



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- I**

IA No. 634 of 2021

AND

IA No. 1514 of 2021

IN

CP(IB) No. 817 of 2019

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“Code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the Resolution Plan under the provisions of Section 31(1) of the Code.

IA No. 634 of 2021

In the Application of

Sameer Kakar

...Applicant/Resolution

Professional

IA No. 1514 of 2021

In the Application of

Superior Malt Private Limited

...Applicant/Operational

Creditor

In the matter of

IDBI Bank Limited

...Financial Creditor/Petitioner

Versus

Impala Distillery & Brewery Limited

...Corporate Debtor/Respondent

Order Delivered on : 05.01.2024



Coram:

Hon'ble Member (Judicial) : SH. Justice Virendrasingh G. Bisht (Retd.)
Hon'ble Member (Technical) : SH. Prabhat Kumar

Appearances:

For the Resolution Professional
in IA No. 634 of 2021 and
IA No. 1514 of 2021 : Mr. Rohit Gupta, Advocate

For the Committee of
Creditors in IA No. 634 of 2021 : Mr. Prakash Shinde, Advocate

For the Applicant/
Operational Creditor in
IA No. 1514 of 2021 : Mr. Nikunj Mehta, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Resolution Professional of **Impala Distillery & Brewery Limited** ("**Corporate Debtor**"), Mr. Sameer Kakar, has filed an Application bearing **IA No. 634/2021** in **CP(IB) 817/2021** seeking approval of Resolution Plan in terms of Sec. 31 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") after the approval of Committee of Creditors ("**CoC**") of the Corporate Debtor.
2. Before we deal with the Application for approval of the Resolution Plan, it is important to deal with **IA No. 1514 of 2021** ("**Objection Application**"), filed by the Operational Creditor of the Corporate Debtor, **Superior Malt Private Limited**, objecting the approval of the

Resolution Plan of the Successful Resolution Applicants (“SRA”) approved by the Committee of Creditors and seeking its rejection.

IA No. 1514 of 2021

Submissions made by the Ld. Counsel on behalf of the Applicant/ Operational Creditor of the Corporate Debtor

3. The Applicant in this Application submits that they supplied Admalt/Malt to the Corporate Debtor, in respect of which invoices were raised from time to time. The Applicant raised total invoices to the tune of Rs. 27,15,765/- (Rupees Twenty Seven Lakh Fifteen Thousand Seven Hundred and Sixty Five Only). However, after adjustment of the amount received from the Corporate Debtor the net outstanding amount stands to Rs. 23,30,754/- (Rupees Twenty-Three Lakh Thirty Thousand Seven Hundred and Fifty Four Only) including the Interest amount of Rs. 3,88,698/- (Rupees Three Lakh Eighty Eight Thousand Six Hundred and Ninety Eight Only) calculated till 31.08.2019.
4. The Applicant has raised the following grounds for objecting the approval of the Resolution Plan submitted by the Successful Resolution Applicants, Mr. Vijay Monte Cruz, suspended promoter of the Corporate Debtor and Clovia Distillery and Brewery LLP :
 - a. False Representations by the Resolution Applicant assuring payment claimed by the Applicant and rejection of Applicant’s claim by the Resolution Professional of the Corporate Debtor on account of delay in filing claim.
 - b. The Corporate Debtor is not an MSME and therefore Section 240A of the Code is not applicable in the present case.
 - c. The Resolution Applicant is in contravention of Section 29A of the Code.



