

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

COURT – IV

26.

IA-1509/2022 in C.P.(IB)/3071(MB)/2019

CORAM:

SHRI MANOJ KUMAR DUBEY
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **20.07.2022**

NAME OF THE PARTIES:

Research Dye Chem Pvt. Ltd.

Vs

Sangeeta Tex Dyes Pvt. Ltd.

SECTION: 9, 30 OF INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

The Court is convened through Video Conference.

1. Mr. Rohit Gupta a/w Adv. Nidhi Chheda, Ld. Counsel for the Applicant in IA present. Mr. Nevil Chopra, Ld. Counsel for the Operational Creditor (Intervener), present.
2. IA-1509/2022 is filed by the RP for approval of Resolution Plan. Heard the Counsel and perused the records. Resolution Plan is approved. Detailed order follows.
3. Accordingly, IA is **allowed** and **disposed** of.

Sd/-
MANOJ KUMAR DUBEY
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV

IA-1509/2022
in
C.P.(IB)-3071(MB)/2019

Under Section 30(6) of the Insolvency and
Bankruptcy Code, 2016.

Application moved by:

Mr. Sandeep Maheshwari
...Resolution Professional

In the matter of:

Research Dye Chem Pvt. Ltd.
...Operational Creditor

Vs.

Sangeeta Tex. Dyes Pvt. Ltd.
...Corporate Debtor

Ordered on : 20.07.2022

Coram:

Hon'ble Shri Kishore Vemulapalli : Member (Judicial)

Hon'ble Shri Manoj Kumar Dubey : Member (Technical)

Appearances:

For the Applicant(s) : Mr. Rohit Gupta a/w Ms. Nidhi Chheda,
Advocates.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

ORDER

1. This is an Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'the Code') filed by the Resolution Professional (RP) on behalf of the Committee of Creditors seeking approval of the Resolution Plan submitted by the Resolution Applicant, which is approved by 100% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'CoC') of the Debtor Company viz. Sangeeta Tex. Dyes Pvt. Ltd. (hereinafter referred to as 'Corporate Debtor').

2. The facts leading to the Application are as under:
 - i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated vide an admission order dated 29.01.2020 of this Court in C.P.(IB)-3071(MB)/2019 under Section 9 of the Insolvency and Bankruptcy Code 2016 filed by Research Dye Chem Pvt. Ltd. (Operational Creditor) and Mr. Suresh Chandra Jena (Reg. No.: IBBI/IPA-001/IP-P-01540/2019-20/12473 was appointed as Interim Resolution Professional (IRP). The IRP published a public announcement in newspapers in Form-A on 14.02.2020 inviting claims from the creditors, workers/employees of the Corporate Debtor and from government bodies. IRP constituted the Committee of Creditors (CoC) on 05.03.2020 on the basis of the claims received by him.
 - ii. IRP called the first meeting of the CoC on 11.03.2020. The CoC in its third meeting held on 09.12.2020 decided to replace the IRP with Mr. Sandeep Maheshwari having registration No. IBBI/IPA-001/IP-P00640/2017-2018/

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

11093 as the Resolution Professional (RP). This Tribunal by order dated 16.12.2021 confirmed the appointment of the Applicant as the RP.

- iii. As the CIRP was delayed due to lockdown, the RP sought exclusion and extension of time for a period of 692 days vide IA-31/2022, which was allowed and the period of CIRP was extended till 17.06.2022 by this Tribunal.
- iv. The RP constituted the CoC whose names and their voting percentages are as follows:

Sr. No.	Name of the CoC Members	Voting %
1.	Bharat Co-operative Bank (Mumbai) Limited	76.37
2.	Alpa Kamlesh Narang	1.08
3.	Kajol Kamlesh Narang	0.86
4.	Mohanlal D Narang	0.65
5.	Kamlesh M. Narang	0.59
6.	Kamlesh M. Narang HUF	2.43
7.	Mini Mehra	1.84
8.	Manoj J Sharma	5.05
9.	Pride Finvest Co. Private Limited	2.70
10.	Kandarp Vakharia (HUF)	2.59
11.	Kandarp Vakharia	2.92
12.	Subhadraben Vakharia	2.92
	Total	100

- v. The Applicant states that six Registered Valuers were appointed to determine the Fair Value and Liquidation Value of the Corporate Debtor in the Fourth CoC meeting held on 12.01.2022 :

- Delta Valuation Services Private Limited (Valuer No. 1 for Land & Building; Fair Value - 14,41,80,000, Liquidation Value- 11,21,40,000)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

