

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

**IA/2977/2022 In C.P.(IB)/934(MB)2020**

*(Under Section 30(6) r/w Section 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.)*

**Kairav Anil Trivedi**, *Resolution Professional for M/s. Prince Manufacturing Industries Private Limited*

**.....Applicant**

*In the matter of*

**Mr. Amit Sangal**, **Proprietor of M/s. Nitin Plastic**

**.....Operational Creditor**

**Vs**

**Prince MFG Industries Private Limited**

**.....Corporate Debtor**

**Order delivered on: 15.05.2023**

**CORAM:**

**SHRI SHYAM BABU GAUTAM**

**HON'BLE MEMBER (T)**

**SHRI KULDIP KUMAR KAREER**

**HON'BLE MEMBER (J)**

*Appearances:*

For the Resolution Applicant : Mr. Kairav Anil Trivedi, RP (*In Person*)

**ORDER**

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

It is an application filed under Section 30(6) read with Section 31 of the Insolvency & Bankruptcy Code, 2016 (“**the Code**”) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process Corporate Persons) Regulations, 2016 for approval of the Resolution Plan by this Bench based on the approval already given by the Committee of Creditors (“**CoC**”) in its 10<sup>th</sup> Meeting with requisite majority of 100% u/s 30(4) of the Code.

2. Looking at the application moved by the Resolution Professional, it reveals that Mr. Amit Sangal, Proprietor of M/s. Nitin Plastic /Operational Creditor has filed the petition u/s 9 of the Code against the Corporate Debtor, which this Bench admitted on 05.10.2021 by initiating Corporate Insolvency Resolution Process (“**CIRP**”) and appointing Mr. Kairav Anil Trivedi, as Interim Resolution Professional who was subsequently confirmed as the Resolution Professional vide order dated 10.11.2022. Meanwhile, IRP made public announcement in Form A on 12.10.2021. Further, the IRP constituted a Committee of Creditors on 03.11.2021, which comprised of Canara Bank, Axis Bank and ICICI Bank. Thereafter, the Resolution

Professional/Applicant appointed 6 independent valuers, registered with IBBI namely (1) Kedar Chikodi (2) Ajit K. Navani (3) Kedar Chikodi (4) C.S. Joshi (5.) Saket Jain and (6) Ganesh Remani as per Regulation 27 of the CIRP Regulations to determine valuation of Plant and Machinery, land and buildings and Securities and Financial Assets of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations, same was approved by the CoC. As per the valuation reports, the average liquidation value of the Corporate Debtor is stated to be Rs. 39.20 Crores and the average Fair Market value is stated to be Rs. 53.16 Crores.

The Applicant has issued invitation for Expression of Interest (“**EoI**”), as approved by the CoC and was published on 03.03.2022 in the newspapers namely Business standard all India (English Edition) and Mumbai Navshakti (in Marathi edition). The last date of submitting the EoI was fixed as 17.03.2022 and the last date of submission of Resolution Plan was marked as 01.05.2022. Further, the Resolution Professional received eight (8) EoI’s pursuant to Form G and has further received resolution plans from only 4 PRA’s viz. are (1) Mr. Ashish Kirit Shah, (2) Mr. Surender Kumar Bansal, (3) Prakash Dall & Flour Mills and (4) Mr. Piyush Chheda as MSME Promoter of the CD under CIRP) along with bid amounts of Rs. 5 Lacs.

3. In the 7<sup>th</sup> CoC meeting, which was held on 27.05.2022, all the above mentioned 4 Resolution Plans were presented by the RP

along with the scores under Resolution Matrix. Further in the 8<sup>th</sup> CoC meeting, all the PRA's were allowed one by one interact with the CoC members by allotting a time slot as per their convenience during the ZOOM meeting. Further, in the 10<sup>th</sup> CoC meeting, pursuant to Section 30(4) of IBC, 2016 on 18.09.2022, the CoC using its commercial wisdom and based on review as detailed in the E voting sheet, approved by 100% E voting/unanimously, the Resolution Plan of Mr. Ashish Kirit Shah, being feasible and viable and in compliance of the requirements of the Code. The CoC resolved through E-voting is summarized below:

- a. The Total consideration of Rs. 40 Crores.
- b. The Highest score of as per the Resolution Matrix,
- c. Payment of the entire CIRP cost, present and future.
- d. Payment of consideration to all operational creditors even when the Liquidation value to other than Financial Creditors is Rs. NIL as per the waterfall mechanism under section 53 of IBC.
- e. Payment of consideration to all the financial creditors i.e. Secured/Unsecured Financial Creditors.
- f. This Resolution plan also considers the future working Capital and capex requirements in addition to the payment of the above consideration.
- g. The period of payment of consideration is 45 days from the date of receipt of the certified true copy of the order, provided no appeal have been filed against this order or such period of 45 days from the date of disposal of

the said Appeal, if an appeal has been filed against this order for approval of Resolution Plan.

