

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Arguments through web-based video conferencing platform)**

**IA No.416/2021
in
CP (IB) No.135/Chd/Hry/2018
(Admitted)**

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

In the matter of:

Bank of India

....Petitioner-Financial Creditor

Versus

M/s Anand Tex India Pvt. Ltd.

...Respondent-Corporate Debtor

And in the matter of:-

IA No.416/2021

Anup Sood, Resolution Professional
of M/s Anand Tex India Pvt. Ltd.
C/o Flat No.185, Block H, 5th Floor,
Spangle Condos, Old Ambala Road,
Gazipur, Mohali – 140603

....Applicant/Resolution Professional

Order delivered on: 20.01.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Applicant/Resolution Professional: 1. Mr. Harsh Garg, Advocate

2. Pulkit Goyal, Advocate

Per: SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

ORDER

IA No.416/2021

This Application has been filed by Mr Anup Sood, Resolution Professional of M/s Anand Tax India Pvt. Ltd. under Section 30(6) read with Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (“the Code” or “IBC”) for approval of the resolution plan in respect of M/s Anand Tax India Pvt. Ltd. (“the Corporate Debtor”). The Applicant-Resolution Professional filed the present application on 31.05.2021 for approval of the resolution plan, which was approved by 100% voting share of the Committee of Creditors (CoC) in its 12th meeting which was held on 14.05.2021. The present application was reserved for orders on 15.12.2022.

2. The Company Petition bearing CP (IB) No.135/Chd/Hry/2018 was filed by the Financial Creditor-Bank of India against the Corporate Debtor which was admitted into the Corporate Insolvency Resolution Process (‘CIRP’) vide order dated 29.11.2019.

3. Mr. Anup Sood was appointed as Interim Resolution Professional (‘IRP’), and the Committee of Creditors (CoC) in its meeting held on 26.12.2019, confirmed the appointment of Mr Anup Sood, (Registration No. IBBI/IPA-003/IP-N000114/2017-18/11218) as the Resolution Professional with 100% voting.

4. The Applicant submits that the public announcement as per Regulation 6 of the CIRP Regulations in Form-A as prescribed under the schedule was made on 01.12.2019 in two newspapers i.e., “Financial Express” & “Amar

Ujala”, inviting claims from the creditors of the Corporate Debtor as envisaged under the Code. The last date for receipt of the claim was 12.12.2019.

5. The Interim Resolution Professional constituted the Committee of Creditors in accordance with Section 21(2) of the Code, as amended which comprised a sole-Financial Creditor i.e., Bank of India holding 100% voting share on 26.12.2019.

6. The Applicant submits that a total of 12 CoC meetings have been held during the CIRP period, details as follows:-

Particulars	Date of CoC Meeting	Main Points of discussion	Important decisions taken
1st CoC Meeting	26.12.2019	Constitution of COC and appointment of RP	<ol style="list-style-type: none"> 1. Appointment of IRP as RP 2. Approval of remuneration of RP 3. Confirmation of the constitution of COC 4. Appointment of Director of the suspended Board, Mr Rakesh Garg as KMP 5. Approval of CIRP expenses 6. Decision taken to keep the CD as a going concern

2 nd CoC Meeting	10.02.2020	Appointment of IRP as RP and approval of his remuneration, approval of EM and RFRP, finalization of terms of EOI, appointment of transaction auditor, approval of reduction in notice period to CoC for meetings	<ol style="list-style-type: none"> 1. To apprise members of CoC of the present position of CIRP 2. To advise about preparation of Information Memorandum. 3. Evaluation Matrix and RFRP discussed and approved 4. Terms of EOI finalized and publication thereof approved 5. Appointment of valuers as per Regulation 27 advised 6. Appointment of Transaction Auditor approved 7. Reduction in notice period of notice to CoC for calling a meeting approved.
3 rd CoC Meeting	7.3.2020	<ol style="list-style-type: none"> 1. Approval of one EOI received 2. Receipt of claims from operational creditors 	<ol style="list-style-type: none"> 1. EOI received from only one applicant viz. Mr. Harsha Vardhan Reddy was not approved by CoC as he did not meet the terms set by the committee. 2. CoC decided to publish Form G once more. 3. RP advised that he had received claims from five operational creditors amounting to Rs.2198.54 Lakhs out of which claims of four creditors totalling 99.84 lakh were admitted, and a claim of ETO amounting to 2084.76 Lakh was not admitted as the same was sub judice.
4 th CoC Meeting	23.06.2020	<ol style="list-style-type: none"> 1. Consideration of EOIs received 2. Preparation of temporary website 3. Approval of remuneration of Valuers. 	<ol style="list-style-type: none"> 1. Five EOIs received out of which four were accepted provisionally as time for receipt of EOI had to be extended due to lockdown. 2. Preparation of temporary website was approved. 3. Remuneration to valuers was approved

