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02-05-2022

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

IA No. 834 / NCLT / AHM / 2021

In

CP (IB) No. 206 / NCLT / AHM / 2019

(Application for approval of Resolution Plan along with Scheme of Amalgamation under Section 30(6) r.w. Section 31(1) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons) 2016)

**Mr. Trupalkumar Patel
Resolution Professional of
M/s Heavy Metal and Tubes Ltd.**

Office at: C/505-506,
The First, Behind Narmada ITC,
Nr. Keshavbaug Party Plot,
Vastrapur, Ahmedabad-380015

...Applicant

Order Pronounced on: 29/04/2022

**Coram: Dr. Deepti Mukesh, Member (J)
Ajai Das Mehrotra, Member (T)**

Appearance:

For the Applicant: Mr. Pavan Godiawala, Adv.



Memo of Parties

Mr. Trupalkumar Patel
Resolution Professional of
M/s Heavy Metal and Tubes Ltd.

Office at: C/505-506,
The First, Behind Narmada ITC,
Nr. Keshavbaug Party Plot,
Vastrapur, Ahmedabad-380015

...Applicant

ORDER

1. This application has been filed by Mr. Trupalkumar Patel, Resolution Professional of M/s Heavy Metal and Tubes Ltd. under Section 30(6) read with Section 31(1) of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **IBC, 2016**) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as **"CIRP Regulations"**) for approval of the Resolution Plan including the Scheme of Amalgamation.

2. The facts, in brief, are that the Corporate Debtor was admitted into CIRP by this Adjudicating Authority vide order dated



01.01.2021, in an application filed by the Financial Creditor u/s 7 of the IB Code, wherein the moratorium was declared and the Corporate Insolvency Resolution Process (hereinafter referred to as **CIRP**) was initiated. Mr. Trupalkumar Patel was appointed as Interim Resolution Professional (hereinafter referred to as **IRP**), who made a public announcement in Form-A on 12.01.2021 and collated claims and constituted a Committee of Creditors (hereinafter referred to as CoC) comprising of 5 Financial Creditors, viz. Prudent ARC Limited, IDBI Bank, Raj Radhe Finance Limited, Heera Ispat Lt. and SKM Steels Limited, which was constituted on 02.02.2021.

3. It is submitted by the applicant that the CoC in its 1st Meeting dated 09.02.2021 resolved to appoint IRP as RP (hereinafter referred to as **RP**). The IRP was confirmed as RP on 12.02.2021. The registered valuer was appointed on 23.02.2021 and the members of CoC in its 2nd meeting approved eligibility criteria for the invitation of EOI from eligible Resolution Applicants. Accordingly, invitation for EOI in Form G was published on 23.03.2021. The detail of the final list of eligible resolution applicants was issued on 02.05.2021.



It is submitted that the last date for submission of the Resolution Plan which was originally fixed on 22.05.2021, was for the first time extended up to 11.06.2021 and the second extension was given up to 25.06.2021.

4. That in the 3rd meeting of the COC, the applicant informed that there are 7 EOIs received from prospective resolution applicants. The draft request for Resolution Plan (RFRP) and evaluation matrix was approved. The following EOIs were received:

Sr.No.	Name of Prospective Resolution Applicants ("PRAs")
1.	Heavy Metal and Tubes (India) Private Limited, Mr. Dilip Khandelwal and Mr. Shyamlal Gupta (Consortium)
2.	SKM Steels Limited
3.	SKM Constructions Private Ltd., The Maitri Metals Private. Ltd. and Bharat Steel Yard Private Limited
4.	Riddhi Siddhi Gluco Biols Ltd.
5.	GSEC Ltd.



6.	Ahmedabad Strips Private Ltd.
7.	Zaveri and Company Private Ltd

5. It is submitted by the applicant that subsequent to receipt of aforesaid EOIs, persons eligible under section 29(A) of the IBC, 2016, applied for the offer document, and the following Resolution Plans were received:

Sr. No.	Name of Resolution Applicant	Place	Resolution plan received date
1.	Heavy Metal and Tubes (India) Private Ltd., Mr. Dilip Khandelwal and Mr. Shyamlal Gupta (Consortium)	Ahmedabad	24.06.2021
2.	Zaveri and Company Private. Ltd.	Ahmedabad	25.06.2021

6. It is submitted by the applicant that upon request from the prospective resolution applicants during the 4th CoC meeting,



it was decided to extend the date of submission of the resolution plan for 14 days and the last date was shifted from 11.06.2021 to 25.06.2021. In the same meeting, a resolution was passed for the extension of CIRP for further 90 days.

