

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
INDORE BENCH at AHMEDABAD BENCH  
AHMEDABAD  
Court 2**

**(MP) IA 96 of 2020 in TP 229 of 2019 [CP(IB) 29 of 2018]**

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 23.10.2020**

Name of the Company: Seroco Lighting Industries Pvt Ltd  
V/s  
Ravi Kapoor RP for Arya Filaments Pvt  
Ltd & Ors  
Section 60(5) of the IBC, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER**

Advocate, Mr. Lalit M Patel appeared on behalf of Respondent.

The order is pronounced in the open court vide separate sheet.

*Manora*  
**MANORAMA KUMARI  
(MEMBER JUDICIAL)**

Dated this the 23rd day of October, 2020

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
INDORE BENCH AT AHMEDABAD BENCH  
AHMEDABAD**

**IA 280 of 2019 &  
IA 96 of 2020  
In  
TP 229 of 2019  
[ in C.P.(IB) No. 29/NCLT/AHM/2018]**

**IA 280 of 2019**

**In the matter of:**

Mr. Ravi Kapoor,  
Resolution Professional for  
Arya Filaments Private Limited

... Applicant

**In the matter of:**

Kotak Mahindra Bank Limited

... Original Applicant/  
Financial Creditor

**Versus**

Arya Filaments Private Limited

... Corporate Debtor

**IA 96 of 2020**

**In the matter of:**

Seroco Lighting Industries Private Limited

... Applicant

**Versus**

Mr. Ravi Kapoor,  
Resolution Professional for  
Arya Filaments Private Limited & Anr.

... Respondents

**Order delivered on 23<sup>rd</sup> October, 2020**

**Coram: Hon'ble Ms. Manorama Kumari, Member (Judicial)**

*Manorama*

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TP 229 of 2019  
[ in C.P.(IB) No. 29/NCLT/AHM/2018]**

**COMMON ORDER**

**[Per se: Ms. Manorama Kumari, Member (J)]**

**IA 280 of 2019**

1. The instant case is assigned to the undersigned by the Hon'ble President, NCLT for disposal vide order dated 11.03.2020 having file no. 10/03/2020-NCLT as there is difference of opinion while passing the order by Hon'ble Member (Judicial), Mr. Harihar Prakash Chaturvedi and Hon'ble Member (Technical), Mr. Prasanta Kumar Mohanty. It is seen that Hon'ble Member (Judicial), Mr. Harihar Prakash Chaturvedi recused from the case however, Hon'ble Member (Technical), Mr. Prasanta Kumar Mohanty was willing to conduct the case. consequent upon such views of both the members, the matter is assigned to the undersigned. Gone through the record, also seen the order so passed by the Member (Judicial) as well as Member (Technical).
2. The instant application is filed under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code") with the prayer to approve the Resolution Plan under Section 31 of the IB Code submitted by Mr. Rajesh Gupta, Mr. Sanjeev Gupte and Mr. Rajendra Shinhde.
3. The brief facts of the case are:
  - 3.1 Financial Creditor filed an application under section 7 of the IB Code for initiation of Corporate Insolvency Resolution Process



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(hereinafter referred as "CIRP"), which was admitted on 17.08.2018 and accordingly IRP was appointed.

- 3.2 The Applicant, subsequently, took the charge of the IRP and conducted the CIRP as per the provisions of the IB Code. The Applicant constituted the Committee of Creditors (hereinafter referred as "CoC") and convened meetings of the CoC timely for the further actions.
- 3.3 It is stated by the Applicant that vide order dated 18.02.2019, further 90 days beyond 180 days was extended by this Adjudicating Authority, which expired on 14.05.2019.
- 3.4 It is stated by the Applicant that only one Resolution Plan was received from Mr. Rajesh Gupta, Mr. Sanjeev Gupte and Mr. Rajendra Shinhde which was put for consideration before the CoC. In the 4<sup>th</sup> CoC meeting held on 16.04.2019, CoC expressed their view that certain improvements are required in the Resolution Plan and so, unanimously agreed to direct the Resolution Applicant to submit a revised plan after making the improvements.
- 3.5 In the 5<sup>th</sup> CoC meeting held on 10.05.2019, the revised Resolution Plan was approved by the CoC with 100% voting and thereafter, the Resolution Professional (hereinafter referred as "RP") was authorized to make an application for approval of Resolution Plan before this Adjudicating Authority.
- 3.6 The Applicant filed revised Compliance Certificate in 'Form H' by way of an affidavit dated 05.06.2020. Applicant has also submitted the Liquidation value which is reflected from page no. 71 of the application. Pursuant to the approval of the

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Resolution Plan by the CoC under Section 30(4) of the IB Code (as amended upto date) as the successful Resolution Plan, RP filed the instant application being IA No. 280 of 2019 under Section 31 of the Code.