5. As regards the false representations made by the Resolution Applicant assuring payment claimed and rejection of Applicant's Claim by the Resolution Professional, it is stated that the Applicant had filed another IA No. 1454/2021 seeking direction against the Respondent, Resolution Professional of the Corporate Debtor, to consider the Claim on merits rather than the only technical glitch of belated filing and for condonation of delay in submission of the claim before the Resolution Professional. This Bench considered the said Application and dismissed the same vide Order dated 10.10.2023, holding that –

4) Since, the claim filed by the Applicant is after the approval of the Resolution Plan by the Committee of Creditors; hence, admitting claims after the Resolution Plan has been accepted by the Committee of Creditors (COC) under Insolvency and Bankruptcy Code, 2016 (IBC) even though the Adjudicating Authority has yet to approve the plan, would make the Corporate Insolvency Resolution Process (CIRP) an endless process. The Hon'ble Apex Court passed a judgment on 11.09.2023, in the matter of M/s. RPS Infrastructure Ltd. vs. Mukul Kumar & Anr. Civil Appeal No. 5590 / 2021 and observed the potential consequences of accepting claims after approval of the resolution plan by the Committee of Creditors (COC). The concern is that it could make the Corporate Insolvency Resolution Process never-ending, making it impossible to move forward.

6. As regards the other grounds, it is the Applicant's case that the Corporate Debtor is not a MSME unit and therefore Section 240-A of the Insolvency and Bankruptcy Code, 2016 will not apply to the Corporate Debtor.

7. The Applicant has relied on the MSME Certificate dated 05.04.2018 produced by the Resolution Professional in their Affidavit-in-Reply dated 21.10.2023. The Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor commenced on 10.01.2020. It is the



Applicant's contention that the MSME certificate dated 05.04.2018 is fraudulent and obtained in violation of the provisions of the MSME Act, 2006. The Petitioner submits that as per Section 7(1)(a)(iii) of the MSME Act, 2006, in the year 2018, the eligibility criteria for a medium enterprise was an investment in plant and machinery of more than Rs. 5 crore, but not exceeding Rs. 10 crore. On a bare perusal of debtor company's Annual Statement for the FY 2016-17, it can be seen that as on 31.03.2017, the Corporate Debtor had investments in Plant and Machinery amounting to Rs.20,69,03,654.77/- (Rupees Twenty Crores, Sixty Nine Lakhs, three Thousand, Six Hundred and Fifty Four Only).

8. The Applicant further states that as per the Office Memorandum dated 06.08.2020 issued by the Ministry of Micro, Small and Medium Enterprises, it is mentioned that only for the registration post 26.06.2020 will the Written Down Value (WDV) at the end of the Financial Year be relevant, and that as per the earlier classification, the original price or the cost of acquisition will be relevant. Therefore, the value of the Corporate Debtor's Plant and Machinery has to be taken to be Rs.20,69,03,654.77/- (Rupees Twenty Crores, Sixty Nine Lakhs, three Thousand, Six Hundred and Fifty Four Only) and not the post depreciation value.
9. The Applicant further submits that even if the MSME certificate dated 05.04.2018 is considered to be valid, the Notification dated 26.06.2020 issued by the Ministry of Micro, Small and Medium Enterprises ("**Notification**") provides for a period of migration of already registered enterprises. Clause 7(3) of the Notification expressly states that the enterprises registered prior to 30.06.2020 shall continue to be valid only for a period up to 31.03.2021. The date of re-registration/migration was extended from 31.03.2021 to 30.06.2022 vide Notification dated 06.05.2022 issued by the Ministry of Micro, Small and Medium Enterprises. The Applicant states that the Resolution Professional has



not produced a MSME certificate under the new regime. The MSME certificate dated 05.04.2018, expired on 30.06.2022. Therefore, as on date, there is no valid MSME certificate. In view of the inapplicability of Section 240-A, the Resolution Plan will be hit by the prohibition contained in Section 29-A.

10. The Applicant has relied on the following judgements to support their contentions :

- a) Binani Industries Limited vs. Bank of Baroda & Anr.
- b) Kanti Mohan Rustagi, Liquidator, UTM Engineering Pvt. Ltd. Vs. Redbrick Consulting Pvt. Ltd. & Anr.
- c) Bank of Baroda & Anr. vs. MBL Infrastructures Limited & Ors.
- d) Navayuga Engineering Company Limited vs. Mr. Umesh Garg

11. The Resolution Professional vide their Reply dated 21.10.2023 submits that the present application is a belated attempt by the Applicant to challenge the Resolution Plan, as it failed to file its claim within the stipulated time. The Resolution Professional maintains that a Resolution Applicant is exempt from the provisions of Section 29A(c) of the Code in the case of MSME Units and that the Corporate Debtor is a duly registered MSME Unit having UAN GA02C0001447, registered on 05.04.2018 with validity upto 31.12.2021.