7. Vide order dated 06.07.2021 this Tribunal passed the extension of CIRP for further 90 days. On 15.09.2021, the 8th CoC meeting was held and as there were two resolution applicants and negotiations were going on, the CoC decided to seek further extension of CIRP for further 60 days beyond 270 days in accordance with Section 12A of IBC, 2016. In the 9th CoC meeting, members of the CoC opened an addendum to the resolution plan as submitted by resolution applicants. On 27.09.2021, in the 10th CoC meeting it was decided to invite revised addendum to the resolution plan from both the resolution applicants and to negotiate with the said applicants. On 05.10.2021, in the 11th CoC meeting three rounds of negotiations were held with the said two resolution applicants, equal chance of discussion was given to both of the resolution applicants. On 28.10.2021, this Tribunal extended the time period for completion of CIRP for further 60 days, that is, up to



27.11.2021. On 20.10.2021, the 12th CoC meeting was held wherein the expenses and remuneration of the resolution professional were ratified. The members of the CoC also unanimously approved the resolution plan of M/s. Heavy Metal and Tubes Private. Ltd. through e-voting which was concluded on 08.11.2021. The resolution plan was submitted to the Tribunal on 24.11.2021.

8. It is further submitted by the RP that the resolution plan complies with provisions of Section 30(2) of IBC, 2016 and Regulation 38 (3A) of the CIRP Regulations.

9. The amount provided for the stakeholders under the Resolution Plan is as under:

Sr. No	Particulars of Claim	Type of Claim	Admitted Amount (INR)/ Amount as on balance sheet dated 09-03-2021	Settlement Amount (INR)	Term of Payment (In months)
1.	CIRP Costs	-	NIL	Unpaid amount as per Actuals	Any unpaid amount shall be paid on approval of the plan by Adjudicating Authority
	Secured	Secured	267,01,72,493	45,50,40,000	Within 60 days of



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	Financial Creditors				sanctioning of resolution plan by Adjudicating Authority.
3.	Unsecured Financial Creditor	Unsecured	8,43,62,482		Issuance of 0.1% NCRPS in the sixth month of the 20 th year.
4.	Statutory Dues	Unsecured		3,16,167	Within 60 days of sanctioning of resolution plan by Adjudicating Authority.
			39,52,086		
5.	Other Operational Creditors	Unsecured	96,97,240	7,75,779	Within 60 days of sanctioning of resolution plan by Adjudicating Authority.
6.	Contingent liabilities			5,00,000	Amount set aside for a period of one year from the date of sanctioning of resolution plan for any contingent liability.
	Total		276,81,84,301	45,66,31,946 + unpaid insolvency resolution process cost + bank balance as on effective debt assigned to lender + gratuity payable on its accrual + wind mill restoration expense if	



any.

10. On 23.02.2022, this Tribunal asked the applicants why the benefits of the contingent amount should not be utilized for paying the operational creditors instead the benefit going to the amalgamated company, as mentioned in the plan. Thereafter, the RP amended the contingent liability clause in relation to the observation of this Tribunal. The amended amounts provided to the stakeholders under the resolution plan are reproduced hereinbelow:

Sr. No	Particulars of Claim	Type of Claim	Admitted Amount (INR)/ Amount as on balance sheet dated 09-03-2021	Settlement Amount (INR)	Term of Payment (In months)
1	CIRP Costs	-	NIL	Unpaid amount as per Actuals	Any unpaid amount shall be paid on approval of a plan by Adjudicating Authority
2	Secured Financial Creditors	Secured	267,01,72,493	45,50,40,000	Within 60 days of sanctioning of resolution plan by Adjudicating Authority.
3	Unsecured Financial Creditor	Unsecured	8,43,62,482		Issuance of 0.1% NCRPS in the sixth month of the 20 th year.
4	Statutory Dues	Unsecured		3,16,167	Within 60 days of sanctioning of resolution plan by



			39,52,086		Adjudicating Authority.
5	Other Operational Creditors (except Resolution Applicant themselves)	Unsecured	96,97,240	7,75,779 +5,00,000 ----- 12,75,779	Within 60 days of sanctioning of resolution plan by Adjudicating Authority.
Total			276,81,84,301	45,66,31,946 + unpaid insolvency resolution process cost + bank balance as on effective debt assigned to lender + gratuity payable on its accrual + wind mill restoration expense if any.	

