

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI**

IA-5462/2020, IA-2597/2021 and IA-2670/2021
In CP (IB)-1665 (PB)/2018

In the matter of:

MAHINDRA AND MAHINDRA SERVICES LIMITED

... Financial Creditor

Vs.

DELHI BARODA ROAD CARRIER PRIVATE LIMITED

...Corporate Debtor

In the matter of IA-5462/2020

DELHI BARODA ROAD CARRIER PRIVATE LIMITED

Through its Resolution Professional

Mr. Rajaraman Balachander

...Applicant

In the matter of IA-2597/2021

KOTAK MAHINDRA BANK LIMITED

...Applicant

Vs.

Committee of Creditors of

Delhi Baroda Road Carrier Private Limited

...Respondent

In the matter of IA-2670/2021

ORIX LEASING AND FINANCIAL SERVICES INDIA LIMITED

...Applicant

Vs.

Committee of Creditors of

Delhi Baroda Road Carrier Private Limited

...Respondent

Order delivered on 21.02.2022

CORAM

**SH. BHASKARA PANTULA MOHAN
HON'BLE MEMBER (JUDICIAL)**

**SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)**

PRESENT

For Applicant: Mr. Rajesh Jangra and Mr. Bharat Chasha in
IA-2670/2021, Mr. Nakul Mohta, Mr. Devansh
Srivastava for CoC, Advocates

For SRA: Mr. Abhijeet Sinha, Ms. Manish Kumar,
Advocates.

For RP: Mr. Arun Khatpalia, Sr. Counsel, Ms. Shweta
Duby, Mr. Abhimanyu Redhu, Ms. Ishita
Shrivastava, Advocates

ORDER

PER- BHASKARA PANTULA MOHAN, MEMBER (J)

1. The Resolution Professional has filed application under Section 30(6) of Insolvency and Bankruptcy Code, 2016 (IBC, 2016) r/w Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) in IA-5462/2020, for seeking approval of the Resolution Plan in the matter of Delhi Baroda Road Carrier Private Limited (Corporate Debtor).

2. Mr. Rajaraman Balachander is the Resolution Professional (Applicant), for the Corporate Debtor who has submitted the Resolution Plan duly approved by the Committee of Creditors

(CoC), which is accompanied by the compliance certificate on prescribed Form H.

3. It was submitted that the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was admitted by this Authority vide Order dated 24.09.2019, pursuant to the application filed under Section 7 of IBC, 2016, by one of Financial Creditors viz., M/s. Mahindra and Mahindra Services Limited and Mr. Rocky Ravinder Gupta was appointed as Interim Resolution Professional vide same Order.

4. The Public Announcement regarding the commencement of CIRP was made on 30.09.2019 and in the 3rd CoC Meeting held on 21.11.2019, it was resolved, to appoint the applicant as the Resolution Professional replacing the IRP and this Authority allowed the same vide Order dated 29.11.2019. The invitation for submission of Expression of Interest (EOI) was issued on 23.12.2019 and in response only one EoI was received, therefore the CoC agreed to extend the timelines for submission of EoI till 27.02.2020. The CoC in the 5th Meeting held on 23.01.2020, resolved to file an application for extension of the CIRP period for 90 days beyond 180 days period. This Authority vide Order dated 08.06.2020, allowed the application and extended the CIRP period for 90 days.

5. The applicant received twelve EoIs as on 06.04.2020 and the list of Prospective Resolution Applicants (PRAs), was finalized on 17.04.2020 which included eleven eligible PRAs. The CoC in its 8th Meeting, held on 24.06.2020, approved the extension of

the last date of the submission of the Resolution Plan. This Authority vide Order dated 24.08.2020 extended the CIRP period for 60 days beyond the 270 days period. The CoC in its 10th Meeting held on 15.09.2020 approved the issuance of Form –G for inviting fresh EoIs, the RFRP alongwith the Evaluation Matrix for the Corporate Debtor. The applicant finalized the list of PRAs on 28.09.2020, which included seven eligible PRAs and also issued the RFRP alongwith the Evaluation Matrix and Information Memorandum.

6. This Authority vide Order dated 26.10.2019, excluded 45 days from the CIRP period of the Corporate Debtor and allowed the application filed by the applicant. The applicant received two resolution plans from two PRAs namely:

- a. Consortium of M/s. Delhi Gujarat Road Carrier and Sushila Transport Pvt. Limited and
- b. KM Trans Logistics Pvt Ltd.

These two Resolution Plans were opened by the applicant in the 11th CoC Meeting, held on 24.10.2020. The CoC in the 12th Meeting held on 9.11.2020, invited the PRAs to present their Resolution Plans and to respond to certain queries raised by the member of the CoC. The Resolution Plan submitted by Consortium of M/s. Delhi Gujarat Road Carrier and Sushila Transport Pvt. Limited (revised on 07.11.2020, 24.11.2020 and subsequently modified by the Addendum dated 27.11.2020) was put to vote before the CoC in the 13th Meeting, which was approved with 91.56% votes. The copy of the minutes and

summary report of the e-voting of the 13th Meeting of the CoC are placed on file and marked as Annexure A-13.