- Mr. Raseek Bhagat (Valuer No. 2 for Land & Building; Fair Value - 14,36,00,000, Liquidation Value- 10,76,00,000)
- Mr. C. S. Joshi (Valuer No. 1 for Plant & Machinery; Fair Value - 3,30,71,237, Liquidation Value- 2,48,03,428)
- Mr. Karan Rajendra Mody (Valuer No. 2 for Plant & Machinery; Fair Value - 3,53,21,000, Liquidation Value- 2,47,25,000)
- Mr. Ganesh Remani (Valuer No. 1 for Securities & Financial Assets; Fair Value - 1,46,36,286, Liquidation Value- 1,40,51,786)
- Mr. Jayesh Shah (Valuer No. 2 for Securities & Financial Assets; Fair Value - 1,41,24,574, Liquidation Value- 1,37,54,349)

The Average Fair Value and Liquidation Value as per Regulation 35 determined are as under:

1. Average Fair Value is Rs. 19,24,66,549/-.
2. Average Liquidation Value is Rs. 14,85,37,282/-.

vi. In the Tenth CoC meeting held on 04.05.2022, wherein the Resolution Applicant, Harit Industries Private Limited (HIPL), was declared as the successful Resolution Applicant, subject to certain modifications. After receipt of modified Resolution Plan, voting was conducted again in the 11th CoC meeting held on 11.05.2022 and the modified Resolution Plan was approved by 100% voting of the CoC members. The Resolution is reproduced below:

“RESOLVED THAT the modified resolution plan submitted by Harit Industries Private Limited for an amount of Rs. 22.41 crores be and is hereby approved subject to receipt of approval from the Adjudicating Authority.”

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

- vii.** The RP issued Letter of Intent on 16.05.2022 in favour of the Resolution Applicant and also sought for Performance Bank Guarantee, which was duly complied by the Resolution Applicant. Therefore, RP states that the Resolution Plan approved by the CoC is in compliance with the requirements of Section 30(2) of the Code.
- viii.** The Resolution Plan proposed by the Resolution Applicant is as follows:
- A.** The Resolution Applicant Mr. Pankaj Mishra is Director of Harit Industries Pvt. Ltd., a Company engaged in the business of curtain and upholstery fabric, printed fabric, embroidery and dobby fabric, yarn processing and dyeing house, incorporated on 01.11.2019 [U17299MH2019PTC332459] having registered office at 209, Block-4, Emerald Plaza, Hiranandani Meadows, Gladys Alwaris Road, Thane (W), Maharashtra - 400601. The Resolution Applicant confirmed that it is eligible to submit Resolution Plan as per Section 29A of Insolvency and Bankruptcy Code.
- B.** The Resolution Applicant has proposed to take-over the management and ownership control of the Corporate Debtor by acquiring 100% ownership of the Company, the details of the proposal are as follows:
- 1.** *The Resolution Plan contemplates a total resolution plan amount Rs.22,41,00,030/- (Rupees Twenty-two Crore Forty-one Lakh and Thirty only) payable and/or to be contributed / invested in accordance with the terms set out in this Resolution Plan. Except the amount payable to various Creditors as per the terms of this Resolution*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

Plan, the Claims of all Creditors and stakeholders of the Corporate Debtor including but not limited to penalties, interest, fines or any other dues, whether admitted or not, due or contingent, whether claim has been filed or not by such Person in respect of such dues, for the period prior to the Trigger Date, shall stand abated, settled and extinguished and neither the Corporate Debtor nor the Resolution Applicant shall be liable to pay any amount against such demand. All proceedings pending against the Corporate Debtor with respect to any such claims and dues owed, on the Trigger Date relating to the period prior to the Trigger Date, shall stand terminated and all consequential liabilities, if any, stand abated and should be considered to be not payable by the Corporate Debtor or the Resolution Applicant.

All notices proposing to initiate any proceedings (if any) against the Corporate Debtor in relation to the period prior to the Trigger Date and pending on the Trigger Date, shall stand settled and abated at Nil value and shall not be proceeded against. Post the Trigger Date, no reassessment / revision or any other proceedings or suits shall be initiated against the Corporate Debtor in relation to a claim for a period prior to the Trigger Date in respect of such Claims and dues and any consequential demand / action should be considered non-existing and as not payable by the Corporate Debtor or the Resolution Applicant. Any proceedings (including proceedings filed before the Supreme Court, High Court or any other court, tribunal or authority, if any) which were kept in abeyance in view of the insolvency process or otherwise shall not be revived post the NCLT Approval Order.

