IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III

I. A. No. 364 of 2021
In
C.P. No. 2476/IB/2018

In the matter of an Application under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 read with Rule 39 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons Regulations, 2016

In the matter of
Premium Transmission Pvt. Ltd.
....Operational Creditor
v/s.
Utech Engineering Works (India) Pvt. Ltd.
.... Corporate Debtor

I.A. No. 364/2021

Ms. Neelima Anil Bhate
... Applicant/
Resolution Professional

Order delivered on 11.02.2022

Coram:
Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance (through video conferencing):
For the Resolution Applicant : Mr. Amay Hadwale a/w.
Ms. Geeta Lundwani, Advocates
Mr. Avinash R. Khanolkar, Advocate
for Committee of Creditor

Per Shri H. V. Subba Rao, Member (Judicial)

ORDER

1. This is an Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the Code) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant Mr. Ravindra P. Birole.

2. The facts leading to the Application are as under:

i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 25.06.2019 (Admission Order). The IRP published a public announcement Form 'A' on 30.06.2019 inviting claims from the creditors of the Corporate Debtor. The Committee of Creditors of the Corporate Debtor ['CoC'] consists of sole member being Janaseva Shahakari Bank Ltd.

ii. Thereafter, Resolution Professional upon verification of the same, constituted the CoC. Pursuant to the public announcement RP received three (3) Expression of Interest from the Prospective Resolution Applicant (PRA).

iii. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

3. During the period of CIRP the RP issued 2nd Form-G on 29.11.2019 inviting expressions of interest (EOI) in "Financial Express, in English and "Loksatta" in Marathi from prospective Resolution applicants (PRAs). The last date for receiving the expression of interest was 14.12.2019 and last date for submission of Resolution Plan was 28.01.2020. The Applicant received 3 responses to the second EOI, however, 2 parties had not submitted documents as required. Since the Corporate Debtor is a MSME, the third response was received from

the Prospective Resolution Applicant (PRA) Mr. Ravindra P. Birole, the Promoter of the Corporate Debtor. The Resolution plan along with information memorandum, evaluation matrix was issued to the Prospective Resolution Appliocant. The Applicant/ RP negotiated with the Resolution Applicant to make the resolution plans more robust and to improve the same.

4. The 2nd CoC meeting held on 28.8.2019 decided to appoint a Valuer. The RP accordingly appointed two registered valuers to determine the fair value and liquidation value of the Corporate Debtor, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These valuers had submitted their reports. The average Liquidation and fair value of the Corporate Debtor is as per the report of the two valuers is as follows:

Liquidation Value (Amount in Rupees)	**Fair Value (Amount in Rupees)**
Rs. 2,74,89,000/	Rs. 3,94,99,000/-

5. The RP submits that the Corporate Debtor falls under the category of Micro, Small and Medium Enterprises as per the certificate of Registration tabled before the CoC and hence the ineligibility to submit Resolution Plan as per section 29A(h) of the Insolvency and Bankruptcy Code, 2016 is not applicable to the Resolution Applicant in terms of Section 240A(1) which is reproduced as under:

"Section 240A. Application of this Code to Micro, Small and Medium enterprise:-

(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."

6. The CoC in its 13th meeting held on 08.01.2021 considered the revised and final Resolution Plan along with its Addendums dated

08.01.2021, submitted by Mr. Ravindra P. Birole, and approved the Plan with the voting share of 100% of the members of the Committee of creditors and the said Resolution Plan consists of the following:

- Provides for payment of Insolvency Resolution Process Costs in a manner specified by the board in priority to the payment of other debts of Corporate Debtor.
- Provides for payment of the debts of the Operational Creditors in such manner as specified by Regulation 38(1) of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations) 2016.
- Provides for management of the affairs of the Corporate Debtor after the approval of the Resolution plan.
- Does not contravene any of the provisions of the law for the time being in force.

Accordingly, compliance certificate in Form "H" was issued by the Resolution Professional.