7. The Applicant issued letter of intent dated 03.12.2020, which was unconditionally approved by the Consortium of M/s. Delhi Gujarat Road Carrier and Sushila Transport Pvt. Limited (Successful Resolution Applicant/SRA). The performance security as required under Regulation 36B(4A) of the CIRP Regulations r/w the RFRP for the Corporate Debtor, was received by the applicant for an amount of Rs 10,00,00,000. The SRA submitted a bank guarantee for an amount of Rs 2,00,00,000, a direct bank deposit of Rs. 2,00,00,000 in bank account of the Corporate Debtor and gave a cheque for the remaining Rs. 6,00,00,000 in favor of the Corporate Debtor. It was submitted that in case, the cheque given by the SRA is not honored, the applicant would seek appropriate directions from this Authority. The copies of the LoI unconditionally approved by the SRA and the documents evidencing the receipt of the performance security from SRA are placed on file and are marked as Annexure A-15 (colly).

8. The Successful Resolution Plan provides for payments to be made to the creditors of the Corporate Debtor within ninety (90) days of the approval of the Resolution Plan by this Authority. The extract of the table detailing the payments, is as under:

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Sr. No.	Category of Stakeholders	Amount Claimed (Rs. in Crore)	Amount Admitted (Rs. in Crore)	Amount provided under the Plan (Rs. in Crore)	Amount Provided to Amount Claimed
1.	Financial Creditors	471.51	370.00	62.61	16.91%
2.	Operational Creditors	6.23	3.95	0.06	1.5%
3.	Statutory Dues	12.50	12.50	0.19	1.5%
4.	CIRP Cost	1.71	1.71	1.71	100%
5.	Employees and Workmen	0.25	0.01	0.01	100%
6.	Others	NIL	N.A.	N.A.	N.A.
7.	Other Debts and Dues	NIL	N.A.	N.A.	N.A.

The amount provided towards the Financial Creditors of the Corporate Debtor is as under:

Sr. No.	Name of the Financial Creditor (Rs. in Lakhs)	Claims admitted (in Rs.)	Amount provided under the plan (in Rs.)	Amount Provided to Amount
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				Claimed
1.	Piramal Capital and Housing Finance Limited	91,89,00,000	12,86,60,000	14%
2.	CFM Asset Reconstruction Pvt. Ltd.	80,97,00,000	25,10,07,000	31%
3.	JM Financial Products Ltd.	26,34,00,000	8,16,54,000	31%
4.	Hinduja Leyland Finance Limited	32,28,00,000	7,20,50,000	22%
5.	Shriram Transport Finance Limited	5,84,00,000	1,28,48,000	22%
6.	Volkswagen Financial Services Limited	4,58,00,000	1,00,76,000	22%
7.	India Infoline Finance Ltd.	2,16,00,000	47,52,000	22%

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8.	Kotak Mahindra Bank Ltd.	1,84,00,000	40,48,000	22%
9.	Tata Motors Finance Solutions Ltd.	1,45,00,000	31,90,000	22%
10.	Fullerton India Credit Company Ltd.	67,00,000	14,74,000	22%
11.	HDB Financial Services Limited	50,00,000	11,00,000	22%
12.	Suraksha Asset Reconstruction Ltd.	3,69,00,000	82,06,000	22%
13.	Reliance Commercial Finance Limited	3,00,00,000	30,00,000	10%
14.	ORIX Leasing & Financial Services India Limited	4,63,00,000	18,52,000	4%
15.	Daimler Financial Services India Private Limited	98,66,00,000	4,00,06,300	4%
16.	Mahindra and Mahindra Financial Services Ltd.	11,33,00,000	21,96,000	2%
TOTAL		3,69,81,00,000	62,61,19,630	16.91%

The terms of the payments are subject to the following clauses of the Successful Resolution Plan, the extract of which are as follows:

***PART B -FINANCIAL PROPOSAL**

4.4.4 It is proposed under this Plan that the dues of the stakeholders shall be settled by way of maximum payment of INR 64.60 Crores subject to the following adjustments:

(viii) *Payment of excess CIRP Costs: CIRP Costs have been provided till August 2020 and is estimated at INR 1.71Crores. In the event the actual CIRP Costs exceed the estimated of INR1.71Cr. the amount shall be deducted from the amount payable to the Financial Creditors on the Effective Date and the amount payable to the Financial Creditors shall stand reduced by such excess CIRP Costs.*

(ix) *At this stage we are not aware of liquidation value of the company and its asset. In case of dissenting financial creditors, if liquidation value is more than proposed amount the same shall deducted from amount payable to other financial creditors on the effective date. ..."*

9. It is stated that the two financial creditors of the Corporate Debtor namely, CFM Asset Reconstruction Ltd and JM Financial Product Limited have voted in favour of including the mortgaged

Personal property of Mr. Jagdish Baweja, the suspended Director and promoter of the Corporate Debtor bearing Khasra No. 210/1,210/2 in the Successful Resolution Plan.