Findings

12. Heard Learned Counsels and perused the material available on record.

13. We find that the last date for submission of the Resolution Plan was 04.01.2021 and the Resolution Plan approved by CoC was submitted by the SRA within the stipulated time and was available with the CoC to deliberate upon at the CoC meeting held on 04.01.2021. The Notification dated 26.06.2020 issued by the Ministry of Micro, Small and Medium



Enterprises (“**Notification**”) provided for the migration of already registered enterprises and in terms of Clause 7(3) thereof, the certificate issued to enterprises prior to 30.06.2020 shall continue to be valid only for a period up to 31.03.2021 and this period was further extended from 31.03.2021 to 30.06.2022 vide Notification dated 06.05.2022 issued by the Ministry of Micro, Small and Medium Enterprises. Accordingly, the MSME Registration in case of Corporate Debtor was in force on the date of submission of the Resolution Plan as well as on last date for its submission. The fact that Resolution Professional didn’t consider it desirable to file for migration of the Certificate in terms of amended classification cannot disentitle the Corporate Debtor to claim exemption from the rigors of 29A(c) of the Code in terms of Section 240A of the Code considering the fact that the Corporate Debtor is eligible to be registered had an application for migration been filed by the Resolution Professional for continuance of the registration under MSME Act. Further, the allegation of fraudulent obtention of the MSME Certificate does not hold substance in view of the fact that none of the financial creditors had objected to the grant of certificate while extending the concessions available to the entity.

14. Accordingly, IA No. 1514/2021 is dismissed.

IA No. 1177 of 2021

15. The present Application is moved by Resolution Professional **Mr. Sameer Kakar (“Applicant”)** under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the Resolution Plan of **Mr. Vijay Monte Cruz along with Clovia Distillery and Brewery LLP (“Successful Resolution Applicant/SRA”)** under the provisions of Section 31(1) of the Code, for **Imapala Distillery & Brewery**

Limited (“Corporate Debtor”) and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.

Brief Facts

16. The CIRP was initiated against the Corporate debtor vide Order dated 10.01.2020 and Mr. Sameer Kakar was appointed as the Interim Resolution Professional (“**IRP**”).
17. The IRP published a Public Announcement in Form-A on 13.01.2020 inviting claims from the creditors of the Corporate Debtor. After the receipt of claims, the CoC was constituted by the IRP on 28.01.2020.
18. The Applicant submits that till the date of filing of the present Application, a total of 17 (Seventeen) CoC meetings of the Corporate Debtor have been held from time to time.
19. The Committee of Creditors (“**CoC**”) in its 1st meeting held on 06.02.2020 confirmed the appointment of the IRP as the Resolution Professional (“**RP**”).
20. On 14.02.2020, the CoC approved appointment of 6 (Six) registered valuers viz. Debashsi Das and Ashlesha for valuation of Financial Assets, Puneet Tyagi and Sandeep Goel for valuation of Land & Building and Dharam Pal Bhatia and Alok Kaushik for valuation of Plant & Machinery (“**Registered Valuers**”). The average liquidation value of the Corporate Debtor was determined as Rs. 6,96,70,736/- (Rupees Six Crores, Ninety Six Lakhs, Seventy Thousand, seven Hundred and Thirty Six Only). The average fair value of the Corporate Debtor was determined as Rs.9,95,60,932/- (Rupees Nine Crores, Ninety Five Lakhs, Sixty Thousand, Nine Hundred and Thirty Two Only).