On intimation of the approval of the Resolution Plan to the Successful Resolution Applicant, the necessary Performance security amount of Rs. 5 crores have been deposited into the bank account of the CD on 23.09.2022, i.e. within the time specified under RFRP. Overall, the Resolution Applicant had submitted the Resolution Plan of Rs. 53 Crores.

4. As regards the Resolution Plan, from Form – H filed by the Resolution Professional, it is evident that average Fair Value is INR 53.17 Crores and the Liquidation Value is INR 39.20 Crores. It is also observed that admitted claim value against the debtor company is more than the liquidation value of the company.

Further, it is evident that the total consideration amount under the Resolution Plan will be INR 53 Crores, out of which all the Creditors shall receive INR 40 Crores within 45 days. Further, Successful Resolution Applicant intends to invest INR 3 Crores for making the plant operational and INR 10 Crores as working capital. Further, the amount of INR 75 Lacs is proposed for the CIRP cost. Mr. Ashish Shah will infuse total 40 Crores in CD, out of which 20 Crores will be financed by Ashish Shah himself from his own and internal sources and balance Rs 20 Crores will be taken from Aryann Chemical trading Pvt. Ltd.

Payment outlay is as under:

| <i>Category of Stakeholder</i>                  | <i>Amount Claimed</i>   | <i>Amount Admitted</i>  | <i>Amount provided under the Plan</i> | <i>Percentage of amount provided</i> |
|---|-------------------------|-------------------------|---------------------------------------|--------------------------------------|
| <i>Dissenting Secured Financial Creditors</i>   | 0                       | 0                       | 0                                     | 0                                    |
| <i>Other Secured Financial Creditors</i>        | 2,78,62,79,988/-        | 1,71,13,03,225/-        | 39,16,67,617/-                        | 22.89%                               |
| <i>Dissenting Unsecured Financial Creditors</i> | 0                       | 0                       | 0                                     | 0                                    |
| <i>Other Unsecured Financial Creditors</i>      | 0                       | 0                       | 0                                     | 0                                    |
| <i>Government Dues</i>                          | 0                       | 0                       | 0                                     | 0                                    |
| <i>Workmen and employees' dues</i>              | 0                       | 0                       | 0                                     | 0                                    |
| <i>Operational Creditors</i>                    | 8,32,38,303/-           | 8,32,38,303/-           | 8,00,000/-                            | 0.96%                                |
| <b>Total</b>                                    | <b>2,86,95,18,291/-</b> | <b>1,79,45,41,528/-</b> | <b>39,24,67,617/-</b>                 | <b>21.87%</b>                        |

5. The Resolution Plan envisages a total period of 45 days from the date of the receipt of the certified copy of the approval of this plan from this Tribunal. Further, it is evident from Form-H that no applications have been filed under Section 43, 45, 49, 50, 66 of I&B Code, 2016.

6. As per the provision of the Code, this Tribunal is duty bound to examine the Resolution Plan as to whether it satisfies the conditions as laid down in Section 30(2) of the Code. A comparison of the mandatory compliance under the Code *vis-à-vis* the same made under the Resolution Plan is tabulated hereunder;

| <b>MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS</b>   | <b>COMPLIANCE UNDER RESOLUTION PLAN</b>  |
|--|--|
| <b>S.30(1)-</b> Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016  | Yes, the Resolution Professional in Form-H has certified that the Resolution Applicant has submitted an affidavit.   |
| <b>S.30(2)(a)-</b> Payment of insolvency resolution process cost in the manner specified by the Board  | Yes, the RA proposes to pay CIRP costs to be appropriated from the proposed total payment of Rs. 40 Cr. in full in priority to payment to the other creditors. In case the CIRP cost increases or decreases from the estimate of Rs. 75 Lac, such amount of increase or decrease will be appropriated from the proposed amount payable to financial creditors. |
| <b>S. 30(2)(b)</b> -Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53 | Yes. the RA has proposed for payment of Rs. 8,32,383/- towards the claim admitted on account of operational Creditors. Further, the Operational Creditors shall be paid in priority over financial creditors.  |
| <b>S. 30(2)(c)-</b> provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;  | Yes, the powers of the suspended Board of Directors of the CD shall get extinguished and Resolution Applicant shall be entitled to reconstitute Board of Directors by appointing Mr. Ashish Shah & Mr. Viral Shah as directors.  |

