



IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD BENCH

COURT - 1

ITEM No. 146

**IA 675 (AHM) 2022 in
CP (IB)/685/9/NCLT/AHM/ 2019**

**Order under Section 30(6) read with Section 31 of the Insolvency and
Bankruptcy Code, 2016**

IN THE MATTER OF:

**CA Dhaval Jitendrakumar Mistry
Resolution Professional of
Superchem Coatings Pvt Ltd.**

...Applicant/Resolution professional

Order delivered on : 20/12/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**DR. MADAN B GOSAVI
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

**IA 675 (AHM) 2022 in
CP (IB)/685/9/NCLT/AHM/ 2019**

IA/675 (AHM) 2022

[An application under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016 read along with the Regulation 39 (4) for approval of resolution plan]

In the matter of:

**CA Dhaval Jitendrakumar Mistry
Resolution Professional of
Superchem Coatings Pvt Ltd.**

Office at: 9-B, Vardan Complex,
Near Vimal House, Lakhudi Circle,
Navrangpura, Ahmedabad,
Gujarat, 380014, India

...Applicant/Resolution professional

Order pronounced on: 20.12.2022

**CORAM: Dr. Madan B. Gosavi, Member (J)
Kaushalendra Kumar Singh, Member (T)**

Appearance: Mr. Atul Sharma, Advocate, for the Resolution Professional

ORDER

1. This Application is filed by Mr. Dhaval Jitendrakumar Mistry Resolution Professional of Superchem Coatings Pvt Ltd under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) for approval of Resolution Plan of Superchem Coatings Pvt Ltd (hereinafter referred to as “Corporate Debtor”).

2. The facts, in brief, are that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (in short “**CIRP**”) by this Adjudicating Authority vide order dated 07.12.2021 and Mr. Arun Chadha was appointed as Interim Resolution Professional (in short “**IRP**”). Thereafter, Public announcement was made as per provision of section 15 of the Code and claims were called from all the creditors. The announcement was published in the newspapers on 10.12.2021 in Financial Express (English & Regional i.e. Gujarati Languages) in prescribed Form A.

3. The IRP had convened First meeting of CoC on 06.01.2022 wherein the CoC members approved the resolution to appoint Interim Resolution Professional as Resolution Professional (in short “**RP**”) of the Corporate Debtor. The CoC in its 2nd meeting held on 11.02.2022 decided to replace the RP Mr. Arun Chadha with the applicant herein i.e. Mr. Dhaval Jitendrakumar Mistry as Resolution Professional.

4. The final CoC comprised of the following members.

Sr. No.	Name of creditors	Amount of claim admitted (lakh)	Percentage of voting
1	HDFC Bank	18.60	74.14%
2	Dinesh Kumar Singla	06.49	25.86%
TOTAL		25.09	100%

5. Further, in 3rd meeting dated 14.03.2022, the CoC decided to defer the publication of Form - G inviting expression of interest for 2 weeks as there was settlement talks going on and in the 5th meeting held on 21.04.2022, the CoC resolved to initiate the process of Expression of Interest [EOI]. Thereafter the applicant published the invitation for expression of interest in the prescribed Form-G in Financial Express [English and Gujarati Edition] on 23.04.2022 in pursuance of Regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016.

6. In the 6th meeting dated 06.06.2022, the CoC resolved for getting extension of CIRP period by 60 days. Accordingly an IA No. 492 was filed and CIRP period was extended by this Adjudicating Authority vide order dated 13.06.2022. In the 7th CoC meeting, the Resolution Professional informed the members about the receipt of one EOI and also of a resolution plan from the suspended board of directors which was submitted jointly by Mr. Ashish Goyel and Sudesh Goyel. The

Applicant informed the members of the CoC that the Corporate Debtor being MSME, the suspended board of directors would not be ineligible under section 29A of the Code.