21. The CIRP Period of the Corporate Debtor was coming to an end on 08.07.2020. Pursuant to the authorization granted by CoC and in view of the Pandemic, the RP filed IA No. 1995/2020 seeking exclusion of 104 days from 15.03.2020 to 07.06.2020 and 20.07.2020 to 08.08.2020, time lost on account of lockdown. The CoC also authorized the RP to file IA No. 1678/2020 seeking extension of the CIRP Period by a further period of 90 days. This Tribunal vide Order dated 03.12.2020 extended the CIRP Period by 90 days, thereby extending the CIRP Period till 02.03.2021. In view of the extension, this Tribunal dismissed IA No. 1995/2020.

22. Thereafter, the RP invited Expression of Interest (“**EOI**”) in Form G under Regulation 36A (1) of the CIRP Regulations from the general public. The paper publication was made on 12.10.2020. The RP received 4 (Four) EOIs and out of these, only 3 (Three) were found to be eligible as Prospective Resolution Applicants (“**PRA**”). Accordingly, the RP issued the final list of PRAs dated 09.11.2020. The RP issued information memorandum, evaluation matrix and Request For Resolution Plan (“**RFRP**”) to the PRAs on 09.11.2020 to enable them to submit a viable Resolution Plan for the Corporate Debtor.

23. The RP submits that as per the published Form-G, the last date for submission of the Resolution Plan was 14.12.2020. However, one of the PRAs, Mr. Vijay Monte Cruz, contracted Covid-19 and was hospitalized/under isolation during the months of November and December, 2020 as a result of which he was unable to submit the plan within the stipulated time. Accordingly, the CoC allowed extension of time for submission of Resolution Plans at its 9th and 10th meetings, thereby extending it to 04.01.2021.



24. The RP received 2 (Two) Resolution Plans from Mr. Vijay Monte Cruz, Suspended Director of the Corporate Debtor along with Co-Applicant Clovia Distillery & Brewery LLP and Ramesh Hotels and Resorts P. Limited. Both the Resolution Applicants deposited a sum of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) each towards Earnest Money Deposit (“EMD”).
25. The said Resolution Plans were opened at the 11th CoC meeting held on 04.01.2021. The CoC allowed time until 08.01.2021 to Mr. Vijay Monte Cruz to submit more documents owing to difficulties as he had contracted Covid and was under isolation.
26. At the 12th CoC meeting held on 13.01.2021, the CoC unanimously resolved to allow all PRAs to modify and present a compliant plan to the RP before 21.01.2021. The RP also informed the CoC that Ramesh Hotels and Resorts P. Ltd. had sent a revised Resolution Plan vide mail dated 13.01.2021.
27. At the 13th CoC meeting held on 22.01.2021, the CoC asked Mr. Vijay Monte Cruz to further rectify the Plan and share the source of funds with the RP before 27.01.2021.
28. At the 14th CoC meeting held on 01.02.2021, the PRAs presented their plans and the CoC granted time to the PRAs until 03.02.2021 to provide further information and clarifications regarding the plans presented.
29. At the 15th CoC meeting held on 04.02.2021, the CoC granted further time until 06.02.2021 to Mr. Vijay Monte Cruz and until 08.02.2021 to Ramesh Hotels & Resorts P. Ltd. to reply to queries raised, provide additional documents and submit revised plan.



30. At the 16th CoC meeting held on 09.02.2021, the CoC requested Mr. Vijay Monte Cruz to further submit a revised plan before 13.02.2021. At this stage, the representative of Ramesh Hotels and Resorts P. Ltd. stated that he was not inclined to raise the plan/offer value any further.
31. In light of the delay caused by the illness of Mr. Vijay Monte Cruz and ongoing negotiations between the PRAs and the CoC and pursuant to the authorization granted by the CoC at their 16th Meeting, the RP filed IA No. 382/2021 seeking exclusion/extension of 30 days from the CIRP Period as the CIRP period was scheduled to end on 02.03.2021. This Tribunal vide Order dated 01.03.2021 allowed the Application, thereby extending the CIRP period until 31.03.2021.
32. At the 17th CoC meeting, the Resolution Plans were discussed once again and then decided to put the plans to vote. The voting began on 22.02.2021 and concluded on 26.02.2021. The CoC voted in favour of the Resolution Plan submitted by Mr. Vijay Monte Cruz along with co-applicant Clovia Distillery & Brewery LLP by 100% voting share.
33. Pursuant to the approval of the Resolution Plan by the CoC, the Successful Resolution Applicant has deposited the Performance Security as stipulated in the Request for Resolution Plan (RFRP) of Rs. 5 Crores on 05.03.2021.

