

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-V**



**I.A. 32 (Plan)-2024
IN
C.P. No. IB- 51/ND/2023**

(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016))

IN THE MATTER OF:

M/s INOX TUBES PRIVATE LIMITED

....PETITIONER

AND IN THE MATTER OF:

RAJIV BAJAJ,

Resolution Professional of
M/s Inox Tubes Private Limited
Address- LG, B-269,
Chattarpur Enclave, Phase-II,
New Delhi-110074
Email- cirpinox@gmail.com

....APPLICANT

ORDER DELIVERED ON: 16.01.2025

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT



For the Applicant :

For the IT Dept. :

For the RP : Mr. Nipun Gautam, Mr. Shivam Gautam, Mr. Rajiv Bajaj

ORDER

PER:MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)


1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by Mr. Rajiv Bajaj ,Resolution Professional (RP), of M/s Inox Tubes Private Limited (hereinafter referred to as 'Corporate Debtor'), seeking approval of the Resolution Plan submitted by Mr. Vikrant Sharma ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') in its 6th CoC Meeting held on 22.04.2024.
2. Briefly stated, the facts as averred by the applicant in the application are stated are as follows:
 - a) That by an order dated 10.11.2023, this Adjudicating Authority had initiated Corporate Insolvency Resolution Process against the Corporate Debtor (M/s Inox Tubes Private Limited) and the applicant ("Mr. Rajiv Bajaj") was appointed as IRP in the matter.
 - b) That Public Announcement in the matter for inviting the claims from the creditors of Corporate Debtor was made on 11.11.2023 by the IRP in Form-A in "Financial Express (English language), in Jansatta (Hindi language) in New Delhi Edition.
 - c) The 1st Committee of Creditors "CoC" meeting was held on 11.12.2023, wherein CoC discussed and passed a Resolution for the appointment of IRP as the Resolution Professional. That in the second meeting of the CoC which was convened on 15.01.2024. In



the said meeting, CoC approved the remuneration of registered valuers for Land and Building, Plant & Machineries and Security & Financial Assets, appointed by RP under Regulation 27 of the IBBI (CIRP) Regulations, 2016 to determine the fair value and the liquidation value of the Corporate Debtor in accordance with regulation 35 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- d) That pursuant to the Regulation 36A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short CIRP Regulations') the Resolution Professional made publication for invitation of Expression of Interest in Form G on 09.01.2024 in two newspapers i.e. Financial Express (English Edition) and Jansatta (Hindi Edition), wherein the last date for Submission of EOI was 24.01.2024.
- e) Pursuant to the above publication of Expression of Interest, following parties showed their interest to submit their Expression of Interest "EOI".
1. SUNRISE INDUSTRIES
 2. VIKRANT SHARMA
 3. SURESH KUMAR GUPTA
- f) The provisional list of prospective resolution applicants ("PRAs") was issued vide email dated 02.02.2024 specifying the names of above three PRAs but Mr. Pawan Kumar Gupta (one of partner of "Sunrise Industries"), the PRA has withdrawn his EOI and asked for refund of Earnest Money Deposit-1. Resolution professional refunded the EMD-1 of Rs.10 Lakhs and was acknowledged the same by respective PRA.
- g) The 3rd CoC Meeting was held on 21.02.2024, wherein the Committee of Creditors ratified the fees of M/s AKPS & Associates, Chartered Accountant Firm to conduct special transaction audit for the identification of transactions falling under sections 43, 45, 49, 50 and 66 of IBC on the fixed remuneration of Rs. 40,000/- (Rupees Forty Thousand Only) plus applicable taxes.
- h) That the last date of submission of resolution plan was 24.03.2024. Only One resolution Plan from (i.e., "Vikrant Sharma") was received till the last date.
- i) The Fourth meeting of Committee of Creditors was convened on 28.03.2024 to, inter alia, open and discuss the resolution plan submitted by resolution applicant. In accordance with the provisions of Section 5 (14) read with Section

12 of The Insolvency and Bankruptcy Code, 2016 and transaction audit report was also placed before the members of CoC.