2. Total Outlay:

The proposed total outlay by the Resolution Applicant as part of the Resolution Plan to revive operations of the Corporate Debtor is as under:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

#	Particulars	Amount Admitted by RP			Amount to be Paid by HIPL			Remarks
		Related	Unrelated	TOTAL	Related	Unrelated	TOTAL	
1	CIRP Cost	0	80,00,000	80,00,000		80,00,000	80,00,000	100% Payment (Please note: it is estimated cost and would be paid on actual basis to the extent outstanding) Within 21 days from Trigger Date.
2	Employees' Dues	73,62,793	14,82,497	88,45,290	73,62,793	14,82,497	88,45,290	100% Payment Within 21 days from Trigger Date.
3	Secured Financial Creditors	0	7,83,60,248	7,83,60,248	0	7,83,60,248	7,83,60,248	100% payment- Within 21 days from Trigger Date.
4.1	Operational Creditors (Other than Related Party)	0	14,70,29,937	14,70,29,937	0	7,08,21,380	7,08,21,380	48.17% payment- Within 21 days from Trigger Date.
4.2	Operational Creditors (Related Party)	54,00,005	0	54,00,005	26,00,889		26,00,889	48.17% payment within 21 days from Trigger date.
	TOTAL Operational Creditors	54,00,005	14,70,29,937	15,24,29,942	26,00,889	7,08,21,380	7,34,22,269	
5.1	Unsecured Financial Creditors (Other than Related Party)	0	2,18,73,193	2,18,73,193		2,18,73,193	2,18,73,193	100% payment- Within 21 days from Trigger Date.
5.2	Unsecured Financial Creditors (Other than Directors)	4,70,10,101	0	4,70,10,101	2,29,37,714	0	2,29,37,714	48.79% payment- Within 21 days from Trigger Date.
5.3	Unsecured Financial Creditors (Directors)	1,34,48,350	0	1,34,48,350	65,61,289	0	65,61,289	48.79% payment- Within 21 days from Trigger Date.
	TOTAL Unsecured Financial Creditors	6,04,58,451	2,18,73,193	8,23,31,644	2,94,99,003	2,18,73,193	5,13,72,196	
6	Provision for essential services			0		41,00,000	41,00,000	100% payment- Within 21days from Trigger Date.
7	Working Capital			0				
	TOTAL	7,32,21,249	25,67,45,875	32,99,67,124	3,94,62,685	18,46,37,318	22,41,00,003	

3. Payment to the Financial Creditors:

- 3.1 *The Financial Creditors (including Dissenting Financial Creditors) will be paid an amount of Rs.7,83,60,248/- (Rupees Seven Crores Eighty-Three Lakhs Sixty Thousand Two Hundred Forty-Eight Only), which shall be payable within 21 days from the Trigger Date.*
- 3.2 *The said payment shall be met from the fresh infusion of the equity/ quasi equity or internal accruals of the Corporate Debtor or loans, i.e., from the cash - flows of the Corporate Debtor generated from the plant or by way of fresh borrowings.*
- 3.3 *The amount shall be payable within 21 days from the Trigger Date. It is hereby clarified that no interest shall be payable on the Deferred Cash. The amount shall be utilised towards the payment and settlement of the remaining amounts due to the remaining Operational Creditors, Secured and Unsecured Financial Creditors (including Dissenting Financial Creditors), in proportion to their Claims.*
- 3.4 *The Resolution Applicant retains a right to prepay the said amount, in part or full, at any time during the tenure proposed in the Resolution Plan, with an intimation to the Monitoring Committee, at the net present value on the date of such prepayment computed with discounting rate @ 14% (fourteen per cent) per annum. There shall not be any extra levy or prepayment charges. Such prepayment shall be done by Resolution Applicant/Corporate Debtor by way of combination of fresh loan from new lender and/or fresh equity / quasi equity / internal accruals.*
- 3.5 *On payment of the entire consideration as per the terms of the Resolution Plan to the respective Financial Creditors, each Financial Creditor shall immediately (i) release the Existing Security Interest existing in favour of the Secured Financial Creditors; and (ii) issue letters/no-objection certificate and no dues certificate releasing the charge/security on the Existing Security Interest. (iii) carry out necessary formalities for removal of such charge from RoC Website and other Government/ Semi- Government Authorities (iv) take necessary steps for regularising account of the Corporate Debtor.*

4. Payment of the Outstanding CIRP Cost:

- 4.1 *In terms of Section 30(2) (a) of the IBC, the CIRP Costs are to be paid in priority to any other creditor of the Corporate Debtor. The Outstanding CIRP Costs shall firstly, be paid from the internal accruals and / or current assets/ receivables of the Corporate Debtor during the CIRP period and to the extent*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

that the internal accruals are not adequate, the balance amounts of the Outstanding CIRP Costs shall be paid out of the provision for essential services. Thereafter, if there is additional CIRP cost, it is to be paid and adjusted from unsecured financial creditors (Related Party).