		4 Approval of CIRP expenses	4. CIRP expenses were approved
5 th CoC Meeting	7.8.2020	<ol style="list-style-type: none"> 1. Provisional and final list of PRAs. 2. Approval of remuneration of Forensic Auditor. 3. Appointment of statutory auditor 4. Approval for extension of CIRP period. 5. Approval of CIRP Expenses 	<ol style="list-style-type: none"> 1. Six PRAs had submitted EOI and provisional list of PRAs was published on 10.7.2020 and final list on 23.07.2020. Information memorandum, EM & RFRP were shared with three PRAs as others did not submit non-disclosure agreement. 2. Remuneration of Forensic Auditor was approved. 3. Appointment of Statutory Auditor approved 4. CoC approved for getting extension of CIRP period by 90 days 5. CIRP Expenses were approved
6 th CoC Meeting	3.9.2020	<ol style="list-style-type: none"> 1. Understanding for Job work contract with S S International. 2. Consideration of Resolution Plan Submitted by Mrs.Kanta Garg 3. Publication of Form G for the third time. 	<ol style="list-style-type: none"> 1. CoC was advised that an understanding had been reached with M/S S.S.International for job work and that an advance had been received amounting to Rs. 15.00 Lakh with which pending dues of the Electricity department had been cleared. 2. Resolution plan submitted by Mrs. Kanta Garg was placed before the CoC but could not be considered as it was not accompanied by earnest money of Rs.50.00 Lakh as per terms of sanction. 3. It was decided by CoC to publish form G for the third time.

7 th CoC Meeting	21.10.2020	<ol style="list-style-type: none"> 1.Transaction Audit Report 2. Appointment of Advocate 3.Publication of Form G 4.Approval of CIRP Expenses 	<ol style="list-style-type: none"> 1. CoC was advised that the Transaction Auditor had identified a fraudulent transaction of Rs.2.33 Crore and an application had been filed with the Hon'ble NCLT for avoidance of the same. 2. Appointment of advocate Varun Katyal was approved 3.CoC was advised that form G had been published for the third time. 4. CIRP Expenses were approved
8 th CoC Meeting	29.10.2020	<ol style="list-style-type: none"> 1. Receipt of Resolution Plan of Mrs. Kanta Garg . 2. Activity at factory of the CD 3.Extension of CIRP Period 	<ol style="list-style-type: none"> 1. RP advised the CoC of receipt of Resolution Plan from Mrs. Kanta Garg along with Binding Submission Bond Guarantee of Rs.50.00 Lakh that was being studied to ensure it complied with the provisions of the Code. 2. RP advised the CoC that Job work at the factory was going on satisfactorily. 3. RP apprised the Coc that Hon'ble NCLT had directed to file the resolution passed by the CoC regarding extension of CIRP period for 90 days. Accordingly, a resolution was passed for submission to Hon'ble NCLT
9 th CoC Meeting	4.11.2020	Discussion on revised Resolution Plan	The plan submitted by the RA was discussed and changes were suggested by CoC. The RP made it clear to the committee that all decisions of the CoC would now be subject to outcome of an application for approval of extension of CIRP period

10 th CoC Meeting	28.12.2020	<p>1.Extension of CIRP Period</p> <p>2. Extension fo CIRP period by another 60 days</p>	<p>1. RP advised the committee that the Hon'ble NCLT had approved extension of CIRP period by 90 days i.e. up to 31.12.2020</p> <p>2. RP brought to the notice of the CoC the extended period of CIRP was coming to an end on 31.12.2020 and wished to know the status of approval of the plan submitted on 4.11.2020. It was advised that the proposal was under consideration of the banks at appropriate level. As the period of CIRP was coming to an end, it was decided to seek a further extension by 60 days.</p>
11 th CoC Meeting	22.03.2021	<p>1.Application for extension of CIRP period</p> <p>2. Discussion on Resolution Plan</p> <p>3.Approval of CIRP Expenses</p>	<p>1. RP advised that as per approval of CoC, he had filed an application before AA on 31.12.2020 for extension of the CIRP period by 90 days and the same was under consideration of AA.</p> <p>2. CoC advised that the Resolution plan submitted by the RA was still under consideration at the appropriate level</p> <p>3. CIRP expenses were approved</p>

