltd)**

...Applicant/Resolution Professional

In the matter of

M/S Karma Roadways

... Financial Creditor

V/s.

Greatweld Engineering Pvt. Ltd.

... Corporate Debtor

Order Dated : 18.07.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance:

For the Applicant: Mr. Nausher Kohli a/w Mr. Kunal Chheda,
Advocates

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The above captioned Application was filed under Section 30(6) and Section 31, of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **“Code”**) by the Resolution Professional (hereinafter referred as (**“Applicant”**), seeking approval of the Resolution Plan, submitted by the Resolution Applicant - Y Axis Structural Steels Pvt. Ltd., which was approved unanimously by the members of the Committee of Creditors (hereinafter referred to as **‘COC’**).
2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated, vide an order dated 29.01.2021, under Section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as **‘the Code’**) (**Admission Order**) and Mr. Fanendra Harakchand Munot, was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors. The COC in its 1st meeting held on 08.03.2021 appointed (**the present Applicant**) as the Resolution Professional (**RP**). The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
 - b. The Applicant published a Public Announcement in Form A in accordance with Section 15 of the Code, on 03.02.2021, in English Newspaper Financial Express and one in Marathi Newspaper Lok Satta, inviting claims from the creditors of the Corporate Debtor.
 - c. The claims **received** and **accepted** by Interim Resolution Professional are as under:

Sr. No.	Name of Financial Creditors	Amount claimed (Rs.)	Amount accepted (Rs.)
1.	Canara Bank	32,02,14,278	31,90,28,631
	Total	32,02,14,278	31,90,28,631

Sr. No.	Name of Operational Creditors	Amount claimed (Rs.)	Amount accepted (Rs.)
1.	Anand Tecknow Aids Engineering India Ltd	1,19,67,955	1,19,67,955
2.	Bhagwati Steel Corporation	74,62,304	74,62,304
	Total	1,94,30,259	1,94,30,259

3. After receiving the claims, the Committee of Creditors was constituted. The constitution of COC is as under:

Sr. No.	Name of the Member	Percentage
1	Canara Bank	100%
Total		100%

4. The Applicant states that in the 2nd COC meeting, dated 28.04.2021, the COC approved with minimum eligibility criteria, Request for Resolution Plan (**RFRP**) and Form G for inviting Expression of Interest (**EOI**) from Prospective Resolution Applicants as per section 25(2)(h) of the Code. Accordingly, Public announcement for inviting EOI was issued. Form G, inviting EOI, was published on 03.05.2021. The last

date for submission of Expression of Interest (EOI) from Prospective Resolution Applicants was 15.05.2021 and last date of submission of Resolution Plan was 26.06.2021.

5. The CoC decided to appoint valuers. The Resolution Professional accordingly appointed six registered valuers, for Plant & Machinery, Land & Building and Securities or Financial Assets (SFA) to determine the fair value and liquidation value of the Plant & Machinery, Land & Building and Securities or Financial Assets (SFA), as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These valuers submitted their reports. The Liquidation and fair value is stated as under:

Sr. No.	Class of Assets	Name of Valuer	Fair Value (Rs.)	Average fair value of a class of assets (Rs.)	Liquidation Value (Rs.)	Average liquidation value of a class of assets (Rs.)
1	Land & Building	Surendra Gordey	5,88,95,000	6,07,94,500	5,21,33,000	4,85,01,000
		Rite value Consulting	6,26,94,000		4,48,69,000	
2	Plant & Machinery	Sushant Aggarwal	44,50,000	46,95,500	44,50,000	44,34,000
		Pranav Ambaselkar	49,41,000		44,18,000	
3	Securities & Financial assets	Jigar Shah	23,94,000	24,53,000	17,01,000	17,29,700
		Harshad Deshpande	25,12,000		17,58,400	
			Total Fair value	6,79,43,000	Total Liquidation value	5,46,64,700

6. The Applicant further states, that in furtherance of the Form-G issued by Applicant, he received EOI from the two Prospective Resolution Applicant (PRA), within the stipulated time period. Below are the names of the prospective resolution applicant:

a) Yaxis Structural Steel Pvt. Ltd.

b) Mr. Rakesh Ranjan

7. **The COC, in its 10th meeting held on 08.03.2022, approved Resolution Plan submitted by Yaxis Structural Steels Pvt. Ltd. with a voting share of 100%. Thereafter, the Applicant has issued compliance certificate in Form “H”.**

8. **The Salient Features of the Resolution Plan are as under:**

A. Brief Background of the Company / Corporate debtor

- i. Greatweld Engineering Private Limited (herein after referred as “GEPL” or the “company”) was incorporated on 20.01.2006. The registered office of the Corporate Debtor is located at Kunal Puram, Building B-1, Office No. 6, II Floor, Mumbai-Pune Road -411012.
- ii. The Corporate Debtor was engaged in the business of production of MS gratings and valves- gates, globe and check type valve.
- iii. The Corporate debtor had faced various issues and industrial depression which adversely impacted the net revenues of the Company. In wake of which the Company had accumulated high debts and was unable to service the same. Hence, it faced CIRP under Section 9 of the Code.