Salient Features of the Resolution Plan

34. The key features and summary of the final Resolution Plan submitted by the Resolution Applicant and as approved by the COC are as under:

(A) Induction of Co-Resolution Applicant

The resolution plan proposes to introduce Clovia Distillery & Brewery LLP as a co-resolution applicant along with the present



promoter and suspended director, Mr Vijay Monte Cruz. The said firm is a conglomeration of individuals who have come together to re-define brewing paradigms in India. Incorporated in September 2020, the following persons are its designated partners:

Name	DIN
Mr. Sumit Rajendraprasad Singla	01363005
Mr. Mohammed Gosh Khan	08861479
Mrs. Linda Antao	08861480

(B) RESOLUTION OF DEBTS

With funding from the co-applicant, the resolution plan proposes to restructure the debts of the corporate debtor as under:

- (i) **Financial Creditors (Secured)** – Total outstanding amount to be settled at Rs. 21.00 crores by way of one-time payment, to be paid within a period of 14 days from the date of approval of plan by Hon'ble NCLT, to IDBI Bank and EDC in terms of their proportional share in the CoC.
- (ii) Apart from the above, the resolution applicants undertake to provide an additional / surplus amount of approximately Rs. 44.59 crores to the Financial Creditors, over and above the amount mentioned in the plan (Rs 21 Crores) in the arbitration proceedings being pursued against Vikings Beverages Pvt Ltd (VBPL), in the event the same is recovered by the CD;
- (iii) **Wages and Salaries dues** – Payment to workmen and employees to be settled at 100% of actual amount, i.e. Rs. 37,30,586.00;
- (iv) **Statutory and Contingent Liabilities** – 50% of the amount in terms of additional payment to Goa Industrial Development Corporation (GIDC) which has not filed a claim. According



to the Resolution Applicant, CD was allotted land adjoining the original factory premises on lease for 90 years by GIDC in 1999. The initial lease premium along with developmental charges, i.e. 100 % of the lease premium was paid by the CD. In due course, compensation paid against the land acquisition was enhanced by 100% and, hence, an amount of Rs 23.41 lakhs along with developmental charges on the enhanced lease premium i.e. Rs 23.41 lakhs remained unpaid. In addition, annual lease rentals of Rs 10,670/- remained unpaid since 1999 which amounts to Rs 2,24,070/-. GIDC has imposed a default interest of 18% per annum on the entire amount payable. The Resolution Applicant requests waiver of the default interest of 18% imposed on the CD and proposes to settle the remaining dues at 50%. The Resolution Applicant therefore proposes to settle all outstanding dues payable towards GIDC at **Rs. 22,40,700/-**

- (v) **Operational Creditors (all inclusive)**– 1% of the amounts as mentioned in the IM/RFRP, i.e. Rs. 1,15,926.30 and Rs 50,000 (1%) to an unrelated party and unsecured financial creditor, Ms Hema Fernandes, who has not filed her claim;
- (vi) **Equity Share Capital** – Existing equity capital shall be written off to the extent of 76% and an amount of Rs 21 crores shall be infused by the Resolution Applicant (RA) or any other eligible person, appointed by the RA on the effective date, as its equity after the existing equity is written off by the company.