10. It was submitted by the applicant that the average liquidation value of the Corporate Debtor under Regulation 35 of CIRP Regulations as valued by the two valuers is approximately Rs. 58.29 Crore.

IA-2597/2021

Submissions of the Applicant:

11. The applicant viz., Kotak Mahindra Bank Limited (Applicant) is a Secured Creditor and member of the Committee of Creditors with a voting share of 0.5% with admitted claim of Rs 1,84,00,000 (Rupees One Crore Eighty-Four Lakhs). The applicant is a dissenting creditor with regard to the Resolution Plan, submitted by the Successful Resolution Applicant of M/s. Delhi Gujarat Road Carrier and Sushila Transport Pvt. Limited.

The prayers made are as follows:

- a. Reject the Resolution Plan and dismiss the company application bearing No. IA-5462/2021, for the approval of the Resolution Plan.
- b. Amend the Resolution Plan and allow Rs 1,84,00,000, towards the admitted claim of the applicant considering the Liquidation Value of Rs 2,45,00,000 of the Secured assets of the applicant bank.

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- c. In the alternate, allow the applicant to withdraw all the secured assets from CIRP with further permission to liquidate the assets and appropriate the proceeds to reduce the outstanding dues.
- d. Pass any other order or directions as deemed fit in the interest of justice.

12. The applicant has rejected the Resolution Plan and had dissented through e-voting held during the period commencing from 30.11.2020 to 03.12.2020. The objections raised by the applicant are as follows:

- i. The SRA has failed to tender on record any consortium deed or any other document to show the legal existence and in absence of any document, it would be difficult to determine the obligations or liabilities of either party to the consortium in the event any default is made by the SRA.
- ii. The amount claimed by all the financial creditors is Rs 471.51 crore of which the total claim admitted is Rs 370 crore. The SRA has allocated only 16.91% of the admitted claim which aggregates to Rs. 62.61 crores
- iii. There is inconsistency in the manner the SRA is arranging funds for the acquisition as the SRA has not placed on record the sanction letter from ICIC Bank. Thus, there is ambiguity in the Resolution Plan.
- iv. The claim of the applicant was reduced to Rs. 1, 84, 00,000 though the applicant had charge over 105 movable assets.

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- v. As per the valuation report dated 24.09.2019, the fair value of the movable assets is Rs 3.67crores and the Liquidation value is Rs. 2.46 crore
- vi. The SRA has allocated only Rs 40,48,000 in favour of the applicant which is only 22% of the admitted claim of Rs 1,84,00,000 whereas the Liquidation value id Rs 2.46 crore.
- vii. The valuer has inspected 7 yards/offices of the Corporate Debtor to understand the physical condition, material deterioration and economic life across locations where the offices/yard/warehouse is situated.
- viii. The valuation of the vehicles cannot be made on the basis of assumptions and presumptions and should be made on the basis of actual condition of the vehicle.
- ix. The SRA has considered a sizeable amount worth Rs.5 to 6 crores from the sale of scrap trucks. In the absence of details and condition of actual number of vehicles, it is impossible to determine the proper values of assets of the Corporate Debtor.
- x. The SRA is providing only an amount of Rs 62.61 to the Financial Creditors; the amount is much lower than the Current Assets of the Corporate Debtor.
- xi. There is no list of PRAs discussed in CoC, thus it seems that no efforts were made to negotiate with any of PRAs finalized to get a better value for the Resolution Plan.
- xii. The interest of the minority shareholders has not been considered since the inspection of the CoC.

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- xiii. The applicant submitted a claim of Rs 3, 12, 61,539 to the Resolution Professional via email dated 14.10.2019 along with the relevant documents as proof of claim. The break of the claim was also submitted however, the Resolution Professional failed to consider the interest and penalty amount which the Corporate Debtor is liable to pay as per the terms of the Agreement.
- xiv. The CoC has ignored the aspect of undervaluation of the assets of the Corporate Debtor and approved the Resolution Plan.
- xv. The SRA has sought concession and reliefs in the Resolution Plan which are unacceptable to the applicant.
- xvi. The cost of the Resolution Professional has been made around Rs 1.44 crore which itself explains that the Resolution Professional did not carry out its functions rationally and diligently.

IA-2670/2021

Submissions of the applicant

13. The applicant viz., M/s. Orix Leasing and Financial Services Pvt Ltd (applicant), has filed this application under Section 60(5) of IBC, 2016 raising objections against the Resolution Plan approved by the CoC and has sought the following reliefs:

- a. Quash/ set aside /reject the Resolution Plan and dismiss the company application bearing no. 5462/2021 for the approval of the Resolution Plan.
- b. Allow the applicant to withdraw all the secured assets from CIRP with further permission to liquidate the

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assets as appropriate proceeds to reduce the outstanding dues.