B. Background of the Resolution Applicant

M/s Yaxis Structural Steels Private Limited (hereinafter mentioned as Yaxis) incorporated on 07.06.2019. The registered office and manufacturing facility of the company are located at

Plot No. A-80/5, A-80/6 and A-80/7, MIDC Indapur Industrial Area, Loni Deokar, Indapur Pune – 413106.

Yaxis Structural Steels Pvt Ltd. is into the fabrication and trading of variety of steel products like Sponge Iron, M.S. Billets, Reinforcement Bars (TMT) and now venturing into manufacturing of Structural Steels (M.S. Angle, Channel, Beam, Round, Square, Flats & more).

The said Prospective Resolution Applicant is eligible to act as a Resolution Applicant of the Corporate Debtor and is not ineligible under section 29A of Insolvency and Bankruptcy Code and also satisfies the eligibility criterion as mentioned in clause (h) of sub-section (2) of section 25 of the Code.

9. **Summary of Payments under the Resolution Plan**

Particulars	(₹ in lakhs)			
	Claims admitted	Proposed payment amount	Upfront Payment	Deferred payment
CIRP cost	-	14	14	-
Workmen Dues – Pari Passu with Financial Creditor u/s 53(b)(i)	Nil	-	-	-
Financial Creditors – Secured	3190.29	430.57	30.57	400
Operational Creditors	209.97	5.43	5.43	-
Equity shareholders	710	-		
Contingent Liability	NIL			
TOTAL	3401.71	450	50	400

Particulars	(₹ in lakhs)			
	Claims admitted	Proposed payment amount	Upfront Payment	Deferred payment
Additional funds for working capital requirement and renovation of assets as required	-	-	-	-
TOTAL	3401.71	450	50	400

10. Sources of Funds:

The Resolution Applicant shall infuse the funds for giving effect to the proposed settlement of the dues of various stakeholders in this resolution plan in the manner specified in below table:

Sources of Funds
<ul style="list-style-type: none"> Resolution Applicant's Own Contribution Unsecured Loans
Total- Rs. 450 lakhs

The above funds shall be utilized in payment as tabulated below:

Particulars of application of funds	Proposed payment Amount (₹ in lakhs)
CIRP cost	14
Workmen Dues – Pari Passu with Financial Creditor u/s 53(b)(i)	Nil
Financial Creditors – Secured	430.57

Particulars of application of funds	Proposed payment Amount (₹ in lakhs)
Financial Creditor - Unsecured	Nil
Operational Creditors	5.43
Contingent Liabilities	Nil
Total	450

11. Payments proposals of the various stakeholders under the Resolution Plan:

A. Proposal for Insolvency Resolution Process Costs in priority to all other debts

Insolvency Resolution Plan considers Insolvency Resolution Process Costs which has been approximately ₹ 1.45 lakhs till date and an estimation of ₹ 14 lakhs which includes payment to Interim Resolution Professional (IRP) and/or Resolution Professional (RP) and all amount of expenses incurred by IRP and/or RP during the CIRP period, to the extent duly ratified or approved by the Committee of Creditors (COC), shall be paid in priority to all other debts by Resolution Applicant after the approval of Resolution Plan by Adjudicating Authority.

The CIRP Cost will be paid in full and priority to any other debts of the Corporate Debtor within 45 days of approval of resolution plan by Hon'ble NCLT.

In case, any excess amount remains after settling the CIRP cost from the total apportioned payment for CIRP costs, then such excess shall be adjusted from the payment to financial creditors proportionately.

B. Proposal for Financial Creditors (Secured and unsecured)

As per the Information Memorandum, The total outstanding of Financial Creditors of the Company is ₹ 3,190.29 lakhs as follows:

Sr. No.	Name of the Claimant	Claim Admitted (₹ in lakhs)	Amount Proposed (₹ in lakhs)
1	Financial Creditors – Secured	3,190.29	430.57
	Total	3190.29	430.57

C. Proposal for Workmen / Employees of Corporate Debtor

As per the Information Memorandum, total dues to the employees / workmen amounts to NIL.

