



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA No.03/2022 IN C.P. (IB)/349(ALD) 2018

IN THE MATTER OF:

(An Application under Section 30 (6) R/w Section 31 of the Insolvency and Bankruptcy code, 2016 R/w Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016

IN THE MATTER OF:

Pramod Kumar Sharma
Resolution Professional,
B.B Foods Private Limited. ... Applicant

And

IN THE MATTER OF:

Bank of IndiaFinancial Creditor
Vs.
B.B Foods Private LimitedCorporate Debtor

Order pronounced on 29.03.2023

CORAM:

Sh. Praveen Gupta : Member (Judicial)
Sh. Ashish Verma : Member (Technical)

Appearances (via Video Conference)

Ms. Babita Jain, Adv. alongwith Sh. Mohd Nazim Khan, PCS.

: For the Applicant

Sh. Abhishek Kumar, Adv.

: For the SRA

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Per: Praveen Gupta, Member (Judicial)

ORDER

Preliminary

1. The present interlocutory application bearing IA. No. 03/2022 was moved on behalf of Mr. Pramod Kumar Sharma Resolution Professional (“**RP**”) of B.B Foods Private Limited. under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as “**the Code**” or “**IBC**”] read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) for approval of the Resolution Plan in respect of M/s B.B Foods Private Limited. (“**Corporate Debtor**”).
2. The underlying Company Petition CP (IB) No.349/ALD/2018 filed by the Bank of India under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor namely B.B Foods Private Limited which was admitted by this Adjudicating Authority *vide* its order dated 22.10.2019 (“**Admission Order**”). On that date, *i.e.*, 22.10.2019 (“**Insolvency Commencement Date**”), Mr. Pramod Kumar Sharma (IBBI Reg. No. IBBI/IPA-002/IP-N00110/2017-18/10258) was appointed as IRP. Subsequently, IRP Conducted 1st CoC meeting on 17.03.2020 whereby IRP was confirmed to be appointed as RP.

Collation of claims by RP

3. It is stated in Resolution Plan that the public announcement was made on 26.10.2019 in *Financial Express (English)* and *Hindustan(Hindi)* and he called for proof of claims from the creditors of the Corporate Debtor and informed lenders to submit their claims as envisaged under the Code.
4. Pursuant to the collation and verification of claims received, the COC was constituted on 17.03.2020 with sole Financial Creditor. The list of Financial Creditors and the distribution the of voting share among them is as under:

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Financial Creditors	Voting Share
Bank of India	100%
Total	100%

5. The details of claims submitted are as follows:

Particulars	Amount Claimed in Cr. Rupees	Claim Admitted in Cr. Rupees
Secured Financial Creditors	71.83	65.47
Unsecured Financial Creditors	NIL	NIL
Workmen & Employees	NIL	NIL
Government Dues	NIL	NIL
Other Operational Creditors	NIL	NIL
Total	71.83	65.47

6. The RP submits that a total of 10 CoC meetings have been held during the whole CIRP period.

Evaluation and voting

7. It is stated in the Resolution plan that the 2nd CoC was held on 22.06.2020 whereby the CoC Inter alia approved the publication of Form G, Request for Resolution plan, Evaluation Matrix, and eligibility criteria. Accordingly, invitations for Expression of Interest (EoIs) in Form-G were published on 27.06.2020, consequent thereupon no resolution plan was received. However, the CoC in its 3rd meeting dated 02.09.2020 passed a resolution to issue fresh Form G for the second time and the



revised eligibility criteria was also approved by the CoC in the said meeting. Consequently, pursuant to the decision taken by the CoC in the 3rd CoC meeting dated 02.09.2020, the Applicant published the fresh EOI /Form G on 04.09.2020 wherein the last date of receipt of the EOI was fixed as 25.09.2020