12 th CoC Meeting	14.5.2021	<p>1. Extension of CIRP period</p> <p>2. Legal Matters & Appointment of Advocates</p> <p>3. Meeting of liquidation cost.</p> <p>4. Assessment of sale as a going concern</p> <p>5. Appointment of Liquidator and approval of liquidator's fees.</p> <p>6. Approval of CIRP Expenses till approval of resolution plan</p>	<p>1. RP advised that the Hon'ble NCLT had passed an order on 15.03.2021 and had granted extension of CIRP period by another sixty days, beyond 270 days, after excluding the period during which IA was pending on the files of AA i.e. from 01.01.2021 till date of order i.e. 15.03.2021. Accordingly, CIRP stood extended up to 14.05.2021</p> <p>2. CoC ratified appointment of Advocate Tarun Deswal for defending the execution proceedings initiated against the CD in respect of decree obtained before commencement of CIRP by Jitendra Steel. CoC ratified appointment of Advocate Vikas Sharma for defending a case filed against the CD before DRT Chandigarh before initiation of CIRP by Bank of India.</p> <p>3. Estimated liquidation cost of Rs.60.34,000.00 (Rs Sixty Lakh Thirty Four Thousand Only) was approved by CoC in terms of regulation 39 (B) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</p> <p>4. The matter of sale of CD as a Going Concern or Sale of Business of CD as a Going Concern was deliberated by the committee and it was resolved with 100% vote to sell the business of the CD as a going concern under clause (e) or (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.</p> <p>5. CoC approved the name of RP as liquidator in case liquidation of the CD was ordered and further approved that in case of liquidation, liquidator shall be paid fee in terms of clause (b) of sub-regulation 2 of Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.</p> <p>6. CoC approved payment of CIRP expenses of Rs.7,28,750.00 (Rs Seven Lakh Twenty Eight Thousand Seven Hundred and Fifty Only) for a period of three months i.e for the estimated period of passage of resolution plan or for passage of liquidation order.</p>
------------------------------	-----------	--	--

		<p>7.Ratification of CIRP cost till date of last CoC</p> <p>8.Approval of Resolution Plan</p>	<p>Permission was further granted to the Resolution Professional for need based expenses such as legal expenses, expenses on statutory compliances, water and electricity charges and other charges for keeping the CD as a going concern as also to utilize funds available from cash flows of the CD for above purposes. It was further resolved that pro rata fees/other expenses shall be paid to the Resolution Professional for the period beyond three months as mentioned above'</p> <p>7.The RP advised the COC about various expenses totaling Rs. 47,56,190.55 which had been incurred for conduct of CIRP till the date of last CoC. The same were taken on record by the CoC.</p> <p>8. The sole financial creditor i.e. Bank of India advised that they had approved the amended Resolution Plan submitted by the resolution applicant Mrs. Kanta Garg on 26.12.2020.</p>
--	--	---	---

7. It is stated by the Applicant that as per the valuation report, the fair value of the Corporate Debtor was assessed as Rs.12,72,22,380.00/- and the liquidation value of the Corporate Debtor was assessed as Rs.9,00,83,616.00/- in terms of Regulation 35 of the CIRP Regulations.

8. In the instant matter, the CIRP period was extended by 60 days beyond 270 days i.e., after 31.12.2021. After the extension of 60 days, the period of 330 days is expiring on 14.05.2021. Vide order dated 30.11.2021, the period from 20.04.2021 up to 29.05.2021 in filing the present application, has been excluded. Whereas, the instant application was filed vide diary No. 00698 dated 31.05.2021. Therefore, the present application is within prescribed CIRP period.

9. Invitation in Form-'G' for Expression of Interest ('EOI') from potential resolution applicants was published on 12.02.2020, and again on 10.03.2020, and thereafter, Resolution Professional had readvertised the Form-'G' on 05.09.2020, for submission of resolution plans for the Corporate Debtor, in terms of Section 25(2)(h) of the Code read with Regulation, 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 ("CIRP Regulations"). The last date of submission of EOI as per Form-'G' was 12.04.2020, 05.05.2020 and 30.10.2020 respectively.