D. Proposal for operational creditor, other creditors and related party of corporate debtor:

- I. The amount due to the Operational Creditors, Other Creditors and related party of Corporate Debtor as provided in Information Memorandum is ₹ 209.97 lakhs.
- II. The Information Memorandum does not specify the liquidation value of the operational creditors. The resolution Applicant propose Rs 5.43 lakhs to the operational creditors. Operational creditors shall be paid in priority over the financial creditors. The proposed amount of Rs. 5.43 lakhs shall be distributed in following manner:

Sr. No.	Name of Operational creditor	Claim amount admitted	Proposed Amount
1	Anand Tecknow Aids Engineering India Ltd	1,19,67,955	Nil
2	Bhagwati Steel Corporation	74,62,304	3,73,115
3	ESIC	96,051	96,051
4	Karma Roadways	14,70,500	73,525
Total		2,09,96,810	5,42,691

E. Proposal for Statutory Dues

The amount due to the Statutory Dues of Corporate Debtor as provided in Information Memorandum is NIL.

F. Proposal for Other Creditors (Other than Financial and Operational Creditors)

NIL amount shall be payable under this Resolution Plan towards payment to such creditors and/or Stakeholders.

12. 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		Yes

	to the complexity and scale of operations of business of the CD?		
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?		Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		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 financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?	Section 4 Sub section B Sub section E Sub section C Sub section L Sub section M	Yes Yes Yes Yes Yes No
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?		Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes
Regulation 35A	Where the resolution profesional 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?		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?	Section 4 Sub section E	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Section 4 Sub section A	Yes
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 the statement giving details of such non-implementation?		No NA
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term 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?	Section 5	Yes
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Section 2 and 5	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		Resolution Applicant will provide a Performance Bank

			Guaran tee of 10% of total amount propos ed under the resoluti on plan. Resolut ion applica nt has provide d Bank Guaran tee of Rs. 50 Lakhs at the time of submis sion of EOI.
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13. **Managing Committee**

Subject to approval of Committee of Creditors and Adjudicating Authorities, resolution applicant shall constitute managing committee for the supervision of the resolution plan. The managing committee shall comprises members from resolution applicant, CoC and Resolution professional.

Note: The fees to be paid to RP shall be decided accordingly after the constitution of the managing committee.

14. Observations and Findings:

- i. As per IBC Code 30(2)(a) – A Resolution Plan 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.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor. The Respondent has proposed to pay liquidation value to unsecured financial creditors who dissent from the plan.
- iv. The plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- v. The plan provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d) & Regulation 38(2)(c).
- vi. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - Resolution Plan provides for the implementation and supervision of the resolution plan as per Section 30(2) (e)
- vii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).

- viii. As per IBBI Guidelines 38(1)(b) - the amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- ix. The resolution applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- x. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
 - d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under sub-section (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
 - f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law

and is in compliance with the Code and the CIRP Regulations.

- g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- h. The plan provides for the management and control of the business of the Corporate Debtor during its term.
- i. All the above factors demonstrate that the plan address as the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- j. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
- k. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).

15. The Resolution Plan has been approved in the 10th COC meeting held on 08.03.2022 with 100% voting in accordance with the provisions of the Code.

16. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** 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.

17. In ***India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)*** the Hon'ble Apex Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

18. The Hon'ble Apex Court at para 42 in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online**, has clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

*“Para 42- 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).”*

19. In view of the above cited case law, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent of scrutiny provided under section 31 of Code and the direction of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code.
20. In view of the discussions, this Bench is of the considered view that 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. The Resolution Plan is feasible and viable. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- a) The Interlocutory Application No. 2724 of 2022 is **allowed**. The Resolution Plan submitted by **Yaxis Structural Steels Pvt. Ltd.**, 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 payment of dues arising under any law for the time being in force is due.
- b) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned 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.
- c) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- d) The Applicant shall supervise the implementation of the Resolution Plan and shall file status of its implementation before this Authority from time to time, preferably every quarter.
- e) 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.
- f) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

- g) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- h) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- i) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- j) The Interlocutory Application **No. 2724 of 2022** is accordingly **allowed, subject to the observations and findings by this Bench in I.A. 2016 of 2022.**

SD/-

Anuradha Sanjay Bhatia
Member (Technical)

SD/-

Kuldip Kumar Kareer
Member (Judicial)