

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – 1**

CP(IBPP) NO. 02 OF 2023

A Petition under Section 54(C) of Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021.

In the matter of:

Garodia Chemicals Limited

Having its Registered Office at:

149/156, Garodia Shopping Centre, Garodia Nagar, Ghatkopar East, Mumbai, Maharashtra, India, 400077

CIN: L99999MH1993PLC070321

.....Corporate Debtor/Petitioner

Order Delivered On : 08.11.2023

Coram:

Hon'ble Member (Judicial) : SH. JUSTICE VIRENDRASINGH G BISHT (RETD.)

Hon'ble Member (Technical) : SH. PRABHAT KUMAR

Appearances:

**For the Petitioner : Mr. Kunal Kanungo a/w Ms. Tanushree Sogani,
Advocates**

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Company Petition is filed under Section 54(C) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") for seeking initiation of Pre-Packed Insolvency Resolution Process ("**PPIRP**") in respect of **Garodia Chemicals Limited** ("**Corporate Debtor**").

Brief Facts

2. The Corporate Debtor is a public, listed Company incorporated on 06.01.1993 vide CIN no. L99999MH1993PLC070321. On the date of Petition, the Corporate Debtor was engaged in the manufacturing and dealing in all types of dyes and chemicals, chemical products and byproducts.
3. Copy of the Base Resolution Plan submitted jointly by the Corporate Debtor and Mr. Ravindra Subhash Salunkhe was submitted by the Petitioner in the form of an Additional Affidavit on 12.09.2023.
4. The total amount of debt payable by the Corporate Debtor to its Financial Creditors is stated to be Rs. 4,41,21,594/- (Rupees Four Crores, Forty One Lakhs, Twenty One Thousand, Five Hundred and Ninety Four Only) as on 21.08.2023, the details of which are as follows –

List of Financial Creditors (Unrelated)			
I	II	III	IV
Sr. No.	Name of the Creditor	Amount of Claim (INR)	% of Claim
1	M/s. WZ Enterprises Private Limited	9,00,528	2.04
List of Financial Creditors (Related)			
I	II	III	IV
Sr. No.	Name of the Creditor	Amount of Claim (INR)	% of Claim
1	Mr. Mahesh Gordhandas Garodia	4,10,40,598	93.02
2	Mr. Nishant M. Garodia	19,25,271	4.36
3	M/s Garodia Sons Private Limited	1,22,197	0.28

List of Operational Creditors (Unrelated)			
I	II	III	IV
Sr. No.	Name of the Creditor	Amount of Claim (INR)	% of Claim
1	M/s. Makarand M. Joshi & Co.	1,33,000	0.30
	TOTAL	4,41,21,594	100

5. The financial summary as per provisional financial statements as on 31.03.2023 annexed with the Petition is as follows –

Details of Assets and Liabilities as on 31.03.2023

Sr. No.	Particulars	Value (INR)
ASSETS		
NON -CURRENT ASSETS		
1.	Other Non-Current Assets	6,15,000
	SUB TOTAL	6,15,000
CURRENT ASSETS		
2.	Cash and Cash Equivalent	23,401
3.	Other Current Assets	4,24,509
	SUB TOTAL	4,47,910
	TOTAL ASSETS	10,62,910
EQUITY AND LIABILITIES		
4.	Equity Share Capital	7,20,02,000
5.	Other Equity	(11,55,85,744)
	SUB TOTAL	(4,35,83,744)
NON-CURRENT LIABILITIES		
6.	Non-Current Borrowings	4,34,08,552
	SUB TOTAL	4,34,08,552

CURRENT LIABILITIES		
7.	Trade Payables	7,28,720
8.	Provisions	34,000
9.	Other Current Liabilities	4,75,382
	SUB TOTAL	12,38,102
	TOTAL EQUITY AND LIABILITIES	10,62,910

Reasons for Losses

6. The Part II of the Base Resolution Plan provides a *Brief Background*, wherein it is stated that the Corporate Debtor availed loan in several tranches to bear the expenses incurred by the Corporate Debtor for meeting its Statutory obligations and compliances. Since the Company is not generating any revenue, it is not able to repay the loan including the interest thereon.

Details of Base Resolution Plan

7. The Part IV of the Base Resolution Plan provides an *Executive Summary Of The Resolution Plan* as extracted below :

IV EXECUTIVE SUMMARY OF THE RESOLUTION PLAN

The Corporate Debtor jointly with the Resolution Applicant brings their unique expertise, network and financial strength and provides all the support which would enable them to successfully implement this Resolution Plan for the Corporate Debtor.