7. In the 8th CoC meeting dated 30.07.2022, the members of the CoC discussed and negotiated with the said suspended board of members namely shri Ashish Goyal and Sudesh Goyal (herein after referred as Resolution Applicant) and decided to get addendum to their proposed revised Resolution plan dated 22.07.2022 in relation to the payment to be made to the secured financial creditor HDFC Bank.

8. Thereafter, the members of the CoC decided to keep the revised Resolution Plan along with the Addendum for e-voting till 02.08.2022. The Revised Plan dated 22.07.2022 along with addendum submitted jointly by the Resolution Applicant Mr. Ashish Goyal and Sudesh Goyal came to be approved by the member of CoC by 100% votes in favor.

9. The Applicant submitted that the Resolution Applicant has proposed to pay Rs. 61,00,000/- within 30 days from the date of order of this Tribunal approving the Resolution Plan.

10. The Applicant had received valuation reports from the registered valuers wherein the average Fair Value and Liquidation Value is estimated at Rs. 1,31,18,222/- and Rs. 58,65,075/- respectively.

11. The amount provided for various stakeholders under the Resolution Plan is reproduced hereunder:

(Amount in Rs. Lakh)

Sr	Category of Shareholder *	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided Under the Plan#	Amount provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	21.64	18.60	18.60 (including interest)	100.00%
		Total [(a)+(b)]	21.64	18.60	18.60	100.00%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				

		(i) who did not vote in favour of the resolution plan	6.49	6.49	6.49	100.00%
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		Total[(a)+(b)]	6.49	6.49	6.49	100.00%
3	Operational Creditors	(a) Related party of the Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) Government	NIL	NIL	NIL	NIL
		(ii) Workmen	NIL	NIL	NIL	NIL
		(iii) Employees	NIL	NIL	NIL	NIL
		(iv) Others	54.73	54.73	25.90	47.32%
		Total[(a)+(b)]	54.73	54.73	25.90	47.32%
4	Other debts and dues		-	-	-	-
5	CIRP Cost	Estimated CIRP Cost			10.00	100%
Grand Total		[1+2+3]	82.86	79.82	61.00	

12. It is noted that for obtaining the approval of Adjudicating Authority under section 31(1), the resolution plan should adhere to the following requirements as per Section 30(2) of the Code:

- (i) It should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the corporate debtor.

[Section 30(2)(a)]

(ii) The repayment of the debts of operational creditors and dissenting financial creditors should not be less than the amount to be paid to such respective creditors in the event of liquidation of the corporate debtor under section 53 of the Code. Moreover, the payment to the operational creditor is to be made in priority over the financial creditor; and the payment to dissenting financial creditor is to be made in priority to the consenting financial creditors.

[Section 30(2) (b) read with CIRP Regulation 38(1)(a) & 38(1)(b)];

(iii) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan.

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

(iv) The implementation and supervision of the resolution plan.

[Section 30(2)(d) read with CIRP Regulation 38(2)(c)];

(v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e)];

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

[Section 30(2)(f)]

Such other requirements of the resolution plan as detailed in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 which are not covered above, are as under:

(a) The resolution plan should include statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors of the corporate debtor.

[CIRP Regulation 38 (1A)]

(b) The resolution plan should include a statement giving details as to whether the resolution applicant or any of its related parties has at any time failed to implement or caused to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority.

[CIRP Regulation 38 (1B)]

(c) The resolution plan should contain the term of the plan and its implementation schedule.

[CIRP Regulation 38(2)(a)]

(d) The resolution plan should also demonstrate that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; has provisions for approvals required and timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan.

[CIRP Regulation 38(3)]

13. In view of the above provisions of the Code, 2016, the resolution plan submitted before us has been examined as follows:

(i) In the plan, the provision towards CIRP costs is made for Rs. 10,00,000/- in priority to the repayment of other debts of the corporate debtor. Thereby, section 30(2)(a) has been complied with.