7. **The salient features of the Resolution Plan are as under:**

A. The Resolution Applicant is the Chairman and Managing Director of the Utech Group. It is in the business of Design, Manufacture, Supply and Erection of Mill House, Boiling House, Sugar Refineries, Material Handling on turnkey basis. The Utech Group also has its own Research and Development Center. The Resolution Applicant is the promoter shareholder of the Corporate Debtor and the Corporate Debtor being an MSME, the Resolution Applicant is eligible under Section 29A of Insolvency and Bankruptcy Code.

B. The Corporate Debtor is a Private Ltd. company incorporated on 16.08.1991. Its shareholders are various members of the Birole Family. The Corporate Debtor is MSME. The Corporate Debtor is in the business of manufacture of boiler and other engineering/ machinery relating to the sugar industry.

C. Reconstitution of Management/ Board and constitution of Monitoring Committee:- Upon approval of plan by Adjudicating Authority, the following actions to be taken:

- **Monitoring Committee:** As agreed by the Financial Creditor in 12th CoC meeting dated 2nd January 2021, the financial creditor shall appoint a 3rd party agency for monitoring the implementation of Resolution Plan. The Charges of the Monitoring committee shall be solely borne by the Financial Creditor.
- **Management:** No Change in the Board of director's, the same management will continue as it subsisted prior to the CIRP commencement date shall continue. The management and control of the Corporate Debtor shall be handed over to the Resolution applicants/ Directors of the corporate debtor for proper running and operational aspects of the Corporate Debtor.

D. Repayment of priority dues:-

- CIRP COST- 100% CIRP Cost within the meaning of Section 5(13) of the Code read with Regulations 31 to 34A of CIRP Regulations which is approved and ratified by the CoC will be paid by Resolution applicant. The CIRP Cost is paid in priority over payments to any other creditors in following manner: Total CIRP Cost shall be paid in Three equal instalments within a period Three months from the Effective date

- Operational & statutory creditors - 25% of the admitted claim to the operational/ statutory creditors. The said 25% will be paid in following manner -10% of the admitted claim of operational/ statutory creditors to be paid within 180 days from effective date. -Balance15% will be paid during the rotation of business operations over the period of 7 years in 7 equal instalments starting from March 2022.

8. **Mandatory contents of the Resolution Plan** :-

1. In compliance with section 30(2)(a) the resolution plan provides for priority in repayment of CIRP cost over payment to other creditors as envagised in Part VI of this resolution Plan
2. The Resolution Plan is compliant with provisions contained in section 30(2)(b) while making payments to operational and statutory creditors.
3. In compliance with section 30(2)(d)/ Regulation 38(2)(b) resolution plan provides for Management and control of the affairs of Corporate Debtor after approval of the Resolution Plan in Part VIII of this resolution Plan.
4. In compliance with section 30(2)(c)/ Regulation 38(2)(c) resolution plan provides for Adequate means for supervision of implementation in Part VIII.
5. In accordance with section 30(2)(e) the Resolution Plan is compliant with all the provisions of law for the time being in force.
6. In compliance Regulation 38(1) of CIRP Regulation, the Resolution Plan has given priority in repayment of the amount

due to the operational creditor over financial creditors as envagised in Part VI of this resolution Plan.

7. In compliance Regulation 38(2)(a) the resolution plan provides for Term of Plan and its implementation schedule in Part VI read with Part VIII of this resolution Plan.

8. In compliance of Regulation 38(1A) the Resolution Plan contains Statement in as to how the applicant has dealt with interest of all Stakeholders in Resolution Plan in Part VI.

9. In compliance with 38(3) A resolution plan shall demonstrate that – it addresses the cause of default, it is feasible and viable, it has provisions for its effective implementation, it has provisions for approvals required and the timeline for the same; and the Resolution applicant has the capability to implement the resolution plan.

10.In compliance with 38(1B) resolution applicant hereby declares that the resolution applicant or any of its related Party has not failed to implement or not contributed in failure of implementation of any other resolution plan approved by Adjudicating authority at any time in the past.

11. Eligibility declaration by Resolution Applicant under section 29A is already been submitted to resolution professional as the Corporate Debtor is MSME registered promoters himself is giving the resolution Plan for the same.

