

**NATIONAL COMPANY LAW TRIBUNAL
BENCH AT HYDERABAD**

I. A. No. 161/2022

IN

CP(IB) No.95/10/HDB/2021

*Application Under Section Under Section 30(6) & 31 of IBC, 2016 R/W
Regulations 39(4) of The IBBI (Insolvency Resolution Process for
Corporate Persons), R/W Rule 11, 13, 32 Of NCLT Rules, 2016*

IN THE MATTER OF UNICORN ORGANICS LIMITED

Filed by

Mr. Pavan Kankani
Resolution Professional
M/s Unicorn Organics Limited
#302, 3rd Floor, 3-6-140/A,
City Centre, Himayat Nagar
Hyderabad – 500 029

...Applicant/
Resolution Professional

Date of order: 29.07.2022

Coram

Dr. N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Applicant: Shri V. Ravi Kumar, Advocate



PER: BENCH

1. **IA No. 161/2022** is filed by the Resolution Professional under Section 30(6) & 31 of IBC, 2016 r/w regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 & Rule 11 of NCLT Rules, 2016, seeking approval of the resolution plan submitted by Mr. Kishore Jain (**Resolution Applicant**) as duly approved by the Committee of Creditors with 100% votes.
2. To put concisely, the main petition filed by Corporate Applicant/Unicorn Organics Limited u/s 10 of IBC, 2016 was admitted by the Adjudicating Authority vide Order Dated 13.08.2021 and ordered commencement of CIRP against the Corporate Applicant. The Applicant herein was appointed as Interim Resolution Professional (IRP), who continued as Resolution Professional.
3. In terms of Regulation 6 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, public announcement in Form-A was made by IRP on 01-09-2021 inviting claims from the creditors of Corporate Debtor. The IRP, after collating and verifying the same admitted Claims from sole operational creditor. Since there are no financial creditors in the Company the IRP

constituted Committee of Creditors comprising of the sole Operational Creditor as under.

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Tapasvilal Deora & Associates	100%	Voted for

4. The Form-G inviting Expression of Interest ("EOI") from Prospective Resolution Applicants for submission of Resolution Plan of the Corporate Debtor was published on 26.10.2021 and the last date for submission of EOI was fixed as 12.11.2021 under Regulation 36A (3)(b) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2011. In response, the Resolution Professional has received two expression of interest as under:-

1. M/s Anirudh Agro Farms Limited

2. Mr. Kishore Jain

5. The Prospective Resolution Applicants were asked to improve their plans a couple of times and the same were deliberated upon in the 7th meeting of CoC dated 29.01.2022 and based on its viability and feasibility, the Resolution Plan submitted by Mr. Kishore Jain was unanimously approved by members of CoC with 100 % voting share in 7th CoC meeting held on 29-01-2022. The Member of the Committee of Creditors evaluated the above-stated Resolutions Plans strictly as per the evaluation matrix and

Section 29A of the Code to identify the best resolution plan. After evaluating in terms of both qualitative and quantitative criteria and aggregate, the resolution plan was put for voting.

The Resolution Plan submitted by Mr. Kishore Jain was unanimously approved by members of CoC with 100 % votes and passed the following resolutions.

“RESOLVED FURTHER THAT the Resolution Plan submitted by Mr. Kishore Jain, be and is hereby unanimously approved with Section 30 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of IBBI (Insolvency Resolution Process for Corporate Persons), 2016 and all other applicable provisions, subject to the approval of the Hon’ble Adjudicating Authority, NCLT, Hyderabad Bench.”

“RESOLVED FURTHER THAT the Committee of Creditors hereby takes note that none of the provisions in the Resolution Plan requires the consent of the members of the corporate debtor under Regulation 39(6) of IBBI (Insolvency Resolution Process for Corporate Persons), 2016.”

“RESOLVED FURTHER THAT in terms of Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons), 2016, Mr. Pavan Kankani, Resolution Professional, be and is hereby directed to submit the Resolution Plan, along with the Compliance Certificate in Form H under Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons), 2016 by making an Urgent Application/ Urgent Motion before the Hon’ble

Adjudicating Authority, NCLT, Hyderabad Bench for their approval.”

“RESOLVED FURTHER THAT Mr. Pavan Kankani, Resolution Professional, be and is hereby directed to inform Mr. Kishore Jain about the approval of their resolution plan and direct them to provide the performance security as mentioned in Request for Resolution Plan (RFRP).”

11. Thus submitting, prayed the Tribunal to approve the Resolution plan submitted by Mr. Kishore Jain.

Contour of the Resolution Plan

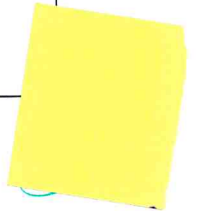
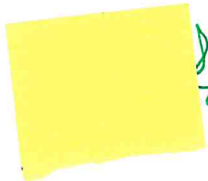
- (A) **Mr. Kishore Jain**, the Successful Resolution Applicant (SRA) is a resident of # 5-3-319, 5th Floor, Flat No. 502, Sankeshwar Apartments, Goshamahal, Near Petrol Pump, Begum Bazar, Hyderabad – 500012, Telangana has essential financial capability criterial
- (B) The CoC comprised of the following operational creditor and the distribution of voting share among them is as under:-

Name of the operational Creditor	Voting share (%)	Voted in favor/ against
Tapasvilal Deora & Associates	100%	Favour

- (C) **FINANCIAL PROPOSALS**: The amount provided to the stakeholders of the Corporate Debtor is Rs

1,33,08.001/-which is tabulated below which shall be paid within 30 days from the effective date.