S. No.	Particulars	Key terms/Amounts
1	Amount of payment to Creditors	The sole Operational Creditor of the Corporate Debtor, namely M/s Makarand M. Joshi & Co. shall be paid IN FULL amounting to Rs. 1,33,000/- (Rupees One Lakhs Thirty Thousand Only) within 30 days from Effective date and shall be paid in priority over Financial Creditors.
		The Financial Creditors of the Company would be paid a total amount of Rs. 34,00,528/- (Rupees Thirty-Four Lakh Five Hundred Twenty-Eight Only) towards their entire outstanding (accrued or to be accrued) as full

		and final settlement.																		
		<table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Name of Financial Creditors</th> <th>Full and final settlement amount</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Mr. Mahesh Gordhandas Garodia</td> <td>12,50,000 /-</td> </tr> <tr> <td>2</td> <td>Mr. Nishant M. Garodia</td> <td>12,50,000 /-</td> </tr> <tr> <td>3</td> <td>M/s Garodia Sons Pvt. Ltd.</td> <td>Nil</td> </tr> <tr> <td>4</td> <td>M/s WZ Enterprises Private Limited</td> <td>9,00,528/-</td> </tr> <tr> <td></td> <td>Total</td> <td>34,00,528 /-</td> </tr> </tbody> </table> <p>The above payment shall be paid within 30 days of the Effective Date.</p>	Sr. No.	Name of Financial Creditors	Full and final settlement amount	1	Mr. Mahesh Gordhandas Garodia	12,50,000 /-	2	Mr. Nishant M. Garodia	12,50,000 /-	3	M/s Garodia Sons Pvt. Ltd.	Nil	4	M/s WZ Enterprises Private Limited	9,00,528/-		Total	34,00,528 /-
Sr. No.	Name of Financial Creditors	Full and final settlement amount																		
1	Mr. Mahesh Gordhandas Garodia	12,50,000 /-																		
2	Mr. Nishant M. Garodia	12,50,000 /-																		
3	M/s Garodia Sons Pvt. Ltd.	Nil																		
4	M/s WZ Enterprises Private Limited	9,00,528/-																		
	Total	34,00,528 /-																		
2	Balance repayment obligation to creditors (other than 1 above)	Operational Creditor is being repaid with 100% pay-out. All the dues of the Financial Creditors are being settled with one-time payment as provided in Point 1 of the table.																		
3	Proposed instruments for repayment	Since, the amount is paid in cash, there are no securities which are being issued for repayment																		
4	Interest rate/coupon and frequency of payment	Since no securities are being issued therefore no interest will be paid to the creditors																		
5	Repayment schedule	Since no securities are being issued therefore no specific repayment schedule is provided. For utmost clarity, the creditors are being paid provided in Point 1 of the table.																		
6	Security	Not Applicable																		
7	Conversion terms for quasi equity instruments if any	Not Applicable																		
8	Terms of equity being offered to lenders, if any	Not Applicable																		
9	Amount of fresh equity proposed to be infused	The Resolution Applicant plans to infuse Rs. 50,00,000 (Rupees Fifty Lacs only) towards subscription of 50,00,000 Equity Shares of Re. 1 each.																		

10	Corporate Guarantee or additional collateral/security being offered by the Resolution Applicant pursuant to section 54K (13) of the Code.	The Resolution Applicant has deposited title documents of Land Admeasuring 0.79 Sq Mtrs situated at Survey No.213/1, Sasane, Murbad, District Thane with the Resolution Professional. The Market value of the property is Rs. Rs. 61,06,100/- as arrived on the basis of valuation report dated 7 th February 2023.
11	Details of management personnel of the Resolution Applicant with a brief description of experience in the relevant industry/business	As detailed Below in point V
12	Details of prior experience of the Resolution Applicant in managing similar business	As detailed Below in point V
14	Credit Rating of the Resolution Applicant	Since the Resolution Applicant is an individual, CIBIL Report representing credit history and records of running credit transaction of Resolution Applicant is appended as Exhibit C
15	Brief of proposed business plan for the Company:	At the outset, with payment of the Operational Creditor of the Company in FULL and with full and final settlement of the Financial Creditors of the Company, the Resolution Applicant will first achieve a DEBT FREE status for the Company. Thereafter the Resolution applicant shall propose to carry out the list of business activities as set out in point VI. Financial projections of the proposed activities are appended in Exhibit D

