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BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

IA 926 of 2020 in C.P.(I.B) No.148/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.03.2021

Name of the Company: Manish kumar Bhagat RP
for Perfect boring Pvt. Ltd
V/s
Perfect boring Pvt. Ltd & Ors

Section 30(6) IBC,2016.

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

- 1.
- 2.

ORDER

(through video conferencing/physical)

Ms. Rashmi Jain, Advocate appeared on behalf of Applicant.

The order is pronounced in the open court, vide separate sheet.



CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 16th day of March, 2021



MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

**I.A. No. 926 of 2020
in
CP(IB) No. 148 of 2019**

In the matter of:

Mr. Manish Kumar Bhagat
Resolution Professional of
Perfect Boring Private Limited ... Applicant

Versus

Perfect Boring Private Limited and Ors ... Respondents

Order delivered on 16th March, 2021

Coram:

**Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance:

Applicant: Mr. Vishal Dave along with Mr. Nipun Singhvi, Advocates
Respondent: Mr. Jaimin R Dave and Mr. S Bansal, Advocate

ORDER

[Per se: Ms. Manorama Kumari, Member (J)]

1. The instant application is filed by the Applicant, the Resolution Professional of Perfect Boring Private Limited (hereinafter referred to as "Corporate Debtor") under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IB Code")

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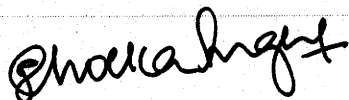
with a prayer for approval of Resolution Plan and condoning the delay in filing the present application in view of the stay from 03.06.2020 to 13.10.2020.

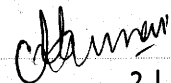
2. The facts of the case is/are herein under:

2.1 CP(IB) No. 148 of 2019 was filed by Operational Creditor viz. Devsaria Iron & Steel Co. Pvt. Ltd., under section 9 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor which was admitted on 30.09.2019 by this Adjudicating Authority and Mr. Manish Kumar Bhagat was appointed as Interim Resolution Professional (hereinafter referred as "IRP").

2.2 That the Committee of Creditors (hereinafter referred as "CoC") was formed and in its First Meeting held on 02.11.2019, CoC decided for continuation of IRP as RP (Resolution Professional).

2.3 That in the Third CoC meeting held on 28.01.2020, RP presented the list of Expression of Interest (hereinafter referred as "EoI") received from prospective Resolution Applicants.

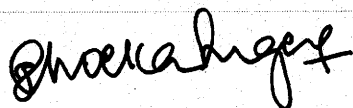


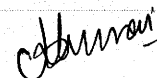


2.4 That in the Fifth CoC meeting held on 09.03.2020, RP apprised CoC about the revised claims of two of the Financial Creditors and further informed about the application being filed by Intec Capital regarding their claim being reduced. RP also informed the CoC that Four Resolution plans have been received and the same was summarily explained to the CoC. After the detailed discussions on the received Plans, CoC asked RP to inform all the Resolution Applicants to revise their Resolution Plans.

2.5 That CIRP was expiring on 28.03.2020, accordingly RP put forward the agenda for extension of 90 days before the CoC. However, CoC was of the view that CIRP can be completed within 180 days, hence, there is no requirement for further extension.

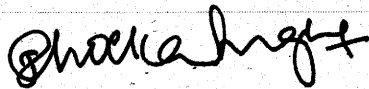
2.6 That in the Sixth CoC meeting held on 16.03.2020, Prospective Resolution Applicants requested some more time to submit the revised Resolution Plan. Since, 180 days were expiring on 28.03.2020, CoC approved for further extension of 90 days. Further, in the Eighth CoC meeting held on

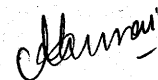


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23.06.2020, RP informed that only two Prospective Resolution Applicants were left out of the four. Hence, CoC decided to publish 2nd EoI due to withdrawal of the Prospective Resolution Applicants and Covid-19 situation. Pursuant to the Resolution Plans received, CoC requested the Resolution Applicants to modify their plans in the 9th CoC meeting held on 21.07.2020. Thereafter, since the CIRP was expiring on 13.08.2020, CoC resolved to file an application for extension of time by further 30 Days over and above the statutory period for completion of CIRP. The said application was allowed by this Adjudicating Authority vide order dated 18.08.2020.