- c. Pass any other order or directions as seem fit in the interest of justice.

14. The applicant is a secured member of the CoC with voting share of 1.3%. The applicant is a dissenting creditor with regard to the Resolution Plan submitted by the SRA. Among others, the objections raised are as under:

- i. The SRA has considered the applicant as an unsecured creditor in the Resolution Plan for the reasons best known to the SRA.
- ii. That there are six trucks of the applicant along with eleven trolleys which are under the possession of the Corporate Debtor/Resolution Professional and no wherein the Resolution Plan this is referred.
- iii. The applicant has raised an objection regarding the manner in which the payment proposed to be paid to the applicant were arrived at and whether the SRA has taken into account all assets secured to the applicant.
- iv. The claim was admitted in part by the Resolution profession in the 5th CoC meeting which was held on 23.01.2020 without providing for any reasoning lieu of the acceptance of claim amounting to Rs. 2.48 crore

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against the claim of Rs. 5, 01, 24,719 submitted by the applicant.

- v. The SRA has allocated Rs 18,52,000 in favor of the applicant which is only 4% of the admitted claim of Rs 4,63,00,000
- vi. The SRA has allocated only 16.91% of the admitted claim which aggregates to Rs. 62.61 crores.

Reply of the Resolution Professional

15. The Resolution Professional has filed a common reply to the IA-2597/2021 and 2670/2021 and seeks dismissal of the applications. It is stated that the contents of objections, except those relating to facts on record, are denied in toto, unless the same are specifically admitted.

16. It was stated that the CoC of the Corporate Debtor consists of sixteen (16) financial creditors, all being private entities and majority being the vehicle lender and private institutions. The applications filed by Kotak Mahindra Bank Limited and M/s. Orix Leasing and Financial Services Pvt Ltd, do not specify what requirements are provided under Section 31 (1) r/w Section 30(2) of the IBC, 2016 are not confirmed to by the Resolution Plan. The Resolution Plan is approved by 91.6 % of voting member of the CoC and such high number of voted indicate that the lender which all the private entities found to give them a better value than they would have received, in case the Corporate Debtor has been liquidated.

17. It was submitted that while dealing with a Resolution Plan submitted under Section 30 (6) of the IBC, 2016, the scope of judicial review by this Authority is limited. The recovery under Insolvency process is intrinsically linked with the valuation of the Corporate Debtor and not with the total debt size of the corporate debtor. The debts given to the Corporate Debtor are typically given to the company, when it is in its prime whereas at the stage of insolvency, the assets of the company would have lost significant value. The true yardstick to measure recovery is what percentage of valuation of the company is being recovered. The fair value of the Corporate Debtor was Rs. 94.64 crores against which a recovery of 68.25% is made.

18. It was submitted that the valuation reports have no bearing on the Resolution Plan and are merely used for assisting the CoC to take an informed decision regarding approval or rejection of the resolution plan. The valuation reports are not shared with the potential resolution applicants and therefore, the figures attributed to each creditor under the resolution plan have no relation to the valuation reports. Thus, a resolution Plan can never be rejected on the ground that the valuation reports are correct or incorrect. The Liquidation Value being incorrect is not a ground to challenge approval of the Resolution Plan, as a Resolution Plan need not even match the Liquidation Value of a Corporate Debtor. The objectors are trying to mislead this Authority by concealing the statements made in the valuation report regarding the Movable assets, plant and machinery and facts as per FAR and information provided therein.

19. It was submitted that there is a difference between physical '*verification*' and physical '*inspection*' of trucks of the Corporate Debtor and M/s. GAA Advisory LLP has physically verified 920 out of 956 trucks of the Corporate Debtor and physically inspected 389 sample trucks to gather sufficient evidence and arrive at the valuation of the trucks of the Corporate Debtor. It was further submitted that, even, the objectors do not provide reference to any provision or valuation standard that has not been confirmed to by M/s. GAA Advisory LLP, who's Valuation Reports has been relied upon to challenge the Liquidation Value of the trucks of the Corporate Debtor. It is stated that due to the COVID-19 pandemic, the Institute of Chartered Accountants of India (ICAI) has provided alternative procedures where it is impractical to physically even '*verify*' the inventory of a Company. A copy of the Auditing Guidance dated 13.05.2020 on "Physical Inventory Verification-Key Audit Consideration amid COVID-19" prepared by the Auditing and Assurance Standards Board of ICAI is placed on file and marked as Annexure R-2.

20. It was stated that the Objectors on one hand have questioned the Valuation Report; on the other hand they have arrived at the Liquidation Value of their security interest on the basis of the said Valuation Report, only to allege that the Resolution Plan does not settle their Claims as per the Liquidation Value of their security interest. Further, the Corporate Debtor, being an operational logistics company, it is not possible for the registered valuers to physically inspect each and every truck, as many such trucks were plying with loads at

the time of valuation. It was submitted that, while inspection was done for the trucks in the yards of the Corporate Debtor and of trucks which were not operational at the time of valuation, there is no requirement that all operations of the Corporate Debtor be halted, so that each and every asset can be physically inspected. The valuations under the CIRP Regulations are done as per the norms laid down for the Registered Valuers and accordingly, the valuations are arrived at, on the basis of estimates and projections regarding inventory, etc.