- 4.2 *As the internal accruals and / or current assets / receivables of the Corporate Debtor were not sufficient to meet with the CIRP Cost and the same was financed by Financial Creditors by way of Contribution to CIRP costs, the CIRP Cost to be paid in full and in priority to any claim of any other creditors, upon the Resolution Plan becoming effective. A sum of Rs.80,00,000/- (Rupees Eighty Lakh only) is kept for meeting the CIRP cost. In the event that the Outstanding CIRP Cost, exceeds Rs.80,00,000/-, the balance amounts of the Outstanding CIRP Costs shall be paid out of the provision for essential services. Thereafter, if there is additional CIRP cost, it will be paid and adjusted from unsecured financial creditors (Related Party).*
- 4.3 *On and from the Trigger Date, the Resolution Applicant shall be entitled to inspect the books of accounts and expenses incurred by the Resolution Professional with respect to the CIRP Costs. The Resolution Professional will provide item wise details along with invoices and supporting documents evidencing payments and outstanding of each such CIRP Cost to the Resolution Applicant and any other information as may be required by the Resolution Applicant and shall facilitate verification of the CIRP Costs by the Resolution Applicant. The Resolution Applicant shall be entitled to appoint auditors/professionals to verify and review the books of the Corporate Debtor and the CIRP costs, on and from the Trigger Date and the Resolution Professional will fully cooperate with the Resolution Applicant/ auditors/ professionals appointed by it and assist in such verification.*
- 4.4 *The Resolution Professional shall (a) submit details of the Outstanding CIRP Costs and copies of requisite documents evidencing the amounts incurred for the Outstanding CIRP Costs to the Resolution Applicant as required by it; and (b) shall confirm to the Resolution Applicant in writing that, except the said Outstanding CIRP Costs provided by him, there is no other outstanding liability of the Corporate Debtor incurred/accrued during CIRP Period up to the Trigger Date.*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

5. Payment due to Other Operational Creditors and the Statutory Dues Creditors:

- 5.1 *In terms of Section 30(2)(b) of the Insolvency and Bankruptcy Code, 2016, the Operational Creditors are required to be paid an amount which is not less than the higher of the following (a) the Liquidation Value available for their Claims in the event of a liquidation of the Corporate Debtor under Section 53 of the IBC; and (b) the amount that would have been paid to such creditors, if the amount to be distributed under this Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53 of the IBC.*
- 5.2 *In terms of Regulation 38(1) of the CIRP Regulations, the payment due to Operational Creditors are to be paid in priority to any other Creditors of the Corporate Debtor.*
- 5.3 *Resolution Applicant has proposed Total payment of Rs. 8,22,67,559/- (form H) (Rupees Eight Crore Twenty-two Lakh Sixty-seven Thousand Five Hundred Fifty-nine Only) to the Operational Creditors under the Resolution Plan against the admitted claims of Operational Creditors.*
- 5.4 *The Resolution Applicant shall pay to the Operational Creditors (including Statutory Dues, if any) an amount which is higher of the following: (a) Rs.7,34,22,269/- (Rupees Seven Crore Thirty-four Lakh Twenty two Thousand Two Hundred Sixty Nine Only) for the amount of claim admitted; (b) the Liquidation Value available for their Claims in the event of a liquidation of the Corporate Debtor under Section 53 of the IBC; and (c) the amount that would have been paid to such creditors, if the amount to be distributed under this Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53 of the IBC, priority to other Creditors of the Corporate Debtor. The said amount shall be distributed to the Other Operational Creditors in proportion to their admitted Claims.*
- 5.5 *The payment set out in Paragraph 5.3 above, shall be deemed to be in full and final settlement / discharge of the liabilities pertaining to the Other Operational Creditors' Operational Debt and the Statutory Dues of the Statutory Dues Creditors in compliance with the Applicable Law. The amount payable to the Operational Creditors (as the case may be as per above) under this Resolution*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

Plan shall be given priority in payment over the Financial Creditors.