2.7 That in Ninth CoC meeting held on 26.10.2020, RP stated that 2nd EoI was published and three Resolution Plans were received viz., a) Shyam Plastic Machinery, b) N.A. Routh Machines and Moulds India and c) Ganeshram Chaudhari and Divyaben Makwana. RP further apprised the CoC about the extension granted by this Adjudicating Authority of further 90 days beyond 180 days. However, 270 days expired on 19.10.2020. Moreover, since one application by Intec Capital was pending and the stay was granted on that application by the contemporary bench wherein the said IA



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was wrongly listed. Hence, CoC was unable to arrive at the conclusion of Resolution Plans. Thereafter, RP filed an application seeking 132 days exclusion due to the stay in one of the application which as rejected by this Adjudicating Authority.

2.8 In the Tenth CoC meeting held on 06.11.2020, RP stated that Ganeshram Chaudhari and Divyaben Makwana withdrew their Resolution Plan. CoC discussed the remaining Resolution Plans and suggested some changes in the plan, upon which Shyam Plastic Machinery submitted that they have already submitted their best offer.

2.9 That in the Eleventh CoC meeting held on 19.11.2020, RP apprised the revised Resolution Plan from N.A. Routh Machines and Moulds India was received wherein, CoC suggested some more changes. On further revision, the Resolution Plan was put for e-voting from 24.11.2020 to 27.11.2020. In the said e-voting, Resolution Plan was approved by majority of 96.37% of the CoC members.

2.10 The Applicant filed Compliance Certificate in 'Form H' as reflected at page no. 387-398 as **Annexure 22** of the

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application. Applicant has also submitted the Liquidation value and fair value from the valuers as reflected from page no. 387 of the application

3. Heard the parties, the present application has been filed for approval of the Resolution Plan under Section 30(6) of the IB Code (as amended upto date) submitted by RP in respect of the Corporate Debtor. The Applicant/ the Resolution Professional, deliberating the sequence of events right from calling of EoI up to approval of the Resolution Plan by the CoC in its 11th meeting submitted the Resolution Plan duly approved by the CoC by 96.37% in favour of the Resolution Plan so submitted by Resolution Applicant as the Resolution Plan complies with the requirements as envisaged under Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as well as Section 30 of the Code, and sought for approval of the Resolution Plan by this Adjudicating Authority.

4. On perusal of the records, it is found that the Resolution Applicant has taken account the interest of all stakeholders of the Corporate

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Debtor to the extent possible, as envisaged in this Resolution Plan
for insolvency resolution of "Perfect Boring Private Limited".

5. The sources of funds for the Resolution Plan is given below:

Application of Funds	INR	Sources of Funds	INR
CIRP Cost	1,35,00,000	Resolution Applicant's own contribution	6,00,00,000
Financial Creditor	13,59,47,000	Anand Panchal and Naresh Panchal contribution	2,00,00,000
Operational Creditor	18,77,000	Bank Finance (Sanction Attached with the plan)	12,00,00,000
Workman Dues	2,18,89,000		

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Employee Dues	1,67,000		
Statutory Dues	22,20,000		
Working Capital	2,44,00,000		
Total	20,00,00,000	Total	20,00,00,000

6. The transaction structure summary of the Resolution Plan is as follows:

Particulars	Claims admitted (Rs. Lacs)	Proposed payment amount (Rs Lacs)	Upfront payment (Rs Lacs)	Deferred payment (Rs in Lacs)	Proposed payment structure
CIRP cost	135.00	135.00	135.00	-	Upfront i.e. within 30 days

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					of the approval of Resolution Plan by AA
Financial Creditors	1912.04	1359.47	454.47	905.00	Upfront i.e. within 30 days of the approval of Resolution Plan. Deferred payment within 60 days of the approval of Resolutio