9. <u>CIRP Costs</u>: -

Payment towards CIRP costs- 100% CIRP Cost within the meaning of Section 5(13) of the Code read with Regulations 31 to 34A of CIRP Regulations which is approved and ratified by the CoC will be paid by Resolution applicant.

Payment to Operational Creditors –

As per the provisions of IBC the operational creditors will be paid in priority over payments to financial creditors in following manner the Resolution Applicant proposes to offer 25% of the admitted claim to the operational creditors as and by way of full and final settlement of their dues.

Payment to Statutory Creditors –

Resolution Applicant proposes to offer 25% of the admitted claim to the Statutory Creditors.

Payment to Financial Creditors –

100% payment of 1200 Lakhs along with Interest at the rate 11.5% p.a. in the manner as per Resolution Plan.

Payment towards outstanding employee dues –

No Outstanding dues are there for Employees and Workman.

Payment to other Financial Creditor (Janseva Shahakari Bank Ltd.) –

1155 lakhs will be paid in total. INR 150 lakhs will be adjusted every year through carrying out repair and maintenance work with or without material.

Fresh capital infusion –

New equity of INR 100 lakhs Equity will be infused for Business operations)**.**

10. The RP has submitted the following chart showing the details of the total claims received and admitted by him and amount under plan as follows:

Creditors/ Stakeholders	**Sub-Category of Stakeholder**	**Amount Claimed**	**Amount Admitted**	**Amount under Plan**	**Amount provided to the amount claimed%**
CIRP cost		As approved and ratified by CoC		100% CIRP Costs which is approved and ratified by CoC	100%
Secured Financial Creditor	a. Creditors not having a right to vote under sub-Section (2) of Section 21 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	NA Rs. 13,60,00,000/- +Interest +Expenses	NA Rs. 13,60,00,000/- +Interest +Expenses	NA Rs.13,60,00,000/- +Interest +Expenses	NA Rs. 13,60,00,000/- +Interest +Expenses
Unsecured Financial Creditor	a. Creditors not having a right to vote under sub-Section (2) of Section 21 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	NA	NA	NA	NA
Operational Creditors	a. Related party of Corporate Debtor i. Government ii. Workmen iii. Employees iv. Other Operational Creditors	NA Rs. 4,26,12,403/- NIL NIL Rs. 2,32,40,624/-	NA Rs. 4,26,12,403/- NIL NIL Rs. 2,32,40,624/-	NA 25% of claim value NIL NIL 25% of claim value	NA 25% of claim value NIL NIL 25% of claim value

Other debts and dues	NIL	NIL	NIL	NIL	NIL
Grant Total		**Rs. 20,18,53,027/-**	**Rs. 20,18,53,027/-**	**Rs. 15,24,63256/-**	**75.53%**

Note : The payment to all stakeholders would be settled as per the table given above.

11. This Bench in its hearing of the Resolution Plan held on 16.12.2021 had contended that Rs. 11.5 Crores worth "purported allotment of contract to the Sister Concern" of the Resolution Applicant, mentioned at page 6 & page 138, 143 of the Application and at page 25 of the Resolution Plan cannot form part of the Resolution Plan as it is a purely an internal matter of the Resolution Applicant. This contention of the Bench was agreed upon by the Resolution Professional and Resolution Applicant in further discussions. In view of this Rs.11.5 Crores worth of contract being given to the "sister concern" does not form part of the Resolution Plan.

12. **Observations and findings:-**

i. All business related activity, Management, Key Managerial personal will remain same as already exist before CIRP start Date. The key management personnel of the Resolution Applicant with a brief description of experience in the relevant industry/ business will be the same Existing management for operations of the Corporate Debtor in terms of Section 30(2)(c).