10. The Applicant submits that in response to the re-publication of Form-'G' on 05.09.2020, two EOI have been received from prospective Resolution Applicants i.e., one Mrs Kanta Garg and another Mr Harsh Vardhan Reddy. The EOI of Mr Harsh Vardhan Reddy was rejected as he failed to provide various clarifications as sought by the Resolution Professional and the plan submitted by Mrs Kanta Garg was found to be in order. It is further submitted by the applicant that Mrs Kanta Garg, i.e the resolution applicant is the wife of the suspended director of the corporate debtor, namely, Mr Suresh Garg and as such falls within the definition of the related party as given under Section 5 (24A) of the Code. The account of the Corporate Debtor was categorised as NPA since 2015, her Expression of Interest was accepted as the corporate debtor falls within the definition of MSME as provided under the Micro, Small and Medium Enterprises Development Act, 2006 and as per Section 240A of the Code, the applicant is eligible to give resolution plan read with provisions of clauses (c) &(h) of Section 29A of IBC, 2016, as the same was not applicable to the resolution

applicant in respect of Corporate Insolvency Resolution Process of MSME. The certificate for the same is attached as Annexure A-70 of the application.

11. The applicant submits that there were certain discussions held with respect to the Resolution Plan submitted by Mrs Kanta Garg and thereafter amendments were required and have been done accordingly. The Resolution Applicant along with Resolution Professional submitted his undertaking with the CoC stating that the Resolution plan as given by the Resolution Applicant is in compliance with the provisions of the IBC, 2016 read with regulations made thereunder.

12. In the twelfth meeting of CoC which was held on 14.05.2021 the agendas, in the eventuality that the Resolution Plan is not approved by Adjudicating Authority, in compliance with regulations 39B, 39C, 39D were approved by CoC. In the same meeting, CoC with 100% voting approved the Resolution Plan of the Resolution Applicant i.e. Mrs Kanta Garg after going through the economic and financial feasibility and viability of the same.

13. The successful resolution applicant had submitted performance security as required under sub-regulation 4A of regulation 36B with the Resolution Professional to the tune of Rs. 130 lakhs, in the form of an FDR issued by Bank of India for an amount of Rs. 80 lakhs, and a bank guarantee of Rs. 50 lakhs from Yes Bank given at the time of submission of the Resolution Plan as an earnest money deposit. In compliance with the order dated 25.08.2022, the Resolution Professional filed the extended Performance Bank Guarantee through affidavit vide Diary No. 00698/9 dated 06.09.2022 submitted by the Successful Resolution Applicant issued by Yes

Bank dated 02.09.2022 vide which the Bank Guarantee has been extended up till 20.01.2023.

14. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations, which a Resolution Plan is required to adhere to, as follows:

Compliance with section 25(2)(h), 29A, 30(2) of the Code and mandatory contents of Resolution Plan in terms of Regulation 38 & 39(4) of CIRP Regulations.

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of the business of the CD?	pg 19-20 and Annexure-B(492,493,508)	YES
Section 29A	Whether the Resolution Applicant is eligible to submit a resolution plan as per the final list of Resolution Professionals or Order, if any, of the Adjudicating Authority?	page 29	YES
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	page 21	YES

Section 30(2)	<p>Whether the Resolution Plan-</p> <p>(a) provides for the payment of insolvency resolution process costs?</p> <p>(b) provides for the payment to the operational creditors?</p> <p>(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?</p> <p>(d) provides for the management of the affairs of the corporate debtor?</p> <p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?</p>	<p>pg 23 (496) pg 24</p> <p>(497)</p> <p>NA</p> <p>pg 27 (500)</p> <p>pg 27 (500)</p>	<p>YES</p> <p>YES</p> <p>N.A.</p> <p>YES</p> <p>YES</p> <p>NO</p>
Section 30(4)	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	<p>(471,628,629)</p> <p>(471)</p>	<p>YES</p>
Section 31(1)	<p>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</p>	<p>pg 27 (500)</p>	<p>YES</p>
Regulation 35A	<p>Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?</p>	<p>IA No. 56/2021 has been filed before AA</p>	<p>YES</p>
Regulation 38 (1)	<p>Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?</p>	<p>pg 24 (497)</p>	<p>YES</p>
Regulation 38(1A)	<p>Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?</p>	<p>pg 23-24 (496,497)</p>	<p>YES</p>

Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	page 32 (505)	NO N.A.
Regulation 38(2)	(Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	pg 628-629 pg 27(500) pg 27(500)	YES YES YES
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	pg 17(490) pg 29(502) pg 27,29 (500) (502)	YES YES YES N.A. YES
39(2) (b)	(Whether the RP has filed applications in respect of transactions observed, found or determined by him?	IA No. 56//2021	YES
Regulation 39(4)	(d) Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	(631-639)	Guarantee issued by Yes Bank for Rs.50.00 Lakh and Fixed Deposit kept with Bank of India Panipat Branch for Rs.80.00 lakh. The total performance security amount provided is Rs.130.00 lakh

15. Measures required for the implementation of the Resolution Plan in terms of Regulation 37 of CIRP Regulations:

Regulation 37	Relevant Page Number of the Resolution Plan dealing aforesaid compliance with Regulation (Clause wise)
(a) Transfer of all or part of or part of the assets of the corporate debtor to one or more persons.	RA Proposes to repay the liabilities of the corporate debtor from its own internal resources
(b) Sale of all or part of the assets whether subject to any security interest or not.	Not applicable
(ba) Restructuring of the corporate debtor by way of merger, amalgamation and demerger	Not Applicable
(c) Substantial acquisition of shares of the corporate debtor	The Resolution Plan envisages the transfer of all the shares of the corporate debtor to the Resolution Applicant or any other person/nominee as the Resolution Applicant deem fit as per the circumstances for consideration of Rs. 0.01 per share.
(ca) Cancellation or delisting of any shares of the corporate debtor, if applicable	The Resolution Plan envisages the transfer of all the shares of the corporate debtor to the Resolution Applicant or any other person/nominee as the Resolution Applicant deem fit as per the circumstances for consideration of Rs. 0.01 per share.
(d) Satisfaction or modification of any security interest	Not Applicable
(e) Curing or waiving of any breach of any terms of any debt due from Corporate Debtor	Not Applicable

(f) Reduction in any amount payable to the creditors'	Financial creditors (secured creditors Rs. 10.75 Crores)
(g) Extension in maturity date or a change in the interest rate or other terms of debt due from the corporate debtor	The assets of the corporate debtor kept as collateral secured shall be released by the financial creditor immediately on payment of the final instalment to them as proposed in the Resolution Plan.
(h) Amendment of constitutional documents of the corporate debtor	RA proposes reconstitution of the board of corporate debtor.
(i) Issuance of security of corporate debtor for cash, property, and securities.	Not Applicable
(j) Change in the portfolio of goods or services produced....	Not Applicable
(k) Change in technology used by the corporate debtor	Not Applicable
(l) Obtaining necessary approvals from the central and state governments and other authorities	All the registration certificates, licences and approvals given by any statutory authority in the name of the corporate debtor will remain in force and will continue.

16. Details of Resolution Plan/Payment Schedule

The relevant information with regard to the amount claimed, amount admitted, and the amount proposed to be paid by the Resolution Applicant under the said resolution plan is tabulated as under;

(Amount in Rs. lakhs)

Sl. No.	Category of Stakeholder *	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL				
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	NIL 48,45,87,95 7.35		48,45,87,95 7.35	10,75,00,000.0 0	22.18
		Total[(a) + (b)]	48,45,87,95 7.35	48,45,87,95 7.35	10,75,00,000.0 0	22.18	
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL				
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	NIL				

		Total[(a) + (b)]	NIL			
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL			
		(b) Other than (a) above:	21,98,53,871.75	99,84,000.00	27,00,000.00	1.22
		(i) Government (ii) Workmen (iii) Employee (iv)				
		Total[(a) + (b)]	21,98,53,871.75	99,84,000.00	27,00,000.00	1.22
4	Other debts and dues		1,80,00,000.00	1,80,00,000.00	1,80,00,000.00	
Grand Total			70,46,21,829.10	49,47,51,957	12,82,00,000.00	18.19

17. Summary of the Financial proposal/payment under the Resolution Plan is as follows;

Sr. No.	Particulars	Amount (Rs. in Lakhs) verified by RP	Upfront Cash	Deferred Cash at the end of 1st Year	Rest of Deferred Cash
1.	CIRP Cost	40.00		40.00 to be paid within 60 days of the effective date.	
2.	Secured Financial Creditor	1075.00		1075.00 to be paid within 6 months of the effective date.	
3.	Unsecured Financial Creditor	NIL			

4.	Operational Creditor for Goods & Services	27.00		27.00 (Rs. 13.50 Lakh to be paid within 30 days of approval of the resolution plan and the balance payment of Rs.13.50 lakh to be paid within six months of the approval of the resolution plan.	
5.	Operational Creditor Government Dues (Customs)	NIL			
6.	Operational Creditor Government Dues (Tax)	NIL			
7.	Operational Creditor Employees & Workers	NIL			
8.	Funds for stabilization of Business and Working Capital	50.00		50.00 To be inducted within six months of approval of resolution plan	