21. It was submitted that, in the present case, the valuation of each truck was arrived at on the basis of its make, model, year and the information regarding ancillary parts supplied by the management of the Corporate Debtor. The members of the CoC, during all meetings were informed regarding the status of possession of trucks and their operational status and at no point during the CIRP, the Objectors made a suggestion to physically inspect all the trucks of the Corporate Debtor and only then, to arrive at their valuation. The halting of operations of a going concern only for valuation purposes would have been detrimental to the Corporate Debtor.

22. It was stated that the Objectors seek the rejection of the Resolution Plan on the ground that “*the Evaluation Matrix considered by the Valuers is incorrect and the Fair/ Liquidation Value of Movable Assets is challenged*”. In this regard, it was submitted that the relevant provisions of the CIRP Regulations can be referred, which are as under:

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“2. Definitions.

(1) In these Regulations, unless the context otherwise requires:-

(ha) “evaluation matrix” means such parameters to be applied and the manner of applying such parameters, as approved by the committee, for consideration of resolution plans for its approval;

(hb) “fair value” means the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.

(k) liquidation value” means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.

35. Fair value and Liquidation value.

(1) Fair value and liquidation value shall be determined in the following manner:

the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;

(b) if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner;

(c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.

(2) After the receipt of resolution plans in accordance with the Code and

these regulations, the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29: (3) The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.”

23. It was submitted that as can be seen from Regulation 2(ha) of the CIRP Regulations, the evaluation matrix is to be considered not by the Registered Valuers, as has been submitted by the Objectors in their application, but by the CoC of the Corporate Debtor. Further, the Regulation 2(k) of the CIRP Regulations provide that the Liquidation Value is calculated, as if the Corporate Debtor is to be liquidated on its CIRP commencement date, i.e., 24.09.2019 and not at the actual date of passing of the Liquidation Order. In case the Resolution Plan for the Corporate Debtor is approved by this Authority and the Corporate Debtor is liquidated, trucks being depreciable in nature, their Liquidation Value would be subject to further dilution. It is further submitted that, as more than two years from the CIRP commencement date, would have been passed, by the time the trucks are sold under liquidation, many of the trucks would have reached the end of their life, as is limited by law.

24. It is stated that the Resolution Plan settles the claims of the Financial Creditors of the Corporate Debtor as under:

S. No.	Name of the Financial Creditor (Rs. in Lakhs)	Claims admitted (Rs. in Lakhs)	Amount provided under the plan (Rs. in Lakhs)	Amount Provided to Amount Claimed
1.	Piramal Capital and Housing Finance Limited	91,89,00,000	12,86,60,000	14%

2.	CFM Asset Reconstruction Pvt. Ltd.	80,97,00,000	25,10,07,000	31%
3.	JM Financial Products Ltd.	26,34,00,000	8,16,54,000	31%
4.	Hinduja Leyland Finance Limited	32,28,00,000	7,20,50,000	22%
5.	Shriram Transport Finance Limited	5,84,00,000	1,28,48,000	22%
6.	Volkswagen Financial Services Limited	4,58,00,000	1,00,76,000	22%
7.	India Infoline Finance	2,16,00,000	47,52,000	22%

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	Ltd./IndoStar Capital Finance Limited			
8.	Kotak Mahindra Bank Ltd.	1,84,00,000	40,48,000	22%
9.	Tata Motors Finance Solutions Ltd.	1,45,00,000	31,90,,000	22%
10.	Fullerton India Credit Company Ltd.	67,00,000	14,74,,000	22%
11.	HDB Financial Services Limited	50,00,000	11,00,000	22%

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12.	Suraksha Asset Reconstruction Ltd.	3,69,00,000	82,06,000	22%
13.	Reliance Commercial Finance Limited	3,00,00,000	30,00,000	10%
14.	ORIX Leasing & Financial Services India Limited	4,63,00,000	18,52,000	4%
15.	Daimler Financial Services India Private Limited	98,66,00,000	4,00,06,300	4%
16.	Mahindra and Mahindra Financial Services Ltd.	11,33,00,000	21,96,000	2%
TOTAL		3,69,81,00,000	62,61,19,630	16.91%

25. It was submitted that, while the settlement amount is 16.91% of the aggregate of all the admitted claims of the Financial Creditors for certain Financial Creditors, the settlement amount is as high as 31% of their admitted claims. The rationale for difference between the payments, being made to the creditors is on account of the difference in security interest (such as those having immovable assets, as security are given higher settlement amount, whereas those who have enforced their security interest prior to the commencement of the CIRP period, have been given lower amounts, as they have recovered part of their debt through such enforcement of security interest). The objectors being

dissenting financial creditors, are also covered by the following clauses of the Resolution Plan:

"Part B (FINANCIAL PROPOSAL)

3.2 The Resolution Plan proposed by the Resolution Applicant adequately deals with the interests of all stakeholders, including Employees and Workmen, Financial Creditors and Operational Creditors, of the Company, and as per the timelines set out below in Clause 3.3 to Clause 4.13. The amount payable under this Resolution Plan to the Operational Creditors (including workmen and employees) shall be paid in priority over financial creditors. Further, the amount payable under this Resolution Plan to the dissenting Financial Creditors would be made in priority to the financial creditors who voted in favour of the plan.

