

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

**IA. No. 1239/2022**

**In  
CP(IB)No. 4289/MB/C-II/2018**

**Application filed under section 30(6), r/w  
Regulation 39(4) of the IBBI (Insolvency  
Resolution Process for Corporate Persons)  
Regulations, 2016, r/w Rule 11 of the NCLT  
Rules, 2016.**

Filed by  
**Mr. Shekhar Kumar Agrawal,  
Resolution Professional  
...Applicant**

*In the matter of*

**Edelweiss Asset Reconstruction Company  
Limited  
...Financial Creditor**

Versus

**M/s Siddharth World Trade Private Limited &  
Ors.**

**...Corporate Debtor**

**Order Pronounced on :- 23.06.2023**

***Coram:***

**Shyam Babu Gautam  
Member (Technical)**

**Kuldip Kumar Kareer  
Member (Judicial)**

*Appearances (through video conferencing)*

**For the Resolution Professional : Mr. Nausher Kohli, Advocate**

**ORDER**

***Per: Kuldip Kumar Kareer, Member Judicial***

1. The present Interlocutory application is filed by **Mr. Shekhar Kumar Agrawal** the Applicant, Resolution Professional of **M/s Siddharth World Trade Private Limited & Ors.**, the Corporate Debtor by submitting a resolution plan under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking approval of the Resolution Plan submitted by M/s Sharad Milk and Milk Products. The Plan was duly approved by 100% of the Committee of Creditors (CoC).
2. The Applicant submits that the Financial Creditor, Edelweiss Assets Reconstruction Co. Ltd, initiated the Corporate Insolvency Resolution process (CIRP) against the Corporate Debtor under Section 7 of the Code on 13.05.2021 and appointed Mr. Sameer Kakar as the Interim Resolution Professional (IRP) and later on replaced Mr. Shekhar Kumar Agrawal as the Resolution Professional.

3. On 03.09.2021, the erstwhile IRP published Form – G in English and Marathi newspapers, inviting expression of interest from the prospective resolution applicants and the last date for submission of EOI was 18.09.2021. Further, two EOI's were received by 18.09.2021 and a provisional list was released. Further, on 29.09.2021, the final list of EOI applicants was received and the Request for Resolution Plan (RFRP) and Evaluation Matrix was issued to the EoI holders on 29.09.2021. The last date for receipt of Resolution Plan was 29.10.2021 and was subsequently extended up to 15.11.2021.
4. On 15.11.2021, the Applicant received two resolution Plans and the same were placed before the CoC on 22.11.2021 at the 10<sup>th</sup> CoC meeting. The plans received did not comply with the RFRP terms and the members of CoC decided to seek revised Resolution Plan. The Applicant received the Plans and the said Plans were conditional and certain discrepancies were observed. In view of the said, the members of the COC decided for inviting fresh EoI's.
5. Accordingly, the Applicant published a fresh Form G dated 14.01.2022. In response to the said, only two EoI's were received from M/s Sharad Milk and Milk Products and Indian Ocean Group PTE Ltd and RFRP was issued to the EoI holders. The last date for submission of the Resolution Plan was 12.03.2022. Further, in the 14<sup>th</sup> CoC meeting held on 10.03.2022, the time for submission of the Resolution Plan was extended till 27.03.2022.

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

I.A. NO. 1239/MB/C-II/2022

In

C.P. (IB) No. 4289/MB/C-II/2018

6. On, 27.03.2022, one of the prospective Resolution Plan namely M/s Sharad Milk and Milk Products submitted its Resolution Plan for consideration. The total amount to be infused in to the Corporate Debtor was Rs. 6.70 Crores payable over one year of period. The said Plan was discussed and negotiated on the basis of which on 25.04.2022, the Resolution Applicant submitted an Addendum to the Resolution Plan by increasing the amount to be infused to Rs. 8 Crores payable within 3 months. The said Plan was voted upon by the members of CoC and was approved by 100% votes in favour of the Resolution Plan.