18. The Resolution Plan defines “Effective Date” as the date on which this Resolution Plan is approved by the NCLT.

19. Details on Management/Implementation and Relief as per Resolution Plan-Salient Features

- a. It is proposed that with the approval of the instant resolution plan, the management and control of the corporate debtor shall vest with the Resolution Applicant. The Resolution Applicant proposes to acquire 100% shareholding of existing shareholders as a part of the resolution process and also shall appoint one or more directors on the board of the corporate debtor from the date of approval of the Resolution plan.

- b. The RA for day-to-day affairs and management of the Corporate Debtor also proposes to appoint a sufficient number of officials/ employees in the Corporate Debtor as may be sufficiently required for fulfilling the objective of the Resolution Applicant to settle the liabilities and claims of the Corporate Debtor and to keep going concern for the business activities.
- c. RA proposes to take over the existing team of management for the purpose of running the business.
- d. That makes the RA technically strong for the purpose of keeping the company as a going concern. The RA proposes to remove/retrench/ appoint/transfer the employees of Corporate Debtor as per the need basis.

20. Waivers, Reliefs and Exemptions sought in the Resolution Plan

The applicant has submitted the following facts with regard to the Waivers, Reliefs and Exemptions sought in the Resolution plan:

Sr. No.	Relief and/or Concessions and Approvals Sought	Name of Applicable Law	Name of Authority who will grant approval
1.	Approval for purchase of all the 1873714 equity shares of the corporate debtor at the rate if Rs.0.01 per share	Companies Act, 2013.	National Company Law Tribunal/ROC
2.	Approval for paid-up capital of the corporate debtor to be Rs.1.00 Crore divided in 10,00,000 shares of Rs.10.00 each	Companies Act, 2013.	National Company Law Tribunal/ROC
3.	Approval for re-constitution of the Board of the corporate debtor with permission to induct new directors. All the present directors to resign.	Companies Act, 2013.	National Company Law Tribunal/ROC

4.	Approval to the effect that any memorandum of understanding, implementation agreement, concession agreement, license, execution agreement or any other agreement executed by the corporate debtor for setting up of or implementation of any works, projects, concessions with any State Government, Government of India, Statutory Bodies, Corporations or companies or any other entity shall remain in force.	Companies Act, 2013.	National Company Law Tribunal/ROC
5.	Approval to the effect that all the registration certificates, licenses and approvals given by any statutory authority in the name of the corporate debtor to remain in force.	Civil Laws	General Relief u/s 32A of the IBC, 2016
6.	Approval to the effect that all litigations, including under section 138 of the Negotiable Instruments Act, initiated by the Financial Creditor against the corporate debtor shall be withdrawn.	Various Laws	General Relief u/s 32A of the IBC, 2016
7.	Approval to the effect that all assets of the corporate debtor kept as collateral security shall be released by the financial creditor immediately upon payment of the final instalment as proposed in the resolution plan.	Various Laws	General Relief u/s 32A of the IBC, 2016
8.	Approval to the effect that the resolution applicant shall not be liable for any previous dues to statutory authorities/public authorities.	Various Laws	General Relief u/s 32A of the IBC, 2016
9.	Approval to the effect that resolution applicant shall not be liable for any previous dues to any other creditor	Various Laws	General Relief u/s 32A of the IBC, 2016
10.	Approval of waiver of Corporate Tax and/or Minimum Alternate Tax arising out of writing off of liability towards creditors and other liabilities of the corporate debtor on account of waivers granted by them.	Various Laws	General Relief u/s 32A of the IBC, 2016
11.	Approval of waiver of stamp duty applicable, if any, on the transfer of shares of the corporate debtor	Various Laws	General Relief u/s 32A of the IBC, 2016

12.	Direction for withdrawal of all litigations filed against the corporate debtor	Various Laws	General Relief u/s 32A of the IBC, 2016
13.	Waiver of any liability on account of previous or future litigations/prosecution in relation to previous debts due from the corporate debtor	Various Laws	General Relief u/s 32A of the IBC, 2016
14.	Waiver of any liability on account of financial/operational debt to related parties and waiver from any future liability on account of non-submission of claims	Various Laws	General Relief u/s 32A of the IBC, 2016
15.	Direction to Financial Creditor for issuance of no dues certificate to the resolution applicant immediately after successful implementation of the resolution plan	Various Laws	General Relief u/s 32A of the IBC, 2016