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4.4.4 (ix) At this stage we are not aware of liquidation value of the company and its asset. In case of dissenting financial creditors, if liquidation value is more than proposed amount the same shall deducted from amount payable to other financial creditors on the effective date."

26. It was stated that the valuation of the Corporate Debtor was never disclosed to the SRA and therefore, the amounts provided by the SRA, for each creditor is based on independent appraisal of the security interest, owned by each of the creditors and the value of trucks underlying such security interest. It is pertinent to mention that the grievance of the Objectors is not that they have been provided a lower settlement amount, but their grievance is that the creditors have been provided a lower amount of recovery. In this regard, it was submitted that during

the meetings of the creditors, the Resolution Professional had requested each of the creditors, to assist in finding more resolution applicants, so that there would be a better price discovery. In fact, two of the creditors also helped in identifying the potential Resolution Applicants and detailed discussions were conducted with these potential Resolution Applicants. The copy of the minutes of 11th and 12th meetings of the CoC, wherein the discussion on the potential resolution applicants and efforts taken by the Resolution Professional to secure more interest in the Corporate Debtor is enumerated, is annexed and marked as Annexure R-3 (Colly).

27. It was submitted that despite all efforts made by the Resolution Professional and the lead creditors, only two resolution plans were submitted for the Corporate Debtor. Since the Resolution plan submitted by the SRA was significantly higher and the other resolution applicant did not pursue the resolution plan, the CoC chose to consider the resolution plan submitted by the SRA. The plan approval came through after significant negotiations between the CoC and the SRA. It was submitted that there is a possibility, that the resolution plan may not meet the expectations of a few creditors but when an overwhelming majority of creditors are aware of the potential for recovery and are satisfied with the offer being made by the resolution applicant.

28. The Objectors have claimed that the value of their security interest is higher, this cannot be a ground to object the approval

of the Resolution Plan and it is also premature, as the stage for challenging the principle for calculation of amount payable to individual creditors comes only after the approval of the Resolution Plan by this Authority, as can be seen from Regulation 39(5A) of the CIRP Regulations, the extract is as under:

“39. Approval of resolution plan.

5A) The resolution professional shall, within fifteen days of the order of the Adjudicating Authority approving a resolution plan, intimate each claimant, the principle or formulae, as the case may be, for payment of debts under such resolution plan:

Provided that this sub-regulation shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020;”

29. That the Objectors have sought rejection of the Resolution Plan on the ground of alleged ambiguity regarding the source of funds for the Resolution Plan. In this regard it is submitted that ICICI Bank has, by its letter dated 12.10.2020, given in principle approval to financing the Resolution Applicant, for acquisition of the Corporate Debtor and this fact is recorded in the excerpts of the minutes of the 12th meeting of the CoC of the Corporate Debtor, as has also been relied upon by the Objectors in their applications. The copy of the said letter dated 12.10.2020 is annexed to the file and marked as Annexure R-4.

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30. It was submitted that the SRA has already provided the performance security, as required under Regulation 36B(4A) of the CIRP Regulations r/w the RFRP for the Corporate Debtor, aggregating to the sum total of INR 10,00,00,000 and the proof of which has been placed on record through IA No. 5462 of 2020. Further, the Objectors seek rejection of the Resolution Plan on the ground that certain reliefs and concessions sought in the Resolution Plan are unacceptable to the Applicants as they *'absolve all the liabilities of the Corporate Debtors & its promoters which is contrary to the provisions of the code'*. In this regard, it is submitted that the reliefs and concessions as reproduced in the objections, pertain to the Corporate Debtor only and there is no mention of the ex-Promoters as has been alleged by the Objectors. It is further submitted that the reliefs and concessions pertain to extinguishment of liabilities of the Corporate Debtor, as has already been provided under Section 31(1), Section 31A(1) and Section 32A(2) of the IBC, 2016. It is thus submitted that averments made by the Objectors are without basis and the Applicants are trying to mislead and prejudice this Authority. In any event it is for this Authority to decide whether these reliefs may be granted or not and the dissenting creditors cannot usurp the role of this Authority.