ii. The Plan also provides for implementation of provision of the Resolution Plan as stated above as per Section 30(2)(d). The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:

a) Payment to Operational Creditor will be made in priority over Financial Creditor (Regulation 38(1)(a)).
b) Since the plan has been approved by 100% voting share of the CoC. This is in compliance of Regulation 38(1)(b) of the Regulations.
c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).
d) In compliance with section 30(2)(a) the resolution plan provides for priority in repayment of CIRP cost over payment to other creditors as envagised in Part VI of this resolution Plan.
e) The Resolution Applicant states that the Resolution Plan is compliants with provisions contained in section 30(2)(b) while making payments to operational and statutory creditors.
f) In compliance with section 30(2)(d) / Regulation 38(2)(b) resolution plan provides for Management and control of the affairs of Corporate Debtor after approval of the Resolution Plan in Part VIII of this resolution Plan.
g) In compliance with section 30(2)(c)/ Regulation 38(2)(c) Resolution plan provides for Adequate means for supervision of implementation in Part VIII.
h) In accordance with section 30(2)(e) the Resolution Plan is compliant with all the provisions of law for the time being in force.
i) In compliance Regulation 38(2)(a) the resolution plan provides for Term of Plan and its implementation

schedule in Part VI read with Part VIII of this resolution Plan.

j) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan.

iii. The Resolution Plan has been approved in the 13th meeting of the CoC held on 08.01.2021 with 100% votes in accordance with the provisions of the Code.

iv. The Resolution Applicant seeks certain concessions and reliefs in the Resolution plan at page 152 of the application. However, this Bench give following directions:

Sr. No.	**Particulars of concessions and reliefs**	**Direction of the Tribunal**
1.	Clause (a) relates to certain exemptions from payment of charges, duty etc, for transfer/ reorganising the change in shareholding	Since the Resolution Applicant is the ex-promoter and there are no changes in the shareholding, this relief is not granted.
2.	Clauses (b), (d), (f), (g) and (h) all relate to either non-payment of earlier or not filed or unconfirmed liabilities; or extinguishment of claims not filed; or waivers of contingent dues etc.	All claims/ liabilities shall stand extinguished as per the effect of law under the Insolvency and Bankruptcy Code, 2016.

	Clause (i). seeks concession in respect of late fees, penalties for compliances of various statutory dues under various Acts.	
3.	Clause (c) relates to all current licenses and permits that are currently and that they continue to remain valid till such time the Resolution Applicant approaches the authorities again.	Extension of all current licenses and permits shall only be upto a period of 1 year during which application for extensions as may be needed can be applied to the relevant authority.
4.	Clause (e) seeks that the RBI and the Financial creditor confirms that all accounts of the Corporate Debtor shall stand regularised and their assets be classified as 'standard' and 'regular'	This relief/ concession is not required, and this relief is not granted.

v. The Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online SC 1478* and in ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150)***, held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Apex Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not confirm to the stated requirements.

13. In view of the above observations 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. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders. Therefore, this Bench in the above background has no option except to approve the present Resolution Plan submitted by the Resolution Applicant. Accordingly this Bench hereby pass the following :-

ORDER

i. The Resolution Plan submitted by **Mr. Ravindra Birole** is hereby approved. It shall become effective from the date of approval 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, Resolution Applicant, guarantors and other stakeholders involved in the Resolution Plan.

ii. We shall clarify here that the Resolution Applicant shall take over the corporate debtor with all its assets and liabilities as per terms as approved in the Resolution plan. This Bench cannot allow any general power to Resolution applicant absolving him from the liability of the corporate debtor company, without knowing about the liability against which such exemption is sought. In other words, relief/ exemptions from only existing liabilities which are specifically identified are deemed to have been allowed and approved in the Resolution plan.

iii. It is seen that the Resolution Plan seeks several dispensations, concessions and waivers. Approval of Resolution Plan does not mean automatic waivers. The Resolution Applicant on approval of the Plan may approach those competent authorities/ courts/ legal forms/ office(s) Government or Semi-Government/State or Central Government for appropriate relief'(s) sought in the plan.

iv. The Resolution applicant shall obtain the necessary approvals 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.

v. Given the above observations, we approve the Resolution plan with modifications, as mentioned above, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the resolution plan.

vi. The Resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the Resolution plan to the IBBI to be recorded on its database. The Resolution Professional is hereby discharged of his duties after handing over the documents to the Resolution Applicant and it taking charge.

vii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), 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.

viii. The moratorium under Section 14 of the Code shall cease to have effect from this date.

ix. 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.

x. 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.

xi. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

xii. The Interlocutory Application No. 364 of 2021 is accordingly allowed and disposed of.

Sd/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)