3.7 It is pertinent to mention herein that the Corporate Debtor is a MSME which is reflected from the additional affidavit filed by the Applicant on 27.07.2019, wherein the Applicant has annexed the copy of Udyog Aadhaar acknowledgment issued by Government of India, Ministry of Micro, Small and Medium Enterprises showing the date of filing as 03.08.2016.

3.8 Accordingly, the RP filed an application under Section 30(6) of the IB Code. The matter has been taken up for hearing on 07.07.2020 and is reserved for passing order.

4. The present application has been filed for approval of the Resolution Plan under Section 31 of the IB Code (as amended upto date) submitted by RP in respect of the Corporate Debtor being MSME. The Applicant/ Resolution Professional, deliberating the sequence of events right from calling of EoI up to approval of the Resolution Plan by the CoC in its Fifth meeting held on 10.05.2019 submitted the Resolution Plan duly approved by the CoC by 100% voting in favour of the Resolution Plan so submitted by Resolution Applicant, as the Resolution Plan complies with the requirements as envisaged under Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as well as Section 30 of the

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Code, therefore sought for approval of the Resolution Plan by this Adjudicating Authority.

5. On perusal of the records, it is found that the Resolution Applicant has taken account the interest of all stakeholders of the Corporate Debtor to the extent possible, as envisaged in this Resolution Plan for insolvency resolution of "Arya Filaments Private Limited".

6. The Applicant stated the brief summary of the priority of usage of funds towards clearance of the dues are as below:

<b>Category of creditors</b>	<b>Particulars</b>	<b>Categorization in books of account</b>	<b>Amount in claim admitted</b>	<b>Amount payable against the claims</b>	<b>%age of the claim amount</b>
CIRP Cost**	CIRP costs to be consolidated and paid in priority to all other stakeholders	-	Not Applicable	*	NA
Operational	As per list provided in	Other Current	22.52 Lakhs	12,57,000	5% of the Amount

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Creditors	IM	Liabilities			incl. claimed/ unclaim ed
Secured Financial Creditors	Kotyak Miahindra Bank & Union Bank of India	Secured Creditors	21,06,59 ,527	6,00,00,000 (as reduced by CIRP Cost)	28.5%
Employee s	As per list provided in IM	Employees dues	32,82,00 0	32,82,000	100%
Statutory Dues	As per list provided in IM	Statutory Dues including PF/ESIC	-	33,83,000	As per Annexur e-6
<b>Total</b>			-	<b>6,79,22,000</b>	

- **The CIRP costs cannot be quantified precisely at present. The total CIRP costs will be known only at the end of the CIRP process. However, Resolution Process Cost to be met out of the amount offered to Secured Financial Creditors and accordingly, payment to Secured Creditors shall be reduced to that extent. the resolution applicant proposes a sum of**

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**Rs. 6,79,22,000/- (Rupees Six Crore Seventy Nine Lakhs Twenty Two Thousand Only) for the entire Resolution Plan costs, including CIRP Cost and all other liabilities, claims, dues or other demands against the Corporate Debtor to be unconditionally written off/waived. The amount payable to the Secured Creditors may vary as per the terms of the Resolution Plan.**

7. The Applicant also submitted the summary of source of funds as given below:

<b>Particulars</b>	<b>Amount</b>
Fresh Infusion by Resolution Applicants	1,89,22,000/-
Sale proceeds of Land and Building	4,75,00,000/-
Sale of old unsalable spares and plant & machineries	15,00,000/-
<b>Total</b>	<b>6,79,22,000/-</b>

8. In view of the above, Section 30(2) and 30(4) is applicable in the instant case. For sake of the convenience the amended provision is reproduced herein below-

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**“30. Submission of Resolution Plan**