(C) RESTARTING OF UNIT

The resolution plan envisages resumption of production, with the Resolution Applicant and Co-Resolution Applicant nominating one Director each into the board. A month from the date of Resolution, the Co-Applicant, i.e. Clovia Distillery and Brewery



LLP shall take over the entire management, control and administration of the Corporate Debtor, and nominate two of its partners, i.e. Mr. Sumit Rajendraprasad Singla and Mr. Mohammed Gosh Khan as Directors on the board. The promoter / suspended director, i.e. Mr. Vijay Monte Cruz, shall be appointed as a director with support of his family. Mr Vijay Monte Cruz will own 24% shareholding in the corporate debtor along with his family members.

The co-resolution applicant shall also infuse an amount of Rs 15.50 crores towards working capital and repair cost, post-resolution, as an unsecured loan, payable in five years, without any interest thereon.

(D) COST OF THE RESOLUTION PLAN

The amounts proposed to be paid under the resolution plan approved by CoC are as under:

Particulars	Proposed Payment (in Rs)	O/s post resolution (in Rs)	Remarks
CIRP Cost (including Other Professional and Consultant) *	51,57,225.00	NIL	Estimated Expenses as per IM/RFRP
Financial Creditors (Secured)	21,00,00,000.00	NIL	Two financial Creditors, namely, EDC Ltd and IDBI Bank Ltd.



Workmen & Employees	37,30,586.00	NIL	Payment of 100% amount shown in records
Operational Creditors	11,59,26.30	NIL	Payment of 1% amount shown in records
Creditors: unrelated parties	50,000.00	NIL	Payment of 1% amount shown in records
Statutory Liabilities	22,40,700.00	NIL	GIDC - Payment of 50% amount shown in records
SUB-TOTAL	22,12,94,437.30		
Working Capital	6,00,00,000.00		
Maintenance / Repairs etc	9,50,00,000.00		
TOTAL	37,62,94,437.30		

Note : The CIRP cost has been paid in full until 30.09.2021 by the CoC, which will have to be reimbursed by the successful RA on priority on approval of the resolution plan. RA has undertaken to CIRP pay additional / on-going cost until handover of management.

Means Of Finance

The entire cost of the resolution plan is being financed by the Co-applicant, i.e. Clovia Distillery and Brewery LLP, which proposes to acquire 76% of the shares in the Corporate Debtor, against the infusion of Rs 21 crores. The remaining amount payable in terms of the resolution plan, i.e. a sum of Rs 1,12,94,437.30, shall be initially infused as short-term loan by the co-applicant, i.e. Clovia Distillery LLP into the Corporate Debtor.

Statutory Compliance

35. In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution Plan of the Successful Resolution Applicant and confirms that this Resolution Plan:

- a) Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the corporate debtor;
- b) Provides for payment of debts of operational creditor 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 liquidation of the corporate debtor under Section 53; or
 - (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distribute in accordance with sub-section (1) of Section 53 in the event of liquidation of the corporate debtor.
- c) Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;
- d) The implementation and supervision of Resolution Plan;
- e) Does not prima facie contravene any of the provisions of the law for time being in force,
- f) Confirms to such other requirements as may be specified by the Board.
- g) As per the Affidavit, the Resolution Applicant is not covered under 29A.

36. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that:

- a) The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.





- b) It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD.
 - c) A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have contributed to the failure of implementation of any other Resolution Plan approved by the AA in the past.
 - d) The terms of the plan and its implementation schedule.
 - e) The management and control of the business of the CD during its term.
 - f) Adequate means of Supervising its implementation.
 - g) The Resolution Plan Demonstrate that it addresses
 - i. The cause of the Default
 - ii. It is feasible and viable
 - iii. Provision for effective implementation
 - iv. Provisions for approvals required and the time lines for the same.
 - v. Capability to Implement the Resolution Plan
37. The Resolution Professional has annexed Form H under Regulation 39(4) of the CIRP Regulations to certify that the Resolution Plan as approved by the CoC meets all the requirements of the Code and its Regulations. The relevant extracts, as otherwise stated elsewhere in the order, are as follows -

FORM H

COMPLIANCE CERTIFICATE

*(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India
(Insolvency Resolution Process for Corporate Persons) Regulations, 2016*

I, Sameer Kakar, an insolvency professional enrolled with Indian Institute of Insolvency Professionals of ICAI, and registered with the Board with registration number IBBI/IPA-001/IP-P00218 /2017-18/10418, am the resolution professional

for the corporate insolvency resolution process (CIRP) of Impala Distillery and Brewery Ltd.