31. That, the objectors seek rejection of the Resolution Plan on the ground that their claims were not fully admitted by the Resolution Professional of the Corporate Debtor. It is submitted that the process of claim verification was completed in the first quarter of the calendar year 2020 and thereafter, in each meeting

of the CoC, the voting share of the members was reflected in the presentation shared with the CoC members. Further, with regard to admission of claim of M/s. Orix Leasing and Financial Services Pvt Ltd, the team of the Resolution Professional held a detailed meeting with M/s. Orix Leasing and Financial Services Pvt Ltd's team and thereafter, they were intimated on 03.03.2020, towards partial admission of the trucks hypothecated to them. It is submitted that post such mail, M/s. Orix Leasing and Financial Services Pvt Ltd did not raise any issue regarding partial admission of their claim. With regard to the claim submitted by Kotak Bank, it is submitted that the fact of partial admission of their claim was known to the Kotak bank since January 2020, as the same formed part of the CoC voting share and also was incorporated in the list of creditors. Despite the said knowledge, Kotak Bank never raised any objection of the partial admission of its claim. It is, therefore, submitted that the issue regarding rejection of partial claim is an afterthought and has been raised only to derail the Resolution Plan approval process.

32. It was submitted that rejection of claims of the Objectors is not a ground to reject the Resolution Plan as no relief has been sought in the objections, regarding the verification of the claims of the Objectors. It is further submitted that the Applicants are trying to bring this issue at this belated stage only to prejudice this Authority, as the Applicants' did not challenge the admission of their claims by the Resolution Professional since January, 2020 and the objections through, IA No. 2597 of 2021, has been filed on 09.04.2021 and IA No. 2670 of 2021 has been filed on

24.05.2021, i.e., after 120 days and 165 days, respectively, of filing of IA No. 5462 of 2020 on 10.12.2020.

33. It was stated that in IA No. 2597 of 2021, the prayer is made for rejection of the Resolution Plan, on the ground that the Resolution Applicant has failed to tender any consortium deed or other document to show its legal existence as a consortium and this ground is without any merits as the Resolution Applicant has provided the Consortium Agreement dated 12.09.2020. Further, as per the copy of the Resolution No. 17D passed on 17.06.2020 which is attached with the IA No. 2597 of 2021, the authority conferred therein to represent Kotak Mahindra Bank Limited has expired on 01.01.2021. and the copy of the Power of Attorney dated 05.11.2018 attached with the IA No. 2670 of 2021, provides for appointment of attorney of M/s. ORIX Auto Infrastructure Services Limited and not of ORIX Leasing & Financial Services India Limited.

34. The note on valuation and Insolvency Resolution Process for Corporate Debtor filed by the Resolution professional and is taken on record. It is seen from records that the SRA has filed an affidavit deposing that the Resolution Plan dated 15.10.2020 (revised on 07.11.2020 and 24.11.2020 and subsequently modified by the addendum dated 27.11.2020) submitted for corporate insolvency resolution of the Corporate Debtor has been approved, under Section 30(4) of the IBC, 2016, by the CoC with 91.56% votes on 03.12.2020. It is further deposed that the amount of Rs. 64.58 Crore stated in Clauses 2.2, 2.5 and 2.5,

and the amount of Rs. 64.60 Crore stated in Clause 4.4.4, in Part B (FINANCIAL PROPOSAL) of the subject Resolution Plan, stand modified to Rs. 65.00 Crore. The additional amount payable as per the modification stated in Para No. 4 of the affidavit, shall be first distributed towards the CIRP costs of the Corporate Debtor (i.e., if the same is more than Rs. 1.7 Crore) and the amount remaining, if any, from the said additional amount payable shall be distributed pro-rata among the Financial Creditors who have approved the subject Resolution Plan.

35. It is also deposed that other than the modifications stated in Para Nos. 4 and 5 of the affidavit, all provisions and terms set out in the subject Resolution Plan shall remain unchanged and continue to be applicable.

36. The parameters for approval of the approval of the resolution plan are set out in the Section 30 and 31 of the IBC, 2016 and CIRP Regulations. The Resolution Plan seems to have complied with such mandatory compliance, the extract of which is as under:

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
25(2)(a)	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?	Part A, Cl. 1 at p. 14	Yes

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Section 19A	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?	N/A	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Document named 'FORMAT 11' and 'FORMAT 11.2'	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?	(a) Part B, Cl. 3.3 at p. 44 (b) Workmen	Yes

	(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?	/Employees - Part B, Cl. 4.5 at p. 49 Government Dues - Part B, Cl. 4.6 at p. 49 Order Operational Creditors - Part B, Cl. 4.7 at p. 51 (c) Part B, Cl. 4.4.4 (ix) at p. 41 (d) Part A, Cl. 4.9 at p. 23 (e) Part C, Cl. 1.2 at p. 59, Cl. 1.3 at p. 61 (f) Part A, Cl. 5.1.2 at p. 26	
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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?	N/A	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Part C, Cl. 1.2 at p. 59, Cl. 1.3 at p. 61	Yes