(1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;

[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

*Explanation 1.* — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

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*Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-*

*(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;*

*(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*

*(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]*

*(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;*

*(d) the implementation and supervision of the resolution plan;*

*(e) does not contravene any of the provisions of the law for the time being in force;*

*(f) conforms to such other requirements as may be specified by the Board.*

*[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”*

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**FINDINGS:**

9. Looking to the entire facts of the case, it is found that the COC has approved the plan with 100% voting in favour of the plan. More so, the Resolution Applicant fulfils the mandatory contents of the Resolution Plan as provided under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. Regulation 38 is reproduced herein under-

***“38. Mandatory contents of the resolution plan.***

*(1) A resolution plan shall identify specific sources of funds that will be used to pay the –*

*(a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;*

*(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and*

*(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.*

*[“(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.”]*

*(2) A resolution plan shall provide:*

*(a) the term of the plan and its implementation schedule;*

*(b) the management and control of the business of the corporate debtor during its term; and*

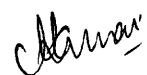
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*(c) adequate means for supervising its implementation.”*

10. It is to be mentioned herein that the Corporate Debtor is an MSME and falls under Section 240A of the IB Code. For the sake of convenience, the section is reproduced herein under:

**“240A. Application of this Code to micro, small and medium enterprises. –**

- (1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises.*
- (2) Subject to sub-section (1), the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—*
  - (a) not apply to micro, small and medium enterprises; or*
  - (b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification.*
- (3) A draft of every notification proposed to be issued under subsection (2), shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.*
- (4) If both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or shall be issued only in such modified form as may be agreed upon by both the Houses, as the case may be.*
- (5) The period of thirty days referred to in sub-section (3) shall not include any period during which the House referred to in sub-*



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*section (4) is prorogued or adjourned for more than four consecutive days.*

*(6) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament.*

***Explanation.***— *For the purposes of this section, the expression "micro, small and medium enterprises" means any class or classes of enterprises classified as such under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006).]*

11. Further, from the object of the IBC, it is amply clear that the **“Resolution is Rule and the Liquidation is an Exception”**. Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only, if there is any surplus after satisfying the claims of a prior set of stakeholders fully. The IB Code’, therefore, does not allow liquidation of a corporate debtor’ directly. It allows liquidation only on failure of corporate insolvency resolution process’. It rather facilitates and encourages resolution in several ways.

The said objective of the Resolution Plan is affirmed in the decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors.** The Supreme Court has observed that National Company Law Tribunal has no jurisdiction and authority to analyze or evaluate the



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commercial decision of the Committee of Creditors (CoC) to enquire into the justness of the rejection of the Resolution Plan by the dissenting Financial Creditors.

Keeping in view such object behind the enactment of the Code, intention of the Legislature, that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for bringing Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per the apex court's decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors** as discussed above.

The Hon'ble Supreme Court in its recent judgment in Civil Appeal No. 10673 of 2018 in **K. Sashidhar Vs. Indian Overseas Bank & Ors.** comprising of Hon'ble Justice A.M. Khanwilkar and Hon'ble Justice Ajay Rastogi observed that Adjudicating Authority has no jurisdiction to interfere with the commercial wisdom of the CoC.

On the backdrop of the decision taken by Hon'ble Supreme Court, it is pertinent to note herein that in the instant case, there is no interference with commercial wisdom of CoC with regard to the implementation of the Resolution Plan. However, the observation so

made is in view of the disparity caused in the distribution of the amount on the pro-rata basis as the Axis Bank is getting lesser amount as compare to other Financial Creditors.

12. However, with regards to the **Relief** sought for, by the Corporate Debtor, the Adjudicating Authority is of the opinion that not allowing the Clause 19(xv) i.e. **Reliefs and Concessions sought by the Resolution Applicants** of the Resolution Plan, is not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant(s) has/have liberty to approach Competent Authorities for any concession, relief or dispensation, as the case may be, as and when required for proper and effective implementation of the Plan. relying on the judgement passed by the NCLT Mumbai Bench in **BMSS Steel Industries Pvt. Ltd vs. Shrid Metal Technologies Pvt. Ltd.**, it is observed that Resolution Applicant has to act in accordance with the existing law of the land and no special concessions can be given by the Tribunal. The Bench further clarified that the Resolution Applicant is only liable to make payments to the creditors included in the Resolution Plan and not otherwise.