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					n Plan by AA
Workmen Dues- Pari Passu with Financial Creditor u/s 53(b)(i)	307.86	218.89	218.89	0	Upfront i.e. within 30 days of the approval of Resolutio n Plan by AA
Workmen compensatio n & employees if any	111.54	1.67	1.67	-	Upfront i.e. within 30 days of the approval of Resolutio n Plan by AA
Operational	1251.47	18.77	18.77	-	Upfront

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Creditors					i.e. within 30 days of the approval of Resolutio n Plan by AA
Government / statutory authorities	1479.70	22.20	22.20	-	Upfront i.e. within 30 days of the approval of Resolutio n Plan by AA
Contingent Liability	10.38	0	0	0	Amount proposed for any Continge

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					nt liability is NIL
Equity shareholder s	NA	0	0	0	Existing equity share capital shall be transfere d to resolution applicant, person acting in concert at Rs. NIL upon approval of resolution plan by

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					AA.
TOTAL	5207.9	1756.00	851.00	905.00	-
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7. The proposal relating to term of the Resolution Plan, its implementation schedule and sources of fund is reproduced herein below:

S. No.	Stakeholders Name	Amount Proposed	Timeline
1.	CIRP Cost	1,35,00,000	Within 30 days
2.	Workman Due	2,18,89,000	Within 30 days
3.	Financial Creditor	13,59,47,000	<ul style="list-style-type: none"> ▪ Within 30 days - 4.5447 Cr ▪ Within 60 days - 9.05 Cr
4.	Operational Creditor	18,77,000	Within 30 days

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5.	Statutory Dues	22,20,000	Within 30 days
6.	Employee Due	1,67,000	Within 30 days

Further, the Resolution Applicant undertake to pay interest @12% if payment is not made within the stipulated period.

8. On perusal of the record, it is found that the Resolution Applicant has also filed Form H as **Annexure 22** under regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 at page no. 387-398 of the application, which is self explanatory.
9. In view of above Section 30(2) and 30(4) is applicable in the instant case. For sake of the convenience the amended provision is reproduced herein below-

“30. Submission of Resolution Plan

(1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

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(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;

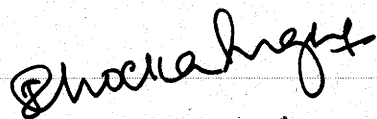
[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

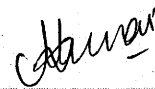
(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.





Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of

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2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

FINDINGS:

10. Looking to the entire facts of the case, it is found that the COC has approved the plan with 96.37% voting in favour of the approval of the plan. Moreso, the Resolution Applicant fulfils the mandatory contents of the Resolution Plan as provided under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. Regulation 38 is reproduced herein under-

“38. Mandatory contents of the resolution plan.

(1) A resolution plan shall identify specific sources of funds that will be used to pay the –

(a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;

(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and

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(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

["(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor."]

(2) A resolution plan shall provide:

- (a) the term of the plan and its implementation schedule;
- (b) the management and control of the business of the corporate debtor during its term; and
- (c) adequate means for supervising its implementation."

11. Further, from the object of the IBC, it is amply clear that the **"Resolution is Rule and the Liquidation is an Exception"**. Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only, if there is any surplus after satisfying the claims of a prior set of stakeholders fully. The IB Code', therefore, does not allow liquidation of a corporate debtor' directly.

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It allows liquidation only on failure of corporate insolvency resolution process'. It rather facilitates and encourages resolution in several ways.

*The said objective of the Resolution Plan is affirmed in the decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors.***

The Supreme Court has observed that National Company Law Tribunal has no jurisdiction and authority to analyze or evaluate the commercial decision of the Committee of Creditors (CoC) to enquire into the justness of the rejection of the Resolution Plan by the dissenting Financial Creditors.

*Keeping in view such object behind the enactment of the Code, intention of the Legislature, that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for brining Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per the apex court's decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors** as discussed above.*

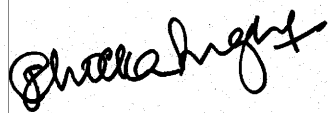
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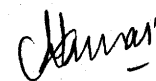
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The Hon'ble Supreme Court further held that "the legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority".