- 5.6 *On payment of the amounts to the other Operational Creditors and the Statutory Dues Creditors (including Tax Authorities, water authorities and electricity authorities, if any), as per the terms of this Resolution Plan, all dues owed or payable to such other Operational Creditors and the Statutory Dues Creditors or owed to any Person including but not limited to penalties, interest, fines, demand for security deposit, mining dues, electricity dues, water dues, Tax dues or any other dues, whether admitted or not, due or contingent, whether claim has been filed or not by such Person in respect of such dues, for the period prior to the Trigger Date, shall stand abated, settled and extinguished and neither the Corporate Debtor nor the Resolution Applicant shall be liable to pay any amount against such demand.*
- 5.7 *All proceedings pending against the Corporate Debtor with respect to any such dues owed to such Other Operational Creditors and the Statutory Dues Creditors (including Tax Authorities, water authorities and electricity authorities) or any Person, on the Trigger Date relating to the period prior to the Trigger Date, shall stand terminated and all consequential liabilities, if any, stand abated and should be considered to be not payable by the Corporate Debtor or the Resolution Applicant.*
- 5.8 *All notices proposing to initiate any proceedings (if any) against the Corporate Debtor in relation to the period prior to the Trigger Date and pending on the Trigger Date, shall stand settled and abated at Nil value and shall not be proceeded against. Post the Trigger Date, no reassessment / revision or any other proceedings or suits shall be initiated against the Corporate Debtor in relation to period prior to the Trigger Date in respect of such dues (including electricity dues, Municipal tax dues, water dues, and Tax dues) and any consequential demand / action should be considered non-existing and as not payable by the Corporate Debtor or the Resolution Applicant. Any proceedings (including proceedings filed before the Supreme Court, High Court or any other court, tribunal or authority, if any) which were kept in abeyance in view of the insolvency process or otherwise shall not be revived post the Trigger Date.*
- 5.9 *The Tax authorities (being Other Operational Creditors and the Statutory Dues Creditors) shall immediately on the Trigger Date withdraw the Proceedings filed against the Corporate Debtor, in lieu of the payment provided to them as*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

Other Operational Creditors and the Statutory Dues Creditors as per this Resolution Plan. The payment to the Tax authorities hereunder (being the Statutory Dues Creditors) shall be in full and final settlement of all Tax dues and no further amounts whatsoever shall be payable to such Tax authorities.

5.10 *All inquiries, investigations, whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with any claim against the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future (including without limitation, any investigation, action proceeding, prosecution, whether civil or criminal, by the Central Bureau of Investigation, the Enforcement Directorate or any other enforcement agency), in relation to any period prior to the Trigger Date shall be deemed to be withdrawn or dismissed by virtue of the order of the Hon'ble Adjudicating Authority approving this Resolution Plan and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.*

5.11 Extinguishment of Claim of Operational Creditors:

Upon acceptance of Resolution Plan, the Resolution Applicant should not be liable and free from all the material litigation (if any) and ongoing investigation proceedings (if any) filed against the Corporate Debtor.

5.12 *Other than the payments set out in the Resolution Plan, any and all liabilities and all amounts due and / or payable by the Corporate Debtor (including direct and indirect Tax dues, water dues and electricity dues) whether admitted or not, due or contingent, asserted or unasserted, assessed or unassessed, determined or undetermined, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, claimed or not, in relation to the Statutory Dues Creditors and Other Operational Creditors of the Corporate Debtor (including water authorities, electricity authorities and Tax authorities), shall stand settled, extinguished and written off as of the Approval Date pursuant to the NCLT Approval Order and the Corporate Debtor shall not be responsible and / or liable, directly or indirectly, for the same. However, we will abide by the approved plan by AA,*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

and our Resolution Plan is not conditional to the relief granted by AA.

6. Payment to the Employees / Workmen:

6.1 *Resolution Applicant proposed a sum of Rs.88,45,290/- (Rupees Eighty-eight Lakh Forty-five Thousand Two Hundred Ninety Only) to settle the dues of Employees/Workmen. Since there is no bifurcation of Employees and Workmen. Resolution Professional also confirms that the total claim amount is for Employees only. This amount is to be distributed in full to the proportion of their claims admitted.*

6.2 *As per Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 38(1)*

“The amount payable under a Resolution Plan -

(a) to the operational creditors shall be paid in priority over financial creditors; and Workmen/Employees are part of operational creditors and will be paid in priority of financial creditors as per regulation 38(1)”

6.3 *The Resolution Applicant should be waived from all the legal proceedings filed against Corporate Debtor (if any) on approval of Resolution Plan.*

7. Payment to the Dissenting Financial Creditors:

7.1 *All the Financial Creditors who do not vote in favour of the Resolution Plan (i.e., Dissenting Financial Creditors) shall be paid such amount as set out in the Resolution Plan, proportionately. The amount payable to the Dissenting Financial Creditors from the Resolution Plan shall be given priority in payment over the other Financial Creditors. It is clarified that in no case, the total amount payable under the Resolution Plan shall be altered and the Resolution Applicant will not be required to bring in any additional amounts over and above the payments amounts provided under this Resolution Plan.*

7.2 *Immediately on receipt of their entire payment (including any prepayment thereof) as per the terms of the Resolution Plan in full and final settlement of their Claims, each Dissenting Financial Creditor shall immediately: (i) release the Existing Security Interest existing in favour of the Secured Financial Creditors; and (ii) issue letters/no-objection certificate and no dues certificate releasing the charge/security on the Existing Security Interest. (iii) carry out*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

necessary formalities for removal of such charge from ROC Website and other Government/ Semi Government Authorities (iv) take necessary steps for regularising account of the Corporate Debtor.