8. The Part XI of the Base Resolution Plan provides for *Source of Funds* as extracted below:

Description of Source of Funds
Pre- packaged Insolvency Resolution Process Costs
By Resolution Applicant
Recovery to Financial Creditors and claims being paid to operational creditors
By Capital infusion by the Resolution applicant

9. The Part XIII of the Base Resolution Plan provides for *Treatment of Various Stakeholders* as extracted below :

XIII TREATMENT OF VARIOUS STAKEHOLDERS

A. Pre-Packaged Insolvency Resolution Process Costs

The Outstanding Pre- Packaged Insolvency Resolution Process Costs borne by the Resolution Professional shall be paid on actual as approved by the Member of the CoC and NCLT for the period up to effective date in priority over payments to all Creditors within 15 days of effective date. Pre- Packaged Insolvency Resolution Process Costs, to the extent that it remains outstanding, shall be paid by the Resolution Applicant.

B. Financial Creditors

The Resolution Applicant is proposing to pay the Financial Creditors the amounts stated under point IV (1), which is higher than the recoveries that the Financial Creditors are likely to make in case of liquidation.

C. Operational Creditor

The Resolution Applicant is proposing to pay the Operational Creditor the amounts stated under point IV (1).

Statutory Compliances

10. The Corporate Debtor is a duly registered MSME (Micro, Small & Medium Enterprise) under the MSME Development Act, 2006 in the category “**Micro Enterprise**” and the copy of the UDYAM (Udyog Aadhar Memorandum) Registration Certificate dated 29.07.2020 is annexed as Annexure D with the Petition. The Corporate Debtor is eligible to file this Petition as per Section 54A(1) of the Code.
11. A copy of the special resolution by the Members of the Corporate Debtor to initiate the PPIRP under Section 54A(2)(g) of the Code was passed on 17.09.2021 and the same is annexed as Annexure F with the Petition.
12. A copy of the declaration given by majority of the directors of the Corporate Debtor pursuant to their meeting held on 09.08.2021 as per Section 54A(2)(f) of the Code in Form P6 is annexed as Annexure B with the Petition.

13. The Financial Creditor i.e. M/s. WZ Enterprises Private Limited holding 100% voting share has approved the decision of the directors to file this Petition as contemplated under Section 54A(3) of the Code after considering the formalities completed by the Corporate Debtor including submission of Base resolution Plan. The Form P4 duly signed by the authorised signatory of WZ Enterprises Private Limited along with Form P2 is annexed as Annexure G & J with the Petition.
14. The Financial Creditor approved the appointment of Insolvency Professional, Manish Motilal Jaju having Registration No. IBBI/IPA-001/IP-P00034/2016-17/10087, holding AFA Certificate No. AA1/10087/02/170124/105393 email: mmjaju76@gmail.com and the proposed Insolvency Professional has filed his written consent in form P1. It is annexed as Annexure H with the Petition, thereby complying with the provisions of Section 54A(2)(e) of IBC, 2016 read with Regulation 14(5) of IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021. The said Insolvency Professional is proposed to be appointed as Resolution Professional to conduct the PPIRP and to discharge duties before initiation of PPIRP. The resolution for appointment of Insolvency Professional was voted by 100% vote.
15. The Resolution Professional's Report dated 21.08.2023 under Section 54B (1)(a) of the Code read with Regulation 17 of IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021 in Form-P8 is annexed as Annexure Q with the Petition.
16. Compliance with Provisions of Section 54C
 - a. The declaration regarding non-existence of avoidance transactions relating to the company and its directors as per Section 54C(3)(c) of the Code read with Regulation 16(2) of IBBI (Pre-packed Insolvency Resolution Process) Regulations, 2021 in Form P7, is annexed as Annexure P with the Petition.
 - b. The affidavit stating that the Corporate Debtor is eligible under Section 29A of IBC, 2016 to submit Resolution Plan has also been annexed as Annexure O with the Petition as an affidavit dated 23.01.2023, thus complying with the provisions of Section 54A (2)(d) of the Code.

- c. The Corporate Debtor has also annexed the audited financial statements of the company for the Year 2021-2022 and 2022- 2023 and provisional financial statements as on 17.08.2023 which are annexed as Annexures M & N with the Petition, thus complying with the provisions of Section 54C(3)(d) of the Code.
- d. The Corporate Debtor has furnished name of Insolvency Professional to be appointed as Resolution Professional as per the provision of Section 54C(3)(b) of the Code and the consent of such Insolvency Professional has also been filed.