8. In pursuance thereto, the resolution professional received Six EoIs for submission of the Resolution plan. The PRAs who have submitted EoIs are given as under:-
 - 1) Dawar Infrabuild Pvt. Ltd.
 - 2) Panchhi Constructions Private Limited.
 - 3) Prabhat Warehouse and Cold Storage Private Limited
 - 4) Sirius Foods Private Limited
 - 5) New Rama Chair Pvt Ltd
 - 6) Mr. Manesh Agarwal (Suspended Director)
9. Two Resolution Applicants *viz, Sirius Foods Private Limited, and Consortium of Prabhat Warehouse and Cold Storage Private Limited and Mr. Ajay Gupta* submitted their Resolution Plan which was put for consideration before CoC in the 7th CoC meeting dated 29.09.2021. Pursuant to the 7th COC meeting, Applicant received revised Resolution Plan from both the Prospective Resolution Applicants wherein inter alia the resolution amounts were raised by both the Prospective Resolution Applicant. The copy of said revisions in the resolution Plan was duly sent to the Suspended Directors of the Corporate debtor. The revised Resolution Plan received from the Successful resolution Applicant was put before 8th COC meeting.
10. During the 8th COC meeting held on 02.11.2021, the sole COC member sort time for taking in-principal approval. Resolution applicants were given time only for removing defects in the resolution. Pursuant to the 8th COC meeting, request for modification was received by the Resolution Professional from Mr Ajay Gupta which was denied. Aggrieved by this decision of the Resolution Professional, the Consortium of Prabhat Warehouse and Cold storage Private Limited and Mr Ajay Gupta moved an application before this adjudicating authority, which was allowed. Thus, both resolution applications were allowed to place modification within 48



hours of this order. Subsequent to this order, second addendum to the resolution plan was received from Successful Resolution Applicant. The resolution professional went through these modifications and gave his prima facie opinion that the amendment submitted by both resolution applicants were in compliance with Section 30 and 29A of the Code.

11. After due discussions and deliberations on various occasions, in the 9th COC meeting dated 22.12.2021, final plan was received by M/s Sirius Foods Private Limited, which was accepted by COC. The CoC also deliberated in accordance with Section 30(2), 30(4) and 30(6) of the Code read along with CIRP Regulations, 2016. The e- voting on the compliant resolution plan commenced at 04:45 PM on 22.12.2021 and concluded at 05:15 PM on 25.12.2021.
12. The Resolution Plan submitted by the Successful Resolution Applicant i.e. Sirius Foods Private Limited was approved by a majority of 100% voting share by the CoC in the 9th COC meeting dated 22.12.2021. The 10th COC meeting was conducted on 30.12.2021 and the application for approval of the resolution plan by this Adjudicating Authority was filed by the RP on 02.01.2022. The relevant portion of the 9th COC meeting dated 22.12.2021 is reproduced hereunder:-

Resolution No 01:

“**RESOLVED THAT** Pursuant to the provisions of Section 30(3) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the Resolution Plan of M/s Sirius Foods Private Limited, placed before the sole COC member be and is hereby approved.

RESOLVED FURTHER THAT pursuant to the provisions of Section 30(6) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under, the Resolution Professional be and is hereby authorized to submit the Resolution Plan as approved by the Committed of Creditors to the Hon’ble Adjudicating Authority



and to do all such acts, deeds and things as may be required or considered necessary or incidental thereto in connection with.”

The COC Member apprised the reasons of approving the resolution plan of company M/s Sirius Food Pvt. Ltd, as below.

- a. The Resolution Applicant namely Sirius Food Pvt Ltd will be paying resolution debt amount of Rs 16.75 Cr. As upfront payment with 60 days approval of NCLT and Rs.0.5 crore in 180 days.
- b. Resolution Applicant appears to be in the similar lines of business.
- c. Bank has approved plan as per norms.

The sole COC Member i.e. Bank of India voted in favour of the Resolution by 100% votes.

Therefore, the Resolution was declared as ***Approved by 100% voting right.***

13. This Adjudicating Authority has granted extensions and exclusion twice in the whole CIR Process which are elaborated as follows:
 - i. 03.06.2020 on IA 126/2020(extension of 90 days + exclusion of time period due to Covid-19 lockdown as per Central Government order since 25.03.2020)
 - ii. 20.09.2021 on IA 277/2021 (exclusion of 409 days + 128 days due to Covid-19 lockdown in pursuance of order dated 03.06.2020 as mentioned in IA 277/2021 and allowed in this order)
14. A compliance Certificate in terms of prescribed Form H under regulation 39 (4) of the CIRP Regulations was also filed before this Tribunal
15. As per the revised FORM H, the fair value of the corporate debtor is **Rs. 25.03 Crores** and the liquidation value is **Rs. 17.87 Crores** as per the registered valuers report.