2. The details of the CIRP are as under:-

Sl. No.	Particulars	Description
1	<i>Name of the CD</i>	<i>Impala Distillery and Brewery Ltd.</i>
2	<i>Date of Initiation of CIRP</i>	<i>10/01/2020</i>
3	<i>Date of Appointment of IRP</i>	<i>10/01/2020</i>
4	<i>Date of Publication of Public Announcement</i>	<i>13/01/2020</i>
5	<i>Date of Constitution of CoC</i>	<i>28/01/2020</i>
6	<i>Date of First Meeting of CoC</i>	<i>06/02/2020</i>
7	<i>Date of Appointment of RP</i>	<i>06/02/2020</i>
8	<i>Date of Appointment of Registered Valuers</i>	<i>14/02/2020</i>
9	<i>Date of Issue of Invitation for EoI</i>	<i>12/10/2020</i>
10	<i>Date of Final List of Eligible Prospective Resolution Applicants</i>	<i>09/11/2020</i>
11	<i>Date of Invitation of Resolution Plan</i>	<i>09/11/2020</i>
12	<i>Last Date of Submission of Resolution Plan</i>	<i>14/12/2020 extended by COC to 04/01/2021</i>
13	<i>Date of Approval of Resolution Plan by CoC</i>	<i>26/02/2021</i>
14	<i>Date of Filing of Resolution Plan with Adjudicating Authority</i>	<i>02/3/2021</i>
15	<i>Date of Expiry of 180 days of CIRP</i>	<i>08/07/2020</i>
16	<i>Date of Order extending the period of CIRP</i>	<i>03/12/2020 & 01/03/2021</i>
17	<i>Date of Expiry of Extended Period of CIRP</i>	<i>31/03/2021</i>
18	<i>Fair Value</i>	<i>Rs. 9.96 Crores</i>
19	<i>Liquidation value</i>	<i>Rs. 6.97 Crores</i>
20	<i>Number of Meetings of CoC held</i>	<i>17</i>

3. I have examined the Resolution Plan received from Resolution Applicant Vijay Montecruz, Suspended Director of CD along with Co-Applicant Clovia Distillery and

Brewery LLP and approved by Committee of Creditors (CoC) of Impala Distillery and Brewery Ltd.

4. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) a. CD is a MSME vide registration number GA02C0001447. Mr. Vijay Montecruz, is suspended director of the CD. Mr. Vijay Montecruz has submitted the plan u/s 240-A which exempts suspended directors of a MSME unit from application of section 29-A and its compliance.

b. Co-applicant Clovia Distillery and Brewery LLP has 3 designated partners who are as under :-

i) Mohammed Gosh Khan.

ii) Linda Antao.

iii) Sumit Rajendraprasad Singla.

All the 3 designated partners of Clovia Distillery and Brewery LLP have submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) The voting was held in the meeting of the CoC on 22/02/2021 (and concluded on 26/2/2021) where all the members of the CoC were present.

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. lakh)