In the recent judgment of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta &Ors** delivered by the Hon'ble Supreme Court, it was strongly opined by the Hon'ble Apex Court that the Adjudicating Authority can exercise only a limited judicial review in respect of any COC decision. NCLT/NCLAT does not have jurisdiction under the provisions of the Code to interfere in the merits of a business decision taken by the majority of COC.

The Hon'ble Supreme Court held that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the CoC and that the CoC is the final authority in this regard. The Hon'ble Supreme Court restricted the role of NCLT to only adjudicate whether the CoC has complied with the objects of the Code i.e. the corporate debtor needs to keep going as a going concern during CIRP, it needs to maximize the value of the assets of the corporate debtor, and interests of all stakeholders have to be taken care of.





The Court referred to its judgment in K Sashidhar's matter wherein it was provided that there is no provision under the Code which empowers the Adjudicating Authority to oversee the justness of the reason or the commercial decision taken by the financial creditors in approving or rejecting the proposed resolution plan. The apex court upheld the autonomy of the CoC regarding the commercial matters and decisions that cannot be questioned by the AA.

12. With regard to the **Extinguishment of claim** in **Part E** (Page no. 345 of the application) and **Part J** (Page no. 357 of the application), it is to be mention that since all the Financial Creditors, Operational Creditors and other Stakeholders have already lodged their claims during the CIRP and the same has been already considered by CoC and accordingly, Resolution Plan has been approved by CoC with majority. The claims of any Stakeholder and others, if remained unaddressed or not considered by CoC, shall not claim upon Corporate Debtor after the approval of Resolution Plan. Furthermore, if there is any proceeding pending before any competent authority(s), Resolution Applicant may approach the said authority for appropriate order.

13. Further, it is to be specifically mention herein that no claim against the Resolution Applicant will lie on and from the date of

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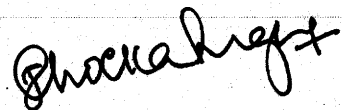
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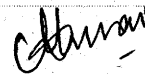
approval of the Resolution Plan by this Adjudicating Authority.

However, any extinguishment, waiver or concession, if claimed, by the Resolution Applicant from any competent authority of Government/ Semi Government/ Central or Local Authority, Resolution Applicant is required to approach them for such relief, claim and/or any waiver.

14. With regard to any pending proceeding before any competent authority(s), civil as well as criminal, against the Corporate Debtor, Resolution Applicant may approach before the said competent authority for any relief as provided for Resolution Applicant in IB Code.

15. It is needless to mention herein that approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/own jurisdiction to pass any appropriate order or as the case may be. The Resolution Applicant(s) on approval of the Plan may approach those Competent Authorities/Courts/Legal Forums/Offices- Govt, or Semi Govt. / State or Central Govt, for appropriate relief(s) sought for in the Resolution Plan.





16. Thus, not allowing the above said relief and/or concession and/or waiver are not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant(s) has/have liberty to approach Competent Authorities for any concession, relief or dispensation, as the case may be as when required for proper and effective implementation of the Plan.
17. Apart from the above observations and directions, it is further directed/ observed that:
- i. The approved Resolution Plan shall come into force with immediate effect.
 - ii. The Resolution Plan shall be subject to the various existing laws in force and shall also conform to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.
 - iii. The Resolution Applicant(s) shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.

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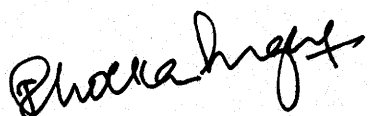
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iv. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.

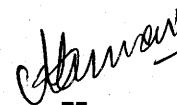
18. Under such facts and circumstances, we, the Adjudicating Authority, is of the considered opinion and also being satisfied that the Resolution Plan as approved by the Committee of Creditors (CoC) meets the requirements as referred to under section 30(2) of the Code.

19. Accordingly, IA 926 of 2020 is allowed with the above said observations and directions and stands disposed of in view of the above order.

20. Any IA(s), if any, reserved for order in relation to the instant Resolution Plan stands infructuous.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member(Technical)



Manorama Kumari
Adjudicating Authority
Member(Judicial)

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