**SALIENT FEATURES OF THE APPROVED RESOLUTION PLAN**

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

(Rs. in Lakhs)

Sr. No	Particulars	Claim (Rs.)	Amounts	Remark
1.	CIRP Cost	40	40	To be paid in Full at actuals
2.	Financial Creditors	23,687.78	749.61	To be distributed proportionately between the secured Financial

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

I.A. NO. 1239/MB/C-II/2022

In

C.P. (IB) No. 4289/MB/C-II/2018

				Creditors
3.	Payment to Workmen	NIL	NIL	Not Applicable
4.	Payment to Employees	NIL	NIL	Not Applicable
5.	Operational Creditors (Non. Govt.)	NIL	NIL	Not Applicable
6.	Operational Creditors (Govt.)	3.80	0.38	Paid 10% of the claim amount
7.	Other Creditors	NIL	NIL	Not Applicable

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

I.A. NO. 1239/MB/C-II/2022

In

C.P. (IB) No. 4289/MB/C-II/2018

8.	Other Contingencies	1,748.32	10	Amount set aside for contingent claims
9.	Shareholders	100	0.01	Rs. 1 for each 100 equity shares.
	<b>Total</b>	<b>25,579.90</b>	<b>800</b>	

1. The Resolution Applicant has stated that in order to regularize the lease in respect of Factory premises situated at Jaisinghpur, the Resolution Applicant will incur cost of Rs. 1,20,00,000/- (Rupees One Crore Twenty Lakh Only). Further, the Resolution Applicant proposes to infuse an amount of Rs. 5,00,00,000/- (Rupees Five Crores Only).
2. The Resolution Applicant has also provided a Performance Bank Guarantee on 19.05.2022 for an amount of Rs. 2,00,00,000/- (Rupees Two Crores Only) to be paid immediately on the last instalment i.e. 90 days from effective date.
3. The Resolution Plan submitted by the Resolution Applicant is in compliance with the provisions of the Code, the CIRP

Regulations and does not contravene any of the provisions of law.

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

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

7. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.
8. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.
9. Further, it is observed that Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan,
  - a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;
  - b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be

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

I.A. NO. 1239/MB/C-II/2022

In

C.P. (IB) No. 4289/MB/C-II/2018

less than,

- i. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
- ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation - For the purpose of this section –

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

c) Provides for the management of the affairs of the

Corporate debtor after approval of the resolution plan;

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

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

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

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

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

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

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

13. The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through two registered valuers. The aggregate of the average of Fair Value of all the assets is Rs. 1,111.29 Lakhs and that of the Liquidation Value of all the assets is Rs. 848.34 Lakhs.

It is observed that the liquidation value of the Corporate Debtor is higher than the Resolution Plan value. However, it is a settled law through catena of judgements that maximization of value of assets of the Corporate Debtor so as to run the Corporate Debtor efficiently as a going concern is an important objective of the Code and as also the CoC members have

exercised their commercial wisdom of their requisite majority which hold sway.

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

which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

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

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

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

**ORDER**

- (i) **The Application IA No. 1239 of 2022 in CP 4289 of 2018 be and the same is allowed.** The Resolution Plan submitted by M/s Sharad Milk and Milk Products is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- (ii) no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.
- (iii) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
- (iv) This Tribunal will not deter such authorities to deal with any of the issues arising after giving effect to the Resolution Plan.

- (v) As to the Reliefs and concessions stated in Clause 9.7 of the Resolution Plan, the exemption as sought for in relation to the stamp duty or tax liability, registration charges, fees arising out of the implementation of the Resolution Plan is not granted.
- (vi) As regards the other reliefs and concessions as sought for which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP as stipulated under Section 32A of the Code, is granted to the Resolution Applicant. With regard to other concessions and reliefs, most of them shall stand subsumed in the reliefs granted above.
- (vii) The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- (viii) Further, in terms of the Judgment of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited**, on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which are not a part of the Resolution Plan.
- (ix) The Memorandum of Association (MoA) and

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

I.A. NO. 1239/MB/C-II/2022

In

C.P. (IB) No. 4289/MB/C-II/2018

Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

- (x) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (xi) Further from the effective date and until the transfer date, a Monitoring Committee is to be constituted. The Committee shall consist of 2 representatives from the Resolution Applicant, 2 representatives of the CoC and the RP.
- (xii) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- (xiii) The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

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

Sd/-

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