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Regulation 35A	Where the resolution professional made a determination of 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 fiftieth day of the insolvency commencement date, under submission to the Board?	N/A	Yes (our after the 117 th day of insolvency commencement or date on account of the COVID-19 pandemic)
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Part B, Cl. 3.2 at p. 2 of the Addendum	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Part B, Cl. 3.5, 3 at p. 42	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?	N/A - Part A, Cl. 3.1.1 at p. 28	Yes

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?	Part C, Cl. 1.1 at p. 59 Part B, Cl. 1.3 at p. 40 Part C, Cl. 1.2.1 at p. 59	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?	(a) Part A, Cl. 3.1.3(d) at p. 23 (b) Part A, Cl. 3.1.3(ii) at p. 23 (c) Part C, Cl. 1.2 at p. 59, 1.3 at p. 62 (d) Part A, Cl. 3.1.3(iii) at p. 23 Part C, Cl. 1.2.1 at p. 59 (e) Part A, Cl. 3.1.3(iii) at p. 30 Part A, Cl. 1 at p. 14, Cl. 3 at p. 16, Cl. 4 at p. 20	Yes
38(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	N/A	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Nature, value, duration and source	

37. Thus the Resolution Plan filed with the application IA-5462/2020, meets the requirements of Section 30 and 31 of IBC, 2016 and Regulations 37,38, 38(1A) and 39(4) of the CIRP Regulations. The provisions of Section 29A of IBC, 2016 are not attracted and the Resolution Professional has also verified that

the “Resolution Plan” approved by the CoC, does not contravene any of the provisions of the law for the time being in force. The Resolution Professional has filed compliance certificate in Form H as required under the Regulation 39(4) of the CIRP Regulations.

38. The SRA has prayed for the reliefs as enumerated under the Resolution Plan approved by the CoC. From the plan approval date all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn, satisfied and discharged. From the date of approval of the ‘Resolution Plan’, the Resolution Applicant shall be legally authorized to seek appropriate orders from respective authorities/courts/tribunals for renewal of licenses/withdrawal/dismissal or abetment of the proceedings as the case may be.

39. The Corporate Debtor shall be entitled to carry forward all accumulated business losses and unabsorbed depreciation, if any, from the date of approval of the Resolution Plan, except as provided in the resolution Plan, all the pending statutory dues including the operational creditors shall stand satisfied/waived off. The reason for these waivers and abetment is that the Operational Creditors would not get more than that as provided in the Resolution Plan in the event of liquidation of the Corporate Debtor, as per the waterfall mechanism provided under Section

53 of the IBC, 2016. Moreover, this is with the view to implement the Resolution Plan successfully as approved by the CoC. It is also made clear that any relief/concession prayed by the SRA, which is beyond the jurisdiction of Adjudicating Authority shall be construed as rejected.

40. In view of the above the 'Resolution Plan' annexed with IA-5462/2020 in CP (IB)-1665 (PB)/2018, is hereby approved, shall be binding on the corporate debtor and its employees, member, creditors, guarantors, other stakeholders including statutory authorities and the Resolution Applicant.

41. The Order of moratorium dated 24.09.2019, passed by this Authority under Section 14 of IBC, 2016, shall cease to have effect from the date of this Order.

42. The Resolution Professional shall forward all records relating to the conduct of the CIRP and Resolution Plan to The Insolvency and Bankruptcy Board of India (Board), so that the Board may record the same on its data base.

43. The approved Resolution Plan shall become effective from the date of passing of this Order.

44. The Resolution Professional shall forthwith send a copy of this order to the participants and the resolution Applicant.

45. The registry and the Ld. Counsel for the Resolution Professional is directed to communicate this Order to the

Registrar of Companies concerned with which the Corporate Debtor is registered for updating the master data.

46. The applications, IA-2597/2021 and IA-2670/2021, as stated above, are the objections filed by the objectors, which were heard and the submissions made by the parties were duly considered, however, this bench does not find the objections tenable, therefore, IA-2597/2021 and IA-2670/2021, are **dismissed** and stand **disposed of**.

47. Accordingly, IA-5462/2020 stands **allowed** and CP (IB)-1665 (PB)/2018 is **disposed of**.

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(BHASKARA PANTULA MOHAN)
MEMBER (JUDICIAL)

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(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 131
(IB)-1665(PB)/2018

IN THE MATTER OF:

M/s. Mahindra & Mahindra Financial Services Ltd. Petitioner/Applicant
V.
Delhi Baroda Road Corporate Carrier Pvt Ltd. Respondent

Order Under Section 7 of Insolvency & Bankruptcy Code (CIRP)

Order delivered on 21.02.2022

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner	Adv Gulshan Kr. Sachdev and Raghunandan sharma counsels for Kotak Mahindra Bank
For RP	Ms. Shweta Dubey and Ms. Ishita Srivastava, Manish kumar advocate for SRA Mr. Nakul MOhta for COC

ORDER

Since we are taking another Bench matters, the matter stands adjourned to 29.03.2022.

— sd —

(RAMALINGAM SUDHAKAR)
PRESIDENT

— sd —

(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)