



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

**I.A. No. 46 of 2022  
and  
IA No. 3850 of 2022  
In  
C.P.(IB)/2987 (MB) 2018**

Under Section 31 of the Insolvency and  
Bankruptcy Code, 2016.

**Gaurav Ashok Adukia,**  
Resolution Professional of Octagea Green  
Power & Sugar Company Limited having  
office at Sumedha Management Solutions  
Private Limited, C-703, Marathon Innova,  
Lower Parel (West), Mumbai,  
Maharashtra- 400 013.

.....Applicant

*In the matter of*

**Edelweiss Asset Reconstruction Company  
Limited**

.....Petitioner

**Vs.**

**Octagea Green Power & Sugar Company  
Limited**

.....Corporate Debtor

**Order delivered on: 19.05.2023**

***Coram:***

**Hon'ble Member (Technical)**

**Shri Shyam Babu Gautam**

**Hon'ble Member (Judicial)**

**Shri Kuldip Kumar Kareer**

***Appearances:***

For the Resolution Professional: Mr. Dhiraj Mhetre, Advocate

For the Resolution Applicant: Mr. Sandeep Bajaj, Advocate

**ORDER**

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

1. This is an Application filed under Section 31 of the Insolvency & Bankruptcy Code, 2016 (“the Code”) for seeking approval of this Bench in respect of the Resolution Plan submitted by the Successful Resolution Applicants i.e. Mr. Mallu Hemanth Reddy and Mr. Basab B Paul (“SRA”) which was passed by the Committee of Creditors (“CoC”) with requisite majority under Section 30(4) of the Code.
2. The Corporate Debtor is a registered MSME, primarily engaged in the business of manufacturing, blending and bottling of alcohol. By an Order of this Tribunal dated **2<sup>nd</sup> July 2019**, Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor and the Applicant was appointed as the Interim Resolution Professional (IRP) and was later confirmed as the Resolution Professional (RP) of the Corporate Debtor in the **First Meeting of CoC held on 19<sup>th</sup> August 2019**. The CIRP was duly conducted from July 2019 to September 2021. During the **Nineteenth Meeting of the CoC held on 27<sup>th</sup> September 2021**, an earlier plan submitted by the present SRA was rejected by the CoC and, in fact, the CoC decided to

liquidate the Corporate Debtor during the **Twentieth Meeting of CoC held on 12<sup>th</sup> November 2021**. The Application being I.A. No. 46 of 2022 filed by the RP for initiating liquidation under Section 33 of the Code is pending before this Tribunal. Subsequent to an Order dated 26<sup>th</sup> August 2022 passed by this Tribunal directing the CoC to reconsider the resolution plan submitted by Mr. Basab Paul (erstwhile director of the Corporate Debtor), the SRA submitted a revised Resolution Plan (hereinafter referred to as “Plan”) for the consideration of the CoC. Ultimately, by way of the **e-voting held on 23<sup>rd</sup> November 2022**, the CoC approved the Resolution Plan with 100% members voting in favour of the Plan.

*Observations about the plan*

3. The SRA are the erstwhile Directors of the Corporate Debtor who are eligible to submit a resolution plan under Section 29A read with Section 240A of the Code. On perusal of the **Resolution Plan and Form- H** filed by the RP, the following facts are relevant:
  - a. The Resolution Plan lays down that the “**Effective Date**” for initiation of the payments envisaged under the provisions of the Plan shall occur on the date on which the Resolution Plan is approved by this Tribunal.
  - b. The **Fair Value** of the Corporate Debtor is estimated as **Rs. 27.48 Crores** only and the **Liquidation Value** is calculated as **Rs. 17.85 Crores** only. The Admitted claim value is stated as **Rs. 25.65**

**Crores** only. It is thus observed that admitted claim value against the Corporate Debtor is more than the liquidation value of the company.

- c. The Resolution Plan contemplates a total investment of **Rs. 28.15 Crores** only which consists of the following components:

<b>Particulars</b>	<b>Amount</b>
Towards CIRP costs	Rs. 2.5 Crores
To Secured Financial Creditors a. Edelweiss Assets Reconstruction Company Ltd. b. State Bank of India	Rs. 25.50 Crores (cumulative)
Towards Statutory dues	Rs. 15 Lakhs
a. Employee Provident Fund Organisation (EPFO)	Rs. 7.69 Lakhs
b. Commissioner of State Excise, Maharashtra	Rs. 3 Lakhs
c. Commissioner of Sales Tax, VAT	Rs. 4.31 Lakhs

- d. With regard to **Financial Creditors**, the Plan allocates an amount of **Rs. 25.50 Crores** accounting for 14.23% of the total amount claimed i.e. Rs. 179.25 Crores only to the two Financial Creditors namely, Edelweiss Asset Reconstruction Company Limited and State Bank of India, both of whom have voted in favour of the Plan. This also includes an upfront payment of Rs. 16 Crores only.