(ii) The resolution plan provides for payment to the operational creditor amounting Rs.25.90 lakhs as against the admitted claim of Rs. 54.73 lakhs. The Proposed payment works out to 47.32% of their admitted claim and the same is not less than the amount payable to them in the event of Liquidation of Corporate Debtor under section 53 of the Code. The Plan also provides for the payment to the Operational Creditors within 30 days from the date of approval of the Plan in priority over to Financial Creditors. It is also noted that there are dissenting Financial Creditors. However they are proposed to be paid in full (100%) against their admitted claim. We hold that provisions of section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b) have been complied with.

(iii) The mechanism for management and control of the affairs of the corporate debtor after approval of the resolution plan has been provided in the resolution plan itself whereby the Monitoring Committee will look after the business of the corporate debtor after approval of the resolution plan and pending its implementation. It consists of RP, one member from Resolution Applicants, one member from secured Financial Creditor, any other expert/professional appointed by CoC. The same committee is given task of implementation of the Plan. We hold that thereby provisions of Section 30(2)(c) read with CIRP Regulation 38(2)(b) have been complied with.

(iv) The resolution plan contains a provision wherein, the implementation of the said plan will be supervised by the Monitoring Committee. Thereby, Section 30(2)(d) read with CIRP Regulation 38(2)(c) has been complied with.

(v) The RP has submitted that the plan does not contravene any provisions of law. We also noted that the plan does not contravene any provisions of the law for the time being in force. Thereby, Section 30(2)(e) has been complied with.

(vi) The resolution plan also conforms to other IBBI Regulations as given hereunder:

a) The resolution plan adequately deals with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor. Thereby, the plan is in compliance with CIRP Regulation 38 (1A)

b) The Resolution Plan includes a statement saying that neither the resolution applicant nor any of its related parties has at any time failed to implement or contributed to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority. Thereby, the plan is in compliance with CIRP Regulation 38 (1B).

c) The Resolution Plan proposed to pay 61,00,000/- within 30 days from the date of order and the CIRP cost Rs. 10.00 Lakh and payment shall be made from the upfront amount paid along with EMD as mentioned in the Plan. Thereby CIRP Regulation 38(2)(a) has been complied with.

d) On perusal of the resolution plan, it is inferred that the plan is feasible and viable, and has an effective implementation mechanism proposed under the resolution plan. It contains provisions for

approvals required and timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan. Thus CIRP Regulation 38(3) has been complied with.

14. As far as reliefs and concessions claimed by the resolution applicant, the law has been well settled by the Hon'ble Supreme Court in the case of **Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021** in the following words:

86. ...*The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*

87. *We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief.....*

15. In view of the above, the Resolution Applicant cannot be saddled with any previous claim against the Corporate Debtor prior to the initiation of it CIRP except stated under section 32A of the Code. However, as far as various statutory rights vested with the corporate debtor in form of various licenses, leases, and other alike matter, we make it clear that the successful resolution applicant has to

approach the concerned statutory authority for those concessions and those authorities will consider the same as per their established procedure.

16. The proviso to section 31 of the Code, 2016, states that before passing any order for approval of the resolution plan, the Adjudicating Authority should also satisfy that the resolution plan has provisions for its effective implementation. We being satisfied or of the considered view that the Resolution Plan has complied with provisions of section 30(2) of the IBC and Regulation 38 and 39(1) of CIRP Regulations. Accordingly we approve the resolution plan and proceed to pass the following order:

ORDER

- I. Application is allowed. The Resolution Plan is approved.
- II. The approved 'Resolution Plan' shall become effective from the date of passing of this order. A copy of this approved plan is enclosed to this order.
- III. The order of moratorium dated 07.12.2021 passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of passing of this order.
- IV. The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.

- V. The monitoring committee as proposed in the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- VI. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).
- VII. 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 in its database.
- VIII. Accordingly IA No. 675 of 2022 in CP IB 685 of 2019 is allowed and stands disposed of in terms of the above directions.
- IX. A certified copy of this order, if applied for, is to be received to all concerned parties upon compliance with all requisite formalities.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B GOSAVI
MEMBER (JUDICIAL)

Divya/LRA