21. As regards the aforementioned claims under the IBC, it is clarified that this Adjudicating Authority has powers to decide the reliefs claimed which are directly relatable to the Resolution Process and not over those pertaining to extraneous issues. Regarding the reliefs/waivers pertaining to the domain of various departments/governmental authorities, it is further clarified that this Adjudicating Authority has no power to sanction these waivers, etc. and the Successful Resolution Applicant is at liberty to approach the competent authorities/courts/legal forums/office(s) Government or Semi-Government/State or Central Government for appropriate relief(s) sought in the plan. Approval of the Resolution Plan does not mean automatic waivers.

22. It is directed that any relief sought in the resolution plan, where the contract/agreement/understanding/proceedings/actions/notice etc. is not

specifically identified or is for future and contingent liability, is at this moment not acceded to.

23. The Resolution Applicants shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.

24. Pursuant to the order dated 10.12.2021 of this Adjudicating Authority, counsel for the Committee of Creditors has placed on record an email dated 09.12.2021 received from the authorized representative of Bank of India i.e. Ms C.S. Rajni i.e. Chief Manager, Law, Legal Department, Chandigarh Zone with regard to the fact that the bank is not nominating any of the representative in the monitoring committee formed for the implementation of the resolution plan. A copy of the email is attached as Annexure R/1 of the affidavit.

25. The Successful Resolution Applicant has filed a compliance affidavit vide diary No. 00698/4 dated 20.05.2022, undertaking that in the event any amount is received by the corporate debtor pursuant to the approval of Resolution Plan by this Adjudicating Authority, pursuant to the outcome of the application bearing IA No. 56/2021 (seeking of avoidance transaction under Section 66 of the Code), then the same shall be deposited with the financial creditors of the corporate debtor.

26. The Resolution Professional has filed an affidavit vide diary No. 00698/6 dated 27.06.2022 stating that on the basis of due diligence done by the Resolution Professional, the Resolution Applicant complies with the provisions of Section 29 A of IBC, 2016. Also, an independent affidavit has been submitted by the Resolution Applicant.

27. Pursuant to the order of this Tribunal dated 07.03.2022, the financial creditor i.e., Rajani Kant Bhuyan, AGM, Bank of India has filed a compliance affidavit vide diary No. 00036/23 dated 06.05.2022 stating that Resolution Applicant has already assured in writing to deposit with the bank (the amount (if any) received by her pursuant to the outcome of section 66 application filed through IA No. 56/2021. Hence, the Resolution Plan can be approved immediately without waiting for the outcome of IA No. 56/2021, which can be decided in due course by this Adjudicating Authority.

28. This Adjudicating Authority vide order dated 22.09.2022 had directed the Resolution Professional or the CoC to file an undertaking/affidavit regarding the person responsible who will pursue the application filed under Section 66 bearing IA No. 56/2021 in future. Pursuant to the said order the applicant-Resolution Professional has filed a compliance affidavit vide diary No. 00698/12 dated 06.10.2022, wherein it has been stated that the stakeholder/ COC member will be the ultimate beneficiary of the proceeds received from the application u/s 66 of the IBC, 2016 bearing IA no. 56 of 2021, and in view of same the sole COC member i.e. Bank of India has given the undertaking/ affidavit that they shall pursue the application bearing IA no. 56 of 2021 filed u/s 66 of the IBC, 2016 after the RP ceases its power. A copy of the affidavit is attached with the instant compliance affidavit.

29. Further, this Adjudicating Authority vide order dated 14.10.2022 had directed the applicant-Resolution Professional to furnish the affidavit regarding the status of the corporate debtor as an SME unit under the MSME Development Act, 2006. Pursuant to the above-said order, applicant-Resolution Professional has filed a compliance affidavit vide diary

No. 00698/13 dated 31.10.2022, wherein stating that the Resolution Plan in the present matter was submitted by the Successful Resolution Applicant i.e- Mrs Kanta Garg who is the wife of the suspended director (Mr Suresh Garg) of the corporate debtor and she is eligible to submit the resolution plan in the present matter in view of the provision of section 240A of IBC, 2016 as the corporate debtor is an MSME firm as per the definition provided under the MSME Development Act, 2006. Moreover, the corporate debtor was a going concern and was kept as a going concern during CIRP as well, and no proceeding for cancellation of the Acknowledged Enterprises Memorandum has been undertaken against the corporate debtor nor has the same been cancelled by any authority under any law, nor was the same cancelled at the time of filing the present application for approval of Resolution Plan. The corporate debtor is not hit by the amendment in section 7(1) of the MSME Development Act, 2006 as mentioned in the notification dated 16.01.2009. A Copy of the MSME certificate of the corporate debtor is attached as Annexure A-1 of the instant compliance affidavit. Further, the Resolution Plan also complies with other provisions of IBC, 2016 and the Regulations made thereunder.