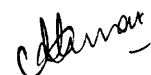
13. It is needless to mention herein that approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/Corporate Debtor, as those are the subject matter of the concerned Competent

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Authorities having their proper/own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicant(s) on approval of the Plan may approach those Competent Authorities/Courts/Legal Forums/Offices- Govt, or Semi Govt. / State or Central Govt, for appropriate relief(s) sought for in "Clause 19 (xv)" of the Resolution Plan.

14. Apart from the above observations and directions, it is further directed/ observed that:

- i. The approved Resolution Plan shall come into force with immediate effect.
- ii. The Resolution Plan shall be subject to the various existing laws in force and shall also conform to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.
- iii. The Resolution Applicant(s) shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws 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(1) or within such period as provided for in such law, whichever is later or as the case may be.



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iv. 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 on its database.

15. Under such facts and circumstances, we, the Adjudicating Authority, is of the considered opinion and also being satisfied that the Resolution Plan as approved by the Committee of Creditors (CoC) meets the requirements as referred to under section 30(2) of the Code. With regard to prayer (c), this Adjudicating Authority is of the opinion that the claim which are not already dealt by RP or COC during the CIRP period or filed within the statutory period cannot be reagitated before the Resolution Applicant after the approval of the Plan.

16. Accordingly, IA 280 of 2019 is allowed with the above said observations and directions and stands disposed of in view of the above order.

**IA 96 of 2020**

17. The instant application is filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code") with the following prayer:

*a) permit the Applicant to revise the Resolution Plan dated 13.03.2020 in terms of letter dated 09.06.2020 at Annexure C;*

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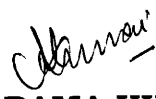
- b) direct the Respondents No. 2 to consider the modified resolution plan as per letter at Annexure C and vote afresh on the same;*
- c) direct the Respondent No. 1 to provide an updated Information Memorandum providing financial condition of the Corporate Debtor as on 01.07.2020;*
- d) during the hearing of this Application, stay the implementation, operation and execution of the Resolution Plan dated 13.03.2020 of the Applicant;*

18. It is the matter of record that the instant application was filed subsequent to the filling of the above stated IA i.e. IA 280 of 2019 filed under Section 30(6) of the IB Code. It is stated by the Applicant that the Resolution Plan, so submitted by the Applicant, is based on the Information Memorandum which was published two years ago. Considering the time of two years and outbreak of Covid-19, the Applicant is not aware of the current financial condition of the Corporate Debtor and is now not in a position to bear the costs/losses of the Corporate Debtor and hence, is seeking for withdrawal of the Resolution Plan. This story is not believable as the Corporate Debtor, being a MSME, has filed the plan considering the financial condition of the Corporate Debtor and have shown his interest to take the Company. Hence, having no knowledge of the financial condition does not arise at all.

19. It is pertinent to mention herein that in view of the judgement passed by Hon'ble NCLAT in **Kundan Care Products Ltd vs. Mr. Amit Gupta Resolution Professional and Ors** (Company Appeal (AT) (Insolvency) No. 653 of 2020), **the Resolution Plan, once**

**submitted, cannot be withdrawn as there is no provision in the IB Code which allows withdrawal of an approved Resolution Plan & the successful Resolution Plan incorporates contractual terms binding the Resolution Applicant but it is not a contract of personal service which may be legally unenforceable.**

20. Moreover, there is an ambiguity in the instant application with regard to the relief sought for, as the title of the application states **“Application for withdrawal under section 60(5) of the Insolvency and Bankruptcy Code, 2016”** where as the prayer, as stated above, has no whisper regarding the withdrawal of the Resolution Plan.
21. Hence, when the application is filed with such vagueness, we find it appropriate to dismiss the instant application with cost of Rs. 50,000/- to be paid within 2 weeks from the date of this order to the PM CARES Fund. Fixing the date for compliance of the order as 13.11.2020.
22. Accordingly, IA 280 of 2019 is allowed and IA 96 of 2020 is dismissed with cost. Hence, both the IAs stands disposed of.

  
**MANORAMA KUMARI**  
**Adjudicating Authority**  
**Member (Judicial)**