- 7.3 *In terms of Section 30(2) of the Insolvency and Bankruptcy Code, 2016, the Dissenting Financial Creditors shall be paid such minimum amount which will be payable to the Dissenting Financial Creditors in accordance with sub-section (1) of Section 53 of the IBC in the event of a liquidation of the Corporate Debtor, as full and final settlement of their entire Claims.*
- 7.4 *Subject to the aforesaid and the terms of the Resolution Plan, Resolution Professional shall calculate the amount payable to the Dissenting Financial Creditors and shall distribute the amounts accordingly in priority to the assenting Financial Creditors.*
- 7.5 *Other than the aforesaid payments, any and all liabilities and all amounts due and / or payable by the Corporate Debtor whether admitted or not, due or contingent, asserted or unasserted, assessed or unassessed, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to the Financial Creditors who do not vote in favour of the Resolution Plan, shall stand settled, extinguished and written off as of the NCLT Approval Date pursuant to the NCLT Approval Order and neither the Corporate Debtor nor the Resolution Applicant shall be responsible and / or liable, directly or indirectly, for the same on any future date.*

8. Payment to the Secured Financial Creditors:

- 8.1 *The Resolution Applicant shall make full and final payment of Rs.7,83,60,248/- (Rupees Seven Crore Eighty-three Lakh Sixty Thousand Two Hundred Forty-eight Only), to the Secured Financial Creditors as set out as per the terms of the Resolution Plan.*
- 8.2 *Based on the aforesaid consideration, any and all liabilities and all amounts due and / or payable by the Corporate Debtor whether admitted or not, due or contingent, asserted or unasserted, assessed or unassessed, crystallized or un-*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to the Financial Creditors, shall stand settled, extinguished and written off as of the Approval Date pursuant to the NCLT Approval Order and the Corporate Debtor/the Resolution Applicant shall not be responsible and / or liable, directly or indirectly, for the same.

- 8.3 *On the payment of the entire consideration each of the Secured Financial Creditors shall immediately: (i) release the Existing Security Interest existing in favour of the Secured Financial Creditors; and (ii) issue letters/no-objection certificate and no dues certificate releasing the charge / security on the Existing Security Interest. (iii) carry out necessary formalities for removal of such charge from ROC Website and other Government/ Semi-Government Authorities (iv) take necessary steps for regularizing account of the Corporate Debtor.*
- 8.4 *With regard to all other unevolved bank guarantees / letters of credit, it is expressly stated that neither the Corporate Debtor nor the Resolution Applicant/ Nominees shall be liable to honour such bank guarantee / letters of credit nor shall it be obliged to renew the bank guarantee / letters of credit or provide any assistance to the Financial Creditors to contest or defend any claims that are raised by the beneficiary. The satisfaction or payment by the Financial Creditors upon receipt of any claims in connection with the aforementioned bank guarantees / letters of credit shall not be construed as a default on part of the Corporate Debtor or the Resolution Applicant and, any modifications required in the bank guarantee / letter of credit documents to reflect such arrangement shall be made by the Financial Creditors prior to the Trigger Date. The aforesaid consideration shall be deemed to be in full and final settlement of all liabilities of the Corporate Debtor for any payment made / to be paid by the Financial Creditors to the respective third-party beneficiaries as and when such payment is made by the Financial Creditors in future.*
- 8.5 *It is clarified that the past promoters or promoter Group, managers, directors, officers, or person in charge of the affairs and/or management of the Corporate Debtor (including any person who was an 'officer in default', 'principal employer', or 'occupier', other than the Resolution Professional) prior to the Trigger Date shall continue to be responsible and liable for all the liabilities,*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code) or any acts or omissions in breach of Applicable Law which occurred prior to the Trigger Date; or (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the NCLT pursuant to Sections 43, 45, 50, 66 of the Code) and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto and no action will be taken in respect of the Corporate Debtor or its assets or business pursuant to the same. In the event any transaction is avoided/set aside by the Adjudicating Authority in terms of Sections 43, 45, 50 or 66 of the Code, and any amount is received by the Resolution Professional or the Corporate Debtor in furtherance thereof, whether prior to the Trigger Date or after the Trigger Date, such sums shall be solely for the benefit of the Resolution Applicant, subject to deduction of the costs, expenses and Taxes incurred even after the approval of the Resolution Plan by the Adjudicating Authority by the Corporate Debtor for such recovery/payment/remittance, if any.

In the matter of Sangeeta Tex Dyes Private Limited, as decided by the Committee of Creditors in the meeting no preferential, undervalued, fraudulent or extortionate transactions were detected.