11. On query regarding status of various litigations, the resolution professional submitted that there is no pending litigation as on the date against the resolution plan of the corporate debtor. It was submitted that the ex-management has withdrawn its appeal on 18.11.2021. One appeal filed by one intending resolution Applicant, who had not even filed EOI, was rejected



By the Hon'ble NCLAT, vide order dated 13.12.2021 and as per

the information and knowledge as gathered there is no further appeal was preferred by the said unsuccessful applicant before the Hon'ble Supreme Court.

12. The Resolution applicant filed an affidavit dated 05.04.2022 to demonstrate financial viability and arrangement made by it to fund the implementation of the Resolution Plan. It is submitted that Aditya Birla Finance Ltd. has sanctioned Term Loan for an amount of Rs. 35,00,00,000/- and that the sanctioned Term Loan, combined with the net worth of constituent member of the Resolution Applicant are sufficient to fund the implementation of the Resolution Plan. In the hearing on 29.03.2022, the successful Resolution Applicant stated that rights of all the employees/workmen are protected and the resolution plan will not prejudice their further continuity of employment.

13. It is submitted by the resolution applicant that exemption may be granted to the amalgamated entity from the levy of stamp duty on the value of assets transferred on account of amalgamation of the corporate debtor into the resolution applicant. It is further submitted by the resolution applicant



that 100% exemption may be granted on stamp duty, taxes, and any other levy on the transactions undertaken pursuant to the approval of the resolution plan including the scheme of amalgamation.

14. It is submitted by the resolution applicant that upon approval of the Resolution Plan by the Adjudicating Authority, the resolution applicant shall not be liable for any liabilities which are neither appearing in the provisional balance sheet nor mentioned in the claim statement in response to the public notice under the IBC, except those which are admitted in the resolution plan.

15. It is submitted by the resolution applicant that upon approval of the Resolution Plan by the Adjudicating Authority, all licenses & consents to operate shall be available within 30 days of the completion date.

16. It is submitted by the resolution applicant that upon approval of the Resolution Plan by the Adjudicating Authority, all environmental business permits as required by the corporate debtor be granted by the Ministry of Environment, Central



Pollution Control Board, and Pollution Control Board of Gujarat, and all other concerned Government Authorities.

- 17.** It is submitted by the resolution applicant that upon approval of the Resolution Plan by the Adjudicating Authority, full waiver of other contingent dues/ charges/ interest/ penalties and unconfirmed dues be granted.
- 18.** It is submitted by the resolution applicant that upon approval of the Resolution Plan by the Adjudicating Authority, the concerned individuals and/or their legal heirs to be directed to sign and execute necessary papers and deeds including conveyance and also to be present before the concerned SRO/competent Land Revenue Authorities for the execution of required agreements for the transfer of the land for which advance payment has been given to them by the Corporate Debtor.
- 19.** It is submitted by the resolution applicant that upon approval of the Resolution Plan by the Adjudicating Authority, no claims other than the claims mentioned in the resolution plan shall be allowed and/or paid towards any statutory dues and to



waive interest, penalty if any (whether provided or not provided in the books of corporate debtor).

20. It is submitted by the resolution applicant that upon approval of the Resolution Plan by the Adjudicating Authority, the dues of Workmen and Employees, labours, labour contractors, retainers, trainees or any other contractual employees or workmen including any dues towards Provident Fund (Contribution of Employees / Company), Gratuity, Employees State Insurance Scheme, Professional Tax or any other taxes in nature of employment, and all rights and entitlements of present or past, direct or indirect, permanent or temporary, employees and/or workmen of the Company, whether admitted or not, due or contingent, asserted or rejected, crystalized or not crystalized, known or unknown, secured or unsecured, disputed or undisputed, in relation to any prior period to the insolvency commencement date or arising on account of acquisition of control by the Resolution Applicant over the Company pursuant to the Resolution Plan, shall be written off in full and shall be deemed to be permanently extinguished and waived off except those which are admitted in the resolution plan and the Company or the Resolution



Applicant shall at no point of time be held responsible or liable in relation thereto.

21. It is submitted by the resolution applicant that upon approval of the Resolution Plan by the Adjudicating Authority, the resolution applicant shall be entitled to carry forward and set off the accumulated losses and unabsorbed depreciation as per provisions of section 72A of the Income Tax Act, 1961 and exemption be granted from other sections of the Income Tax Act, 1961. The resolution applicant shall be allowed to claim and utilize any MAT, VAT/GST credit if any available to the corporate debtor.