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- j) That thereafter fifth meeting of Committee of Creditors was convened on 02.04.2024 to, inter alia, have discussion and negotiation with the PRA for enhance the value of resolution plan.
- k) That the Sixth meeting of Committee of Creditors was convened on 22.04.2024 in which finally the resolution for approval of resolution plan put before the CoC members and put to vote. That on 6th meeting of the CoC meeting dated 22.04.2024 the CoC took note of the CIRP cost incurred till date. That thereafter the CoC deliberated on the Resolution Plan submitted by Mr. Vikrant Sharma. That pertinently, the Applicant also put the Resolutions pertaining to estimated CIRP expenses to be incurred up to the approval of Resolution Plan, approval of the fees to be made as per Regulation 34B of the CIRP Regulations, fixing of the fees of the Liquidator in terms of Regulation 39D.
- l) That the Resolution Plan of Mr. Vikrant Sharma has been approved by 100% voting share of the Committee of Creditors. That the e-voting on the aforesaid agendas concluded on 10.07.2024. That the resolution plan as placed for approval has been approved 100%. Copy of Resolution Plan along with voting results is annexed as Annexure-13 (Colly) with the instant Application.
- m) The Resolution Applicant as stated in the Clause 4(c) of the Resolution Plan undertakes to allocate the benefits if any, received under Section 43, 45, 49, 50 or 66 to the sole financial creditor in the ratio of voting share of the Corporate Debtor and the same shall be distributed as per Section 53 of the Code.
- n) That pursuant to the approval of the Resolution Plan by the CoC, the Applicant issued a Letter of Intent dated 11.07.2024 to the Resolution Applicant and the Resolution Applicant was requested to convey his unconditional acceptance thereto. Further, as per Regulation 39(4A) of CIRP Regulations, the Applicant has furnished the Performance Bank Guarantee to the tune of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only).
- o) That the Liquidation value of the assets of the Corporate Debtor based on valuation reports obtained from the valuers are as follows:



S. No.	Assets	Average Fair Value (Rs.)	Average Liquidation Value (Rs.)
1.	Securities or Financial Assets	77756	77756
2.	Plant & Machinery	297320	237856
3.	Land and Building	10775500	8081625
	Total	11150576	8397237

- p) That in terms of Regulation 39(4) of the CIRP Regulations, the Applicant is required to submit a Compliance Certificate in prescribed format, i.e., FORM-H stating that the Resolution Plan is compliant of the provisions of the Code. The FORM-H duly signed by the Applicant, being the compliance certificate is annexed as ANNEXURE-15 with this Application.
- q) That the Resolution Applicants have submitted an undertaking stating that the Resolution Applicant is eligible under Section 29A of the Code.
- r) As per the Section 30(6) of the Code the Resolution Plan submitted by the Resolution Applicant has been approved by 100% of CoC which is more than the requisite voting share required, i.e., 66%, the Applicant is filing the present application for approval of the resolution plan before this Adjudicating Authority.
- s) Applicant further submitted that the Applicant herein is filing the present Application seeking an order under Section 31(1) of the Code, i.e., approval of the resolution plan as approved by the Committee of Creditors under sub-section (4) of Section 30 of Code. Further submitted that the instant application is bonafide and being filed in the interest of justice and to advance the objectives of the Code/IBC.
3. We have heard the submissions made by the Ld. Counsel for the applicant and have gone through the documents produced on record.
4. That some key features of the Resolution Plan are as follows:
- i. That the amounts proposed to be paid towards the Corporate Insolvency Resolution of the Corporate Debtor pursuant to the implementation of the proposed Resolution Plan is as under: -



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 Creditor	(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	Rs. 6,37,27,138.20	Rs. 6,37,27,138.20	Rs. 70,00,000/-	10.98%
		Total (a)+(b)	Rs. 6,37,27,138.20	Rs. 6,37,27,138.20	Rs. 70,00,000/-	10.98%



2.	Unsecured Financial Creditor	<p>(a) Creditors not having a right to vote under subsection (2) of section 21.</p> <p>(b) Other than (a) above:</p> <p>(i) who did not vote in favour of the resolution Plan.</p> <p>(ii) who voted in favour of the resolu</p>	Nil	Nil	Nil	Nil
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		tion plan				
		Total (a)+(b)	Nil	Nil	Nil	Nil
3.	Operational Creditors	<p>(a) Related Party of Corporate Debtor</p> <p>(b) Other than (a) above :</p> <p>(i) Government</p> <p>(ii) Workmen</p> <p>(iii) Employees</p> <p>(iv) Others</p>	Nil	Nil	Nil	Nil
		Total (a)+(b)	24203450	24203450	200000	0.83%
4.	Other Debts and dues		Nil	Nil	Nil	Nil
Grand Total			87930588	87930588	7200000	8.19%



ii. The Fair Value and Liquidation Value of Corporate Debtor is as follows:

S. No.	Assets	Average Fair Value (Rs.)	Average Liquidation Value (Rs.)
1.	Securities or Financial Assets	77756	77756
2.	Plant & Machinery	297320	237856
3.	Land and Building	10775500	8081625
	Total	11150576	8397237

iii. That the final resolution plan and its addendum submitted by “Vikrant Sharma” meets the requirements of Section 30(2) of the Code as under: -

Section	Requirement with respect to Resolution Plan	Compliance under Resolution Plan
30(2)(a)	provides for the payment of insolvency resolution process costs?	Yes Clause 2 of Part 10
30(2)(b)	provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be 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	Yes Clause 5 of Part 10



	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	
30(2)(c)	Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Yes Nil
30(2)(d)	Provides for the management of the affairs of the corporate debtor? ;	Yes Clause C, D, E of the Part 9
30(2)(e)	Provides for the implementation and supervision of the resolution plan?	Yes Part 9
30(2)(f)	Contravenes any of the provisions of the law for the time being in force?	Yes Clause 5 of Part 12

iv. That the RA has provided the indicative timeline of events for implementation of the Resolution Plan at page 190 which is reproduced as under: -

A. SUMMARY OF IMPLEMENTATION TIMELINES

Sl. No.	Activity	Estimated Time Line
1.	Date of Resolution Plan	24.03.2024
2.	NCLT Approval Date	X (Approval Date)
3.	Payment towards CIRP Cost	Within X+ 30 days
4.	Payment to Operational Creditors	Within X+ 30 days
5.	Payment to Financial Creditor	Within X+ 90 days
6.	Extinguishment of Existing Promoter (Equity & Preference Shares)	Within X+ 90 days
7.	Infusion of funds for Business Improvements	Within X + 90 days

- v. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	YES Part 10
38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	YES Part 10
38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non implementation?	Yes Part 12
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	YES Part 9



38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	YES Part 9
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	YES Part 9
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	YES Part 4
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	YES Part 2, Clause 2 of the Part 12
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	YES Part 9
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	YES Part 9
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	YES Part 4

- vi. In compliance of the order dated 22.07.2024, the Resolution applicant through an affidavit dated 09.08.2024 submitted the bank statement showing the maintaining of the sufficient funds for honouring the payments commitments given in the Resolution Plan. The Copy of the bank statement is annexed as Annexure -2 with the affidavit dated 09.08.2024.
- vii. Further, the Ld. Counsel of the Applicant vide order dated 22.10.2024 submitted that the total plan amount is Rs. 97 lakh and the Successful Resolution Applicant/SRA having cash in hand of. Rs. 50 Lakh. The same has been recorded vide order dated 22.10.2024.
- viii. There are no objections to the Resolution Plan by any of the stakeholders.

Plan for revival



- ix. The Resolution Applicant shall introduce the funds as committed in terms of this resolution plan for smooth functioning and operations of the Corporate Debtor. As the Corporate Debtor is undergoing the insolvency process, it must have lost its credibility in the market/industry. Resolution Applicant who has the credibility in the market shall facilitate the creditworthiness of the Corporate Debtor by taking the credit in market and by infusion of funds, if required, which shall help the Corporate Debtor in revival process. After introduction of the fresh fund for working capital by the Resolution Applicant, the Resolution Plan will become feasible and viable. The Resolution Plan has a unique likelihood of resolving insolvency and its sustainability.
- x. With respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code.
5. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is duty bound to follow the judgement of the **Hon'ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow: -

35. Whereas, 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. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of



the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

6. Also, the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”

7. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.
8. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan,**



which shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. In view of the above, ***I.A. 32 (plan)- 2024 in CP (IB)- 51/ND/2023 stands allowed.***

9. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
10. Mr. Rajiv Bajaj has been appointed as the Monitoring Professional as proposed in the Resolution Plan. The Monitoring Professional will be entrusted with the responsibility of monitoring and supervising the resolution plan until the expiry of its term. The Monitoring Professional shall also be required to ensure all statutory compliances are met within the stipulated time provided in the instant application during the implementation of the plan along with updating the Adjudicating Authorities, Financial and other Creditors about the status of implementation of the resolution plan, on a quarterly basis.
11. The monitoring Professional shall seek appropriate directions from the Adjudicating Authority, where implementation is not in accordance with the terms and conditions of the resolution plan.
12. However, the resolution plan shall not construe any waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws.
13. Accordingly, MoA and AoA of the corporate debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
14. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises,

properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.



Non-performance of the above mentioned obligation may lead to a violation of the terms of the approved Resolution Plan and also violation of this Order approving the Resolution Plan, further may also be liable for the punishment under section 74 of the IBC as well.

16. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.
17. Let the copy of the order be served to the parties.

Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-
MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)