- 8.6 *In case there are any un-invoked bank guarantees claims in relation to these bank guarantees, by virtue of being part of the admitted Financial Debt, shall be discharged as per the terms of the Resolution Plan and all rights and entitlements of the Financial Creditors in relation to such bank guarantees shall be deemed to be permanently extinguished and the Corporate Debtor or Resolution Applicant shall at no point of time be, directly or indirectly, be held responsible or liable in relation thereto.*

Pursuant to the discharge of admitted Financial Debt as per the terms of the Resolution Plan, the commission invoked or uninvoked bank guarantees on or prior to ICD shall be deemed to be discharged in full. Further, all the claims, rights and entitlements in relation to any invoked/uninvoked bank guarantees

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

issued for and on behalf of the Corporate Debtor, shall be deemed to be permanently extinguished and deemed to have been returned to the issuer as on the Trigger Date and the Corporate Debtor or Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

With effect from the Trigger Date, the beneficiaries of uninvoked guarantees, shall not be entitled to make any Claims, whatsoever in relation to the invoked/uninvoked guarantees issued for and on behalf of the Corporate Debtor. Further the beneficiaries of uninvoked guarantees shall not be entitled to make any Claims and shall be liable to return the bank guarantees. The Resolution Applicant shall arrange for fresh bank guarantees that may be required for running the operations of the Corporate Debtor, as may be required.

9. Payment to Unsecured Financial Creditors:

- 9.1 The Resolution Applicant shall make full and final payment of Rs.5,13,72,196/- (Rupees Five Crore Thirteen Lakh Seventy-two Thousand One Hundred and Ninety-six Only) to the Unsecured Financial Creditors as set out as per the terms of the Resolution Plan.*
- 9.2 Based on the aforesaid consideration any and all liabilities and all amounts due and / or payable by the Corporate Debtor whether admitted or not, due or contingent, asserted or unasserted, assessed or unassessed, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to the Financial Creditors, shall stand settled, extinguished and written off as of the Approval Date pursuant to the NCLT Approval Order and the Corporate Debtor/the Resolution Applicant shall not be responsible and / or liable, directly or indirectly, for the same.*
- 9.3 It is clarified that the past promoters or promoter Group, managers, directors, officers, or person in charge of the affairs and/or management of the Corporate Debtor (including any person who was an 'officer in default', 'principal employer', or 'occupier', other than the Resolution Professional) prior to the Trigger Date shall continue to be responsible and liable for all the liabilities,*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code) or any acts or omissions in breach of Applicable Law which occurred prior to the Trigger Date; or (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code) and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto and no action will be taken in respect of the Corporate Debtor or its assets or business pursuant to the same. In the event any transaction is avoided/set aside by the Adjudicating Authority in terms of Sections 43, 45, 50 or 66 of the Code, and any amount is received by the Resolution Professional or the Corporate Debtor in furtherance thereof, whether prior to the Trigger Date or after the Trigger Date, such sums shall be solely for the benefit of the Resolution Applicant, subject to deduction of the costs, expenses and Taxes incurred by the Corporate Debtor for such recovery/payment/remittance, if any.

10. Shareholders/Share Application Money:

- 10.1 *The existing Capital shall be treated as Zero on the date of approval of the Resolution Plan and shares allotted in the name of erstwhile shareholders shall stand cancelled upon approval of Resolution Plan without any consideration or claim or rights. Further, Share Application Money and Unsecured Financial Creditors holding any rights for issuance of shares of Corporate Debtor at a future date shall not be paid any amount and/or no shares shall be issued to them.*
- 10.2 *On the approval of the Resolution Plan, the Monitoring Committee shall pass necessary resolutions for extinguishment of the existing shares of the Corporate Debtor and the shares held in demat form by the shareholders of the Corporate Debtor shall be extinguished by NSDL or CDSL as the case may be upon the NCLT Approval Order being sent to them and the necessary corporate actions*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

for the same will be carried out with NSDL or CDSL by the Corporate Debtor through the Monitoring Committee. In case of physical share certificates, if not lodged for cancellation, shall be deemed to have been cancelled and destroyed.

10.3 *No Shareholder will be required to be intimated separately whether holding share in physical or demat form and all their rights as shareholder shall stand extinguished as on the Trigger Date by virtue of the NCLT Approval Order.*

11. Extinguishment of Claims:

11.1 *Notwithstanding anything contained in this Resolution Plan, it is clarified that neither the Corporate Debtor nor the Resolution Applicant shall be required to make any payments over and above as agreed to be paid under this Resolution Plan, towards settlement of all or any of the Claims whether admitted or not, due or contingent, asserted or unasserted, assessed or unassessed, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed.*

11.2 *Any instrument executed by the Corporate Debtor under the Negotiable Instrument Act, 1881 including but not limited to Post Dated Cheques, Demand Promissory Notes etc. prior to the NCLT Approval Order date shall in no manner be the liability of the Resolution Applicant and all such instruments to be treated as null and void-ab-initio.*