30. This Adjudicating Authority vide administrative order dated 13.09.2022 had directed the applicant-Resolution Professional to file a compliance affidavit in view of the decision of the Hon'ble Supreme Court in the case of **State Tax Officer vs. Rainbow Papers Limited** Civil Appeal Nos. 1661 of 2020 and 2568 of 2020, specifying the dues if any, payable to Government/Government Authorities where a security interest is created and to state that the distribution of the amounts under Section 53(1)(b)(ii) in the

present case is in accordance with the aforementioned observations of the Hon'ble Supreme Court regarding the payment of statutory dues payable to any State Government or legal authority in favour of whom security interest is created by operation of law. Pursuant to the above-said order, the applicant has filed a compliance affidavit vide diary No. 00698/10 dated 21.09.2022 stating that in the present matter, the corporate debtor as on insolvency commencement date i.e., 29.11.2019 as per the provisional balance sheet as on 29.11.2019 no amount was pending due towards any statutory department/authority. Further, ETO had filed an application bearing IA No. 43/2022 challenging the order of the RP for rejection of the claim, which has been dismissed by this Tribunal vide order dated 21.09.2022. Further, the applicant has stated that there are no dues payable to any Government department/ Authorities where a security interest is created in their favour either by charge or by operation of law, and as such the only secured creditors in the matter of the present corporate debtor is the financial institution i.e. Bank of India.

Findings

31. On hearing the submissions made by the learned counsel for the Resolution Professional and perusing the records, we find that the Resolution Plan has been approved at a total Resolution Value of Rs.12,82,00,000.00/-(Twelve Crores and Eighty Two Lakhs only). The resolution applicant proposes to make a payment to secured financial creditors Rs. 10,75,00,000.00 (Ten Crores and Seventy Five Lakhs only). The

Resolution Applicant proposes to pay Rs. 27,00,000.00 (Twenty Seven Lakhs only) to the Operational Creditors as per Financial Proposal.

32. The sole COC member i.e. Bank of India has given the undertaking/ affidavit that they shall pursue the application bearing IA no. 56 of 2021 filed u/s 66 of the IBC, 2016 after the Resolution Professional ceases its power. The said undertaking shall form part of the Resolution Plan. The financial creditor-sole member of CoC shall be bound by the undertaking given.

33. As per the CoC, the Resolution Plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.

34. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the Code and complies with Regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Orders

35. Therefore, subject to the observations made in this order, we hereby accord our approval to the Resolution Plan.

36. It is further directed that the Resolution Applicant, on taking control of the corporate debtor, shall ensure compliance under all applicable laws for the time being in force. As far as the question of granting time to comply with the statutory obligations or seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under Section 31(4) of the Code.

37. The Resolution Plan as approved shall be binding on the corporate debtor and its employees, members, and creditors, including the Central Government, State Government, or Local Authority, to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

38. The Moratorium imposed under Section 14 shall cease to have effect from the date of this order.

39. The Resolution Professional shall stand discharged from his duties with effect from the date of this order. However, he shall perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.

40. The Resolution Professional is further directed to hand over all records and properties to the Resolution Applicant and shall finalize the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Resolution Professional to finalize the further line of action required for starting the operation.

41. In case of non-compliance with this order or withdrawal of the Resolution Plan, the performance security amount already paid by the Resolution Applicant shall be liable to be forfeited, in addition to such further action as may be permitted under the law.

42. Liberty is hereby granted for moving any application if required in connection with the implementation of this Resolution Plan.

43. The Resolution Professional shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.
44. The Resolution Professional shall file a copy of this order with the Registrar of Companies, NCT of Delhi and Haryana inter alia for updating the status of the corporate debtor.
45. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, NCT of Delhi and Haryana.
46. The application bearing IA No. 416/2021 and the main Company Petition i.e., CP (IB) No. 135/Chd/Hry/2018, shall stand disposed of accordingly.
47. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

January 20, 2023

PB/ASH