Findings

17. We have heard the submissions of the Petitioner and perused the records.
18. The Corporate Debtor owes a total debt of Rs. 4,41,21,594/- (Rupees Four Crores, Forty One Lakhs, Twenty One Thousand, Five Hundred and Ninety Four Only), out of which Rs. 4,10,40,598 (Rupees Four Crores, Ten Lakhs, Forty Thousand, Five Hundred and Ninety Eight Only) is owed to Mr. Mahesh Gordhandas Garodia, a Director and related Financial Creditor and Rs. 9,00,528 (Rupees Nine Lakhs, Five Hundred and Twenty Eight Only) is owed to M/s WZ Enterprises Private Limited, an unrelated Financial Creditor.
19. The Corporate Debtor has filed Ledger Account in the name of M/s WZ Enterprises Private Limited, which indicates that the a sum of Rs.7.30 Lakhs was received by the Corporate Applicant in the first week of May, 2023 and remaining amount of Rs. 1.70 Lakhs represents reimbursement of expenses to the Financial Creditor, which pertains to payments made towards the Listing Fees of the Corporate Debtor, Link Intime India Pvt. Ltd. and Salary Expenses. This Application under Section 54 (C) was filed on 25.08.2023 after approval of the Financial creditors on 21.08.2023. A copy of Special Resolution was filed by the shareholders on 17.09.2021 in terms of Chapter IIIA of the Code which came on the statute book w.r.e.f 04.04.2021.
20. On perusal of Financial Statements, it is seen that the Corporate Applicant has reported Nil Revenue in the Financial Year ended on 31st March, 2021, 31st March 2022 and

31st March 2023. Further, these Financial Statements indicate that the Corporate Applicant owes mainly to the related parties and M/s WZ Enterprises Private Limited. It is further seen that the Base Resolution Plan has been submitted jointly in consortium by M/s Garodia Chemicals Limited through Mr. Mahesh Gordhandas Garodia and Mr. Ravindra Subhash Salunkhe who is a director of M/s WZ Enterprises Private Limited. The Base Resolution Plan contemplates write off of 100% promoter shareholding and 12/13 of public shareholding. The Plan further contemplates that (a) the Compliances prescribed under Section 61, 66 of the Companies Act, 2013 and Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Regulation 31A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and SEBI (SAST) Regulations and any other applicable laws and Regulations shall be dispensed off in implementing this plan; (b) The Approval of Resolution Plan shall be deemed approval as specified above in point XII (1 to 12) as required under the Companies Act, 2013, SEBI (LODR) Regulations, 2015, SEBI (ICDR) Regulations, 2011, and any other applicable laws, rules, Regulations, and schedule etc. In other words, the Plan seeks exemption from compliance to SEBI Takeover Regulations.

21. From these facts we find that present application is not intended towards resolution of the Corporate Debtor but is an attempt to circumvent the Takeover Regulations of SEBI by bringing M/s WZ Enterprises Private Limited in control in place of existing promoter group led by Mr. Mahesh Gordhandas Garodia. The fact of the payments towards listing fees and NSDL charges made by M/s WZ Enterprises Private Limited immediately prior to filing of this Application, no business carried out by the Corporate Debtor in the last 3 years as discernible from NIL revenue reported in the Audited Financial Statements and the director of such enterprise being one of the joint Resolution Applicants to infuse Resolution money under the Base Resolution Plan, we feel that the Base Resolution Plan has been devised as a mechanism to transfer control to Mr. Ravindra Subhash Salunkhe of a listed entity which would have otherwise attracted the rigor of the SEBI Takeover Code in respect of acquisition of shareholding in a listed entity beyond the specified threshold limit. The legislative intent behind the introduction of PPIRP in the Code was to provide an alternative process for resolution of the stress

of corporate MSMEs due to their unique nature of business and simpler corporate structures. PPIRP is built on trust and honors the honest MSME owners by enabling resolution when the company remains with them. Accordingly, we are of considered view that the Application by Corporate Applicant for a purpose other than its resolution cannot be maintained even under Sec. 54 (C) in the garb of Insolvency Resolution Process.

22. Hence, for the reasons stated above we **reject** the Company Petition bearing CP(IBPP) No. 02 of 2023.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

/SP/

Sd/-

VIRENDRASINGH G. BISHT
MEMBER (JUDICIAL)