22. It is submitted by the Resolution Applicant that upon approval of the Resolution Plan, all business permits and/or licenses and/or approvals required by the Corporate Debtor to conduct its business and which have not been granted/cancelled/terminated/revoked suspended or not renewed may please be directed to be granted/restored/renewed/reinstated as the case may be (by the concerned competent authority of State/Central Government/any other competent authority) at no additional cost to the Resolution Applicant.



23. It is submitted by the resolution applicant that upon approval of the Resolution Plan (including Scheme of Amalgamation) by the Adjudicating Authority, no further proceedings and/or formalities shall be required to be undertaken under the Companies Act and/or SEBI Regulations and the respective authority shall take cognizance of it on receipt of the copy of Order of Adjudicating Authority.

24. It is submitted by the resolution applicant that upon approval of the Resolution Plan (including Scheme of Amalgamation) by the Adjudicating Authority, no other payments or settlements (of any kind) shall be made to any other person in respect of claims filed under the CIRP (including, for the avoidance of doubt, any unverified portion of their claims) and all claims against the Corporate Debtor along with any related legal proceedings, including criminal proceedings and other penal proceedings, shall stand irrevocably and unconditionally abated, settled and extinguished with effect from the Appointed Date.



25. It is submitted by the resolution applicant that upon approval of the Resolution Plan (including Scheme of Amalgamation) by the Adjudicating Authority, the Resolution Applicant shall be liable only to all encumbrances, security interest, liens and/or attachments (including pursuant to applicable law) created or exists over the assets of the Corporate Debtor (charged or not charged with the lenders) and not on any other assets of the erstwhile promoters, directors, officers or associate (charges with the lenders).

26. It is submitted by the resolution applicant that upon approval of the Resolution Plan (including Scheme of Amalgamation) by the Adjudicating Authority, all the outstanding negotiable instruments issued by the Director/promoter or Corporate Debtor or by any person on behalf of the Corporate Debtor for any dues of Corporate Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished.



27. It is submitted by the resolution applicant that upon approval of the Resolution Plan (including Scheme of Amalgamation) by the Adjudicating Authority, a dues under the provisions of Income Tax Act, 1961 including taxes, duty, penalties, interest, fines, cess, unpaid TDS/TCS, whether admitted or not, due or contingent, whether part of the above claim of the Income-tax authorities or not whether part of tax due diligence finding or not asserted or unasserted crystallized or not crystallised, known or unknown, secured or unsecured disputed or undisputed, present or future, in relation to any period prior to the Effective Date pursuant to this Resolution Plan, shall stand extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Corporate Debtor and Resolution Applicant shall not be liable to pay any amount against such demand. All assessments/appellate or other proceedings pending in the case of the Corporate Debtor, on the date of the order of Adjudicating Authority relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, shall be deleted and be considered to be not payable by the Corporate Debtor.



28. It is further submitted by the resolution applicant that upon approval of the Resolution Plan (including Scheme of Amalgamation) by the Adjudicating Authority, all pending proceedings of the Income Tax Department including but not limited to issue of notices or subsequent notices of assessment, re-assessment etc under Section, 143, 147, 148, 263 or any other provisions of Income Tax Act, 1961 for the period prior to the effective date shall stand extinguished on approval of the resolution plan by the Adjudicating Authority. No demand shall be raised against the Corporate Debtor for any period prior to the effective date of the resolution plan.

29. It is further submitted by the resolution applicant that upon approval of the Scheme of Amalgamation by the Adjudicating Authority, the Resolution Applicant be permitted to carry out necessary write off of assets, creation of additional liability or expenses or write back of liability or provision (as the case may be) in the books of accounts of the Corporate Debtor or in the books of the Resolution Applicant as per the applicable provisions under the Companies Act, 2013