- e. With regard to the **Statutory dues**, the Plan envisages a cumulative payment of **Rs. 15 Lakhs** only. In this regard, it is submitted that the Applicant has received claims dated 13<sup>th</sup> September 2022 from the Employees Provident Fund Organisation (“EPFO”) amounting to Rs.26,08,423/- only, from Commissioner of Sales Tax VAT, Maharashtra amount to Rs.3,46,50,271/- only and Commissioner of State Excise Maharashtra amounting to Rs. 17,14,145/- only. The SRA has agreed that the claims of EPFO will be paid in full as admitted on the effective date of the Resolution Plan. Further, the claim of State Excise Department, Maharashtra and Departmental of State Tax, Govt. of Maharashtra will be paid in same proportion as paid to secured Financial Creditors on the basis of the amount of claim admitted as on the effective date of the resolution plan. The Applicant submits that after the scrutiny of the aforesaid statutory claims, if any further claims are admitted, the SRA undertakes to make the payment of the same within 30 days of the approval of the Plan.
- f. With regard to the **Operational Creditors**, in compliance with the provision of Section 30(2)(b) of the Code, since the admitted claims of Operational Creditors of the Corporate Debtor are nil, they are not being paid under the Resolution Plan. Further, payment of statutory dues (for an aggregate claim value of Rs. 3.90 Crores) has been provided for under the plan together with an undertaking that any further admitted claims as on effective date of any statutory authorities including EPFO, State Excise or VAT will be paid in full or in proportion as stated earlier.

g. The payment of **CIRP costs** amounting to **Rs. 2.5 Crores** is ensured in full and will be paid within 15 days of approval of the Resolution Plan by this Tribunal.

4. The Resolution Plan includes a statement under Regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and the amounts provided to the respective stakeholders is tabulated as under:

Sr. No.	Stakeholder	Amount Claimed	Amount Admitted	Amount provided (in Rs.)	Amount provided (in %)
1.	Secured Financial Creditors (both who voted in favour of the Plan)	179.25	179.25	25.50	14.23%
2.	Unsecured Financial Creditors (not having right to vote)	467.71	0	0	NA
3.	Operational Creditors				
	(a) Related Party of Corporate Debtor	33.27	0	0	NA
	(b) Other than (a)				
	(i) Government	3.90	3.90	0.15	3.85%
	(ii) Suppliers	0.04	0.0031	0	NA
	Total:	37.21	3.90	0.15	0.40%
	<b>TOTAL</b>	<b>684.17</b>	<b>183.15</b>	<b>25.65</b>	<b>3.75%</b>

5. A perusal of Form-H as filed by the Resolution Professional also posits the fact that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30 of the Code read with Regulations 37 to 39 of the Insolvency and Bankruptcy Board of India

(Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. Further, as per the provision under Section 30(1) of the Code, the SRA, being promoters of the Corporate Debtor that is registered as a MSME under the Micro, Small and Medium Enterprises Development Act, 2006, has furnished an Affidavit affirming their eligibility under Section 29A read with Section 240A of the Code to submit a Resolution Plan. The Applicant also submits that the Plan is not subject to any contingency and the SRA has submitted the Plan as a going concern for acquiring the ownership of the Corporate Debtor.

6. The Applicant further states that in compliance with Section 30(2)(d) of the Code, the Resolution Plan provides for implementation of the Plan including the authority to take decisions on operational, financial and legal matters with respect to the Corporate Debtor from the Effective Date under the supervision of the Monitoring Committee which shall consist of the following members:
  - a. Representative of Edelweiss ARC;
  - b. Representative of State Bank of India;
  - c. Representative of the SRA
  - d. Existing RP as Chairperson of the Committee;
  
7. The Applicant states that pursuant to Regulation 38(2)(d) of the CIRP Regulations, it is submitted that in case of any Applications related to Preferential transactions under Section 43, Undervalued transactions under Section 45, Extortionate credit transactions under Section 50 and Fraudulent transactions under Section 66, the same shall be pursued by the members of the CoC after approval of the Plan. All

ancillary costs will be borne by them and the benefits, if any, will also accrue to them.

8. As to the Reliefs and Concessions stated in Clause 11 of the Resolution Plan, the exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted. 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 and as stipulated under Section 32A of IBC, 2016 is granted to the Resolution Applicant. With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. 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. Further in terms of the Judgement 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 approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and 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. In view of the foregoing, this Plan is hereby **approved**.

9. Consequently, the **I.A. No. 46 of 2022** filed by the present Applicant seeking Liquidation of the Corporate Debtor is rendered infructuous

and is hereby disposed of. The Resolution Professional is further directed to handover all records, premises / documents to the SRA to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan.

10. The SRA shall have access to all the records, premises / documents through the Resolution Professional to finalise the further line of action required for starting of the operation.
11. Accordingly, the Resolution Plan in **I.A. No. 3850 of 2022** is hereby allowed and approved.

**Sd/-**

**SHYAM BABU GAUTAM  
MEMBER (TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER  
MEMBER (JUDICIAL)**

Anusha  
19.05.2023