| <p><b>S.30(2)(d)-</b> Implementation and Supervision of the Resolution Plan</p>   | <p>Yes, the Resolution Applicant has provided for the mechanism to monitor the progress for implementation, which includes constitution of Implementation and Monitoring Committee for supervision of the Resolution Plan.</p>   |             |                  |            |             |    |             |       |   |    |           |       |   |    |            |       |   |  |              |             |  |
|---|--|-------------|------------------|------------|-------------|----|-------------|-------|---|----|-----------|-------|---|----|------------|-------|---|--|--------------|-------------|--|
| <p><b>S. 30(2)(e)-</b> Contravene any of the provisions of the law for the time being in force.</p>   | <p>Does not contravene any of the provisions of the law for the time being in force.</p>   |             |                  |            |             |    |             |       |   |    |           |       |   |    |            |       |   |  |              |             |  |
| <p><b>S. 30(4)-</b> Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board</p> | <p>The CoC, in its 10<sup>th</sup> meeting has approved the Resolution Plan in the following voting pattern;</p> <table border="1" data-bbox="789 684 1321 1010"> <thead> <tr> <th>S. No</th> <th>Name of Creditor</th> <th>Ascent (%)</th> <th>Dissent (%)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Canara Bank</td> <td>67.36</td> <td>-</td> </tr> <tr> <td>2.</td> <td>Axis Bank</td> <td>18.72</td> <td>-</td> </tr> <tr> <td>3.</td> <td>ICICI Bank</td> <td>13.92</td> <td>-</td> </tr> <tr> <td></td> <td><b>TOTAL</b></td> <td><b>100%</b></td> <td></td> </tr> </tbody> </table> | S. No       | Name of Creditor | Ascent (%) | Dissent (%) | 1. | Canara Bank | 67.36 | - | 2. | Axis Bank | 18.72 | - | 3. | ICICI Bank | 13.92 | - |  | <b>TOTAL</b> | <b>100%</b> |  |
| S. No   | Name of Creditor   | Ascent (%)  | Dissent (%)      |            |             |    |             |       |   |    |           |       |   |    |            |       |   |  |              |             |  |
| 1.  | Canara Bank  | 67.36       | -                |            |             |    |             |       |   |    |           |       |   |    |            |       |   |  |              |             |  |
| 2.  | Axis Bank  | 18.72       | -                |            |             |    |             |       |   |    |           |       |   |    |            |       |   |  |              |             |  |
| 3.  | ICICI Bank   | 13.92       | -                |            |             |    |             |       |   |    |           |       |   |    |            |       |   |  |              |             |  |
|   | <b>TOTAL</b>   | <b>100%</b> |                  |            |             |    |             |       |   |    |           |       |   |    |            |       |   |  |              |             |  |

7. A perusal of Form-H as filed by the Resolution Professional also affirm the fact that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code and also the Resolution Applicant has filed an Affidavit to the effect that he is eligible to submit the Resolution Plan taking into consideration Section 29A of the Code. The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall review operational performance of the Corporate Debtor. The Monitoring Committee shall consist of an Insolvency Professional (earlier RP), one representative from Financial Creditors and one representative of the Resolution

Applicant. Aforesaid committee shall stand automatically dissolved on completion of term of Resolution Plan.

8. As to the Reliefs and Concessions stated in Clause 15 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 same, this plan is hereby **approved.**

9. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise the further line of action required for starting of the operation. Further, on payment of the entire amount to Financial Creditors, Financial Creditors shall unconditionally release all securities/corporate guarantees provided by the Corporate Debtor/collaterals owned by the Corporate Debtor provided as security against the debt availed. Accordingly, the Resolution Plan in **IA/2977/2022** is hereby allowed and approved.

Sd/-

**SHYAM BABU GAUTAM  
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)**