- 30.** It is further submitted by the resolution applicant that permission be granted to the applicant for drawing up the financial statements of the company for the period ending on the effective date/appointed date in compliance with the applicable accounting standards such that it truly reflects the fair value of the assets as may be determined by the board of directors of the Resolution Applicant.
- 31.** It is further submitted by the applicant that the resolution applicant has deposited the Performance Bank Guarantee of Rs.4,56,63,195.00/- of ICICI Bank Limited on 17.11.2021.
- 32.** We have heard learned counsel for the applicant RP and perused the material available on record. It is noted that Form H has been filed by Resolution Professional wherein all information/details as regard to conduct of CIRP as well as process adopted for Resolution Plan have been given. The Resolution Applicant has proposed to pay the financial creditor Rs.45,50,40,000/- against its total admitted claim of Rs.267,01,72,493/-. The amount of Rs.15,91,946/- has been proposed in the Resolution Plan to pay to the Operational Creditors against the total admitted claim of Rs.1,36,49,326/-



including the Statutory Dues. The Resolution Applicant has proposed to issue 1 equity share of Rs. 10 each of the resolution applicant against 70,000 Equity shares of the Corporate Debtor and issued 1(one) Non- Cumulative Redeemable Non- Convertible Preference Share carrying coupon @ 0.1% p.a. of Rs. 10 each, fully paid – up in lieu of their entitlement towards the fractional shares of the Amalgamated Company. Such 0.1% NCRPS be redeemable in the sixth month of the 20th Year from the date of issue. The resolution plan value is Rs. 45,66,31,946/- whereas the liquidation value as per Form H is Rs. 37,99,89,125/-.

33. It is further noted that an affidavit as regard to the eligibility of the resolution applicant under Section 29A along with the undertaking of the resolution applicant to this effect has been filed. We have also perused the contents of the resolution plan, we are of the view that Regulations 36 to 39 of CIRP Regulations, 2016 have been complied with. We further noted that the resolution plan complies with all requirements under Section 30(2)(b) of IBC, 2016. We also find that the resolution plan addresses the cause for failure and also contains



measures to run the Corporate Debtor in future and that the resolution plan is both feasible and viable as held by CoC it also contains provisions for its effective implementation. Accordingly, we being satisfied, approve the resolution plan and pass the following order:

- I.** The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- II.** The order of moratorium dated 01.01.2021 passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of this order.
- III.** 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.
- IV.** The monitoring committee as proposed the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- V.** The Resolution Professional, Mr. Tripul Kumar Patel, shall be released from the duties of the resolution professional of the Corporate Debtor as per the provisions of the IBC, 2016 and rules/regulations made thereunder.
- 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. As regards to various reliefs and concessions which are being sought, we hereby grant the following reliefs and concessions only as against reliefs and concessions claimed by the resolution applicant:

- i.** After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders shall stand permanently extinguished and other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;
- ii.** From the date of this order, all claims except those provided in the plan of the Corporate Debtor stand extinguished.
- iii.** From the date of this order, all encumbrances on the assets of the Corporate Debtor before the plan shall stand permanently extinguished.



- iv. For reliefs and concessions sought from the Government/Statutory Authorities including environmental clearance as well as stamp duty, we direct the resolution applicant to approach the concerned Authorities. The concerned Authorities may decide the matter as per applicable provisions of law for effective implementation of the Resolution Plan.
- v. As regard to reliefs prayed under various provisions of the Income Tax Act, 1961, the Corporate Debtor/ resolution applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the resolution applicant in accordance with the provisions of Income Tax Act, 1961.
- vi. The resolution applicant shall be entitled to review, revise or terminate any appointments/agreements entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements/MoUs/contracts;
- vii. The management of the Corporate Debtor shall be handed over to the Board of Directors as may be



nominated by the resolution applicant for proper running operations of the business of the Corporate Debtor;

- viii.** The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;
- ix.** The resolution applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;
- x.** All the approvals of shareholders/members and creditors of both the proposed transferor company (Corporate Debtor) and the transferee company shall be deemed to have been obtained and the provisions made in the resolution plan as regard to the restructuring of capital shall be binding on them as per clause 18 of the Scheme of Amalgamation. For



concession of stamp duty as prayed in the resolution plan, the resolution applicant may approach the concerned Government Authority.

- xi.** With respect to the grant of license/ Government approval, if the license or approval is terminated, suspended and revoked, the resolution applicant may approach the concerned Department/ Authorities for such approval/ renewal and Government Authorities may consider the request of the resolution applicant as per applicable provisions of law for effective implementation of the resolution plan.

34. Accordingly, IA 834 of 2021 is allowed with the above-said observations and directions and stands disposed of.

35. Urgent certified copy of this order, if applied for, is to be issued to all concerned parties upon compliance with all requisite formalities.

-Sd-

Ajai Das Mehrotra
Member (Technical)

-Sd-

Dr. Deepti Mukesh
Member (Judicial)

RAHUL/LRA

Prepared

Sign

Date

Vimal
2-5-22