Sl. No	Category of Stakeholder*	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	--	--	--	--
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	--	--	--	--
		(ii) who voted in favour of the resolution plan	--	--	--	--
		Total[(a) + (b)]	--	--	--	--
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	--	--	--	--



		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	--	--	--	--
		(ii) who voted in favour of the resolution plan	--	--	--	--
		Total[(a) + (b)]	--	--	--	--
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NA	NA	NA
		(b) Other than (a) above:				
		(i) Government	--	--	--	--
		(ii) Workmen/ Employees	--	--	--	--
		(iii) Other Trade Creditors	1,00,000/-	1,00,000/-	1,00,000/-	100%
		Total[(a) + (b)]	1,00,000/-	1,00,000/-	1,00,000/-	100%
4	Other debts and dues	(i) Shareholders of Company	--	--	94,78,001/-	NA
Grand Total			1,00,000/-	1,00,000/-	95,78,001/-	

The break-up of the resolution amount of Rs. 1,33,08.001/- brought in by the Resolution Applicant for various purposes are detailed as under:

SNo	Category of Creditor	Amount proposed (in Rs)	Payment proposed
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1	CIRP Costs	12,30,000/-	100%
2	Operational Creditor	1,00,000/-	100%
3	Existing Shareholders	94,78,001/-	9.23
4	Renovation/ Restoration etc	25,00,000/-	--
	Total	1,33,08.001/-	

(D) TERM OF THE PLAN

The term of the plan envisaged is 10 business days from the date of approval of the Resolution Plan by the Adjudicating Authority.

(E) Management of the Corporate Debtor

On and from the Effective Date, the Reconstituted Board shall constitute the Board of the Company/ CD and the Reconstituted Board shall be responsible for daily affairs and operations of the Company/Cd.

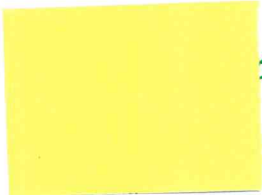

(F) Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:-

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (herein after referred to as Regulation) and has submitted his Form

H under Regulation 39 (4). It is submitted that Resolution Applicant has filed an Affidavit declaring that they are eligible to submit the plan under Section 29A of the Code and that the contents of the said affidavit are in order. The fair value and Liquidation value as submitted in Form-H is Rs. 1,62,03,956/- and Rs. 1,36,64,706/- respectively.

9. The Ld. Counsel submitted that EMD equal to 15% of the Resolution Amount has been deposited into the Account of Corporate Debtor on 02.02.2022.
10. In the above backdrop we heard Shri Ravi Kumar, Learned Counsel for the Resolution Professional. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-

- (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) The Plan provides for payment of 100% of the admitted claims of the operational creditor on priority in terms of Section 30 (2)(b) as the CD does not have any Financial Creditor,
- (c) As the Corporate Debtor does not have Financial Creditors, there are no dissenting financial creditors such the plan does not provide for payment to the dissenting Financial Creditors.

11. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:
- (a) The Plan provides for payment of 100% of the admitted claims of the operational creditor on priority
 - (b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38 (1A)).
 - (c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan. (Regulation 38 (1B)).
12. ***In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) 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. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and r less”.*
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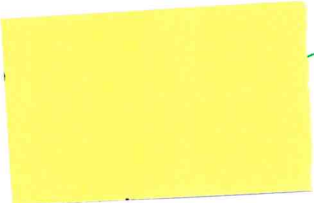
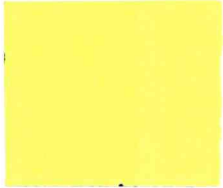
13. The Hon'ble Supreme Court has further held at para 35 of the above judgement that ***the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in 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.***
14. The Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors***, held that "*the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved*".
15. The Hon'ble Supreme Court of India, in the recent ruling in re ***Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors***, has held as under:-
21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status

without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:**

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation

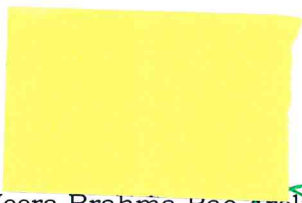
remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

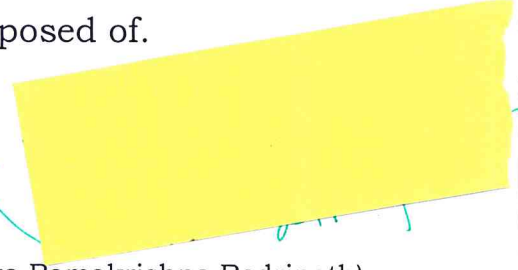
16. Therefore, the resolution plan, when tested on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also found that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.
17. We therefore, hereby **approve** the Resolution Plan submitted by Mr. Kishore Jain, along with annexure, schedules forming part of the Resolution Applicant annexed to the Application and order as under:
- (i) The Resolution Plan along with annexures and schedules forming part of the plan 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.
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- (ii) All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this 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 with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned as held by Hon'ble Supreme Court in the matter of **Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited** in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.
- (iv) It is hereby ordered that EMD amount in lieu of Performance Bank Guarantee furnished by the Resolution Applicant shall remain as performance Bank Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.
- (v) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad 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.

- (vi) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- (vii) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (viii). 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.
- (ix). The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- (x). The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016 .
- (xi) The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.
- (xii). Accordingly, IA 161/2022 stands disposed of.


(Veera Brahma Rao Arekapudi)
MEMBER (TECHNICAL)


(DR N.Venkata Ramakrishna Badrinath)
MEMBER (JUDICIAL)

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