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH- I

IA No. 634 of 2021
AND IA No. 1514 of 2021
IN CP(IB) No. 817 of 2019



<i>Sl. No.</i>	<i>Category of Stake holder</i>	<i>Sub-Category of Stake holder</i>	<i>Amount claimed</i>	<i>Amount Admitted</i>	<i>Amount provided for in the Plan</i>	<i>Amount provide to amount claimed</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>	<i>(7)</i>
<i>1</i>	<i>Secured Financial Creditors</i>	<i>(a) Creditors not having a right to vote under sub-section (2) of section 21</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
		<i>(b) Other than (a) above:</i>	<i>28265.90</i>	<i>22340.10</i>	<i>2100.00</i>	<i>9.40%</i>
		<i>(i) who did not vote in favour of the resolution Plan</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
		<i>(ii) who voted in favour of the resolution plan</i>	<i>22340.10</i>	<i>22340.10</i>	<i>2100.00</i>	<i>9.40%</i>
		<i>Total[(a) + (b)]</i>	<i>28265.90</i>	<i>22340.10</i>	<i>2100.00</i>	<i>9.40%</i>
<i>2.</i>	<i>Unsecured Secured Financial Creditors</i>	<i>(a) Creditors not having a right to vote under sub-section (2) of section 21</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
		<i>(b) Other than (a) above:</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH- I

IA No. 634 of 2021
AND IA No. 1514 of 2021
IN CP(IB) No. 817 of 2019



		<i>(i) who did not vote in favour of the resolution Plan</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
		<i>(ii) who voted in favour of the resolution plan</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
		<i>Total[(a) + (b)]</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
3.	<i>Operational Creditors</i>	<i>(a) Related Party of Corporate Debtor</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
		<i>(b) Other than (a) above:</i>	<i>10149.39</i>	<i>153.23</i>	<i>38.47</i>	<i>25.10</i>
		<i>(i) Government</i>	<i>98.88</i>	<i>98.88</i>	<i>0.99</i>	<i>1%</i>
		<i>(ii) Workmen</i>	<i>40.00</i>	<i>37.30</i>	<i>37.30</i>	<i>100%</i>
		<i>(iii) Employees</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
		<i>(iv) Others</i>	<i>10010.50</i>	<i>17.04</i>	<i>0.17</i>	<i>1%</i>
		<i>Total[(a) + (b)]</i>	<i>10149.39</i>	<i>153.23</i>	<i>38.47</i>	<i>25.10</i>
4	<i>Other debts and dues</i>	<i>Persons who have not filed claim before the RP</i>	<i>Nil</i>	<i>Nil</i>	<i>22.90</i>	<i>NA</i>

		<i>(i) Unsecured Financial Creditors (unrelated)</i>	<i>Nil</i>	<i>Nil</i>	<i>0.50</i>	<i>1%</i>
		<i>(ii) Government</i>	<i>Nil</i>	<i>Nil</i>	<i>22.40</i>	<i>50%</i>
<i>Grand Total</i>			<i>38415.3</i>	<i>22493.3</i>	<i>2161.37</i>	<i>9.61%</i>

38. On perusal of the Resolution Plan, we find that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
- c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
- d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

39. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.

40. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the CoC by majority of 100%. It is undisputed fact that the Resolution Professional has also certified that the SRA is not disqualified in terms of Section 29A of the Code in view of fact that an application u/s 19(2) of the Code was filed by him against the suspended Board. There is no allegation that the Resolution Professional was in collusion with the Suspended Director. Accordingly, we are of considered view that no adverse inference can

be drawn merely from the fact of filing of Section 19(2) application against the suspended Board.

41. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) 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 (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is 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.
42. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.
43. The Resolution Plan along with the Addendum thereto annexed to the Application is hereby **approved**. It shall become effective from this date and shall form part of this order with the following directions:
- i. It 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.

- ii. 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 by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned in light of the Judgment of Supreme Court in *Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited*, the relevant paras of which are extracted herein below:

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the 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 part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and



therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra 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.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. 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.



vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

44. Accordingly, IA No. 634 is allowed. In view of the above, IA No. 815/2020, an application under Section 19(2) of the Code, filed against the suspended Directors of the Corporate Debtor is rendered infructuous. Another IA No. 1715/2021, an application filed by Superior Malt Private Limited for urgent listing of IA No. 1454/2021 stands dismissed as disposed as the said matter has already been decided by this Bench.

Sd/-

Prabhat Kumar
Member (Technical)

/SP/

Sd/-

Justice V.G. Bisht
Member (Judicial)