12. Provision for essential services:

12.1 *An amount of Rs.41,00,000/- (Rupees Forty-one Lakh only) is kept as provision for essential services which shall be utilised in case of need on the following basis:*

- a) Towards payment to the Operational Creditors whose claims are considered after the resolution plan is submitted.*
- b) Towards the expenses incurred for CIRP cost beyond the amount allocated.*
- c) Expenses incurred towards litigation, this includes professional fees charged by the legal counsel and other expenses such as printing, notary, stamping, out of pocket expenses etc.*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

- d) Expenses incurred towards Maharashtra Industrial Development Corporation.*
- e) Expenses incurred towards Gram panchayat.*
- f) Any expenses incurred towards the Electricity Board (Torrent Power Limited) including the connection charges.*
- g) Any other expenses incurred by the Corporate Debtor."*

ix. Lastly, the Applicant submits that the Resolution Plan is otherwise compliant with various requirements under the Code and the Regulations as stated in detail in the Applicant's compliance certificate. A tabular summary of Applicant's determination of compliance of the Resolution Plan with various provisions and regulations under the Code and CIRP Regulations is as under:

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Y/N)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the COC having regard to the complexity and scale of operations of business of the CD?	Introduction	Yes
Sec. 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per finalist of Resolution Professional or Order, if any, of the Adjudicating Authority?	-	Yes
Sec. 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Provided separately	Yes
Sec. 30(2)	Whether the Resolution Plan – a. provides for the Payment of insolvency resolution process costs?	Clause 3	Yes
	b. provides for the payment to the	Clause 3	Yes

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

	operational creditors?		
	c. provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	-	NA
	d. provides for the management of the affairs of the corporate debtor?	Clause 5	Yes
	e. provides for the implementation and supervision of the resolution plan?	Clause 6	Yes
	f. contravenes any of the provisions of the law for the time being in force?		
Sec.30(4)	Whether the Resolution Plan		
	- is feasible and viable, according to the COC?	-	Yes
	- has been approved by the COC with 66% voting share?	-	Yes
Sec.31(1)	Whether the Resolution Plan has provisions for effective implementation according to CoC?	Clause 4 Clause 6	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 3	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 3	Yes
Regulation 38(1B)	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.	Schedule 1	No
	If so, whether the Resolution Applicant has Applicable submitted the statement giving details of such non-implementation?	-	NA
Regulation 38(2)	Whether the Resolution Plan provides:		
	(a) the term of the plan and its implementation schedule?	Clause 6	Yes

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

	(b) for the management and control of the business of the corporate debtor during its term		
	(c) adequate means for supervising its implementation?	Clause 6	Yes
Regulation 38(3)	Whether the resolution plan demonstrates that -		
	it addresses the cause of default?	Schedule 1	Yes
	it is feasible and viable?		
	it has provisions for its effective implementation?		
	it has provisions for approvals required and the timelines for the same?		
	the resolution applicant has the capability to implement the resolution plan?		
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	-	NA
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Provided separately	Yes

x. The Tribunal in compliance of the provisions of the Code and Rules framed thereunder admitted the Corporate Debtor into CIRP.

3. 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 Resolution Plan is feasible and viable. Adequate provision is provided for future claims of Operational Creditors, if any, by the Resolution Applicant. Provision for the CIRP cost has already been made in the Resolution Plan and will be paid as certified by the Resolution

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved. So far as the Avoidance Applications under various Sections of IBC mentioned in the proposed Resolution Plan is concerned, it is noted in the Plan approved by the CoC that no such transactions have been detected.

4. We are of the considered opinion that the distribution of the payments to the Creditors; Financial or Operational, as the case may be, shall be subject to orders to be passed in the respective Interlocutory Application within the ambit of the Code. We are thus inclined to dispose of this Application in the following terms and ordered accordingly;

- i. The Resolution Plan submitted by **Pankaj Mishra**, Director of **Harit Industries Private Limited** is hereby approved. It shall become effective from this date and shall form part of this order. 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 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 THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned 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 and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. In terms of the judgement of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited v. 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 part of the resolution plan. **The Applicant/s who have already moved their claims which are submitted late and ordered for consideration, if any, are to be considered by the Resolution Professional as per law.**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-1509/2022 in C.P. (IB)-3071(MB)/2019

- vii. 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.
 - viii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
5. With the above directions, the Resolution Plan of the Applicant i.e. IA-1509/2022 is **allowed** and **disposed** of.

Sd/-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

pvs /20.07.2022

Sd/-

**KISHORE VEMULAPALLI
MEMBER (JUDICIAL)**