Details of Resolution Plan/Payment Schedule

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16. The successful Resolution Applicant i.e. M/s Sirius Foods Private Limited is a company engaged in the frozen food market and they are in aforesaid market since 40 years. The Resolution Plan states the cause of the default of Corporate Debtor due to Low Liquidity, High Dependency on credit, Lack of experience in export, Lack of Financial Discipline, Lack of necessary adjustment with regard to climate conditions, Lack of Proper management, Lack of distribution capability, High input cost. The resolution applicant states that through better management control, infusion of additional funds for working capital and bringing down the total debt to a sustainable level, it endeavours to turn around the company by improving its top line and bottom line, for which a viable and workable resolution plan has accordingly been prepared and the successful Resolution Applicant has the capability for effective implementation of the Plan.
17. The amount proposed in the Resolution Plan are tabulated below:

Sl. No.	Types of debts	Resolution Amount (In Crores)	Payment Term
1.	CIRP Cost	1.0	The actual amount proposed to be paid in full and in priority within 30 days of approval of Resolution Plan by the Adjudicating Authority.
2.	Financial Creditors	16.27	<ul style="list-style-type: none">• 15.75 Cr to be paid within 30 days from the Cut-off date• 0.5 Cr to be paid within 180 days from the Cut-off



Sl. No.	Types of debts	Resolution Amount (In Crores)	Payment Term
			date. • 0.02 Cr provisioned for interest on deferred payment
3.	Operational Creditors (Trade payables)	NIL	NIL
4.	Workmen/ Employees	NIL	NIL
5.	Contingent Liabilities (Non Statutory)	NIL	NIL
6.	Statutory Dues as per Information Memorandum	NIL	NIL
7.	Infusion of funds for Capex	10	To be infused progressively as and when required

Estimated Total Amount Proposed to be brought in the Corporate Debtor for the turnaround of the Corporate Debtor:-

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S.No	Particulars	Rs. (In Crores)
A	CIRP Cost	1.00
B	Upfront cash payment to the Financial Creditors to be paid within 30 days from the Cut-Off date	15.75
C	Total Upfront Cash Payment as part of Resolution Plan (A+B)	16.75
D	Deferred payment to the Financial Creditors to be paid within 180 days from the Cut-Off date	0.5
E	Provision of interest with regard to deferred payment to the Financial Creditors	0.02
F	Workmen & Employee /due/claim retirement benefit	NIL
G	Operational Creditor	NIL
H	Other Creditors	NIL
I	Payment to outside party (C+D+E+F+G+H)	17.27
J	Repairs /Refurbishment (To be brought through equity)	5.00
K	Working capital margin (To be brought through equity)	5.00
L	Total Fund Required(I+J+K)	27.27

Sources of Funds

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18. The overall Resolution Plan is for a total amount of approximately Rs. 27.27 Crores which shall be funded with a mix of Equity/Preference Shares and unsecured loan/ Inter corporate deposit/ other loan from the Resolution Applicant. In case this amount becomes short, the shortfall amount may also be infused by the Resolution Applicant with a mix of Equity/Preference Shares and unsecured loan/ Inter corporate deposit/ other loan.

The above requirement will be met out of the following sources:

Time Period	Equity/Preference Shares (In Cr.)	Unsecured loan/ inter corporate deposit/ other loan (In Cr.)	Utilization
Upfront Payment Within 30 Days from the cut-off date	7	9.75	Towards CIRP Cost and payment to financial creditors
Within 180 Days from the cut-off date	10.52	NIL	Towards creditors Financial and towards Refurbishment, repairs & maintenance, and start-up expenses

Compliance of the successful Resolution Plan with various provisions:

19. 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 30(2) of the Code:

Section 30(2) of Insolvency and Bankruptcy Code, 2016	Compliance under Resolution Plan	Relevant Page Number of Section 30 Application
(a) Plan must provide for payment of CIRP cost in priority to repayment of other debts of the CD in the manner specified by the Board.	Provided in Clause 5.1.2 of the Resolution Plan read with Clause 6.7 of Resolution Plan	5.1.2.- Page 354 (Page 16 of Resolution Plan) 6.7.- Page 568 and 569 (Page 4-5 of 2 nd Addendum dated 15.12.2021 to Resolution Plan)
(b) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than	Not Applicable as there are no Operational Creditors.	
(b)(i) the amount payable to them in the event of liquidation u/s 53; or	Not Applicable as there are no Operational Creditors.	
(b)(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which	Not Applicable as there are no Operational Creditors.	



shall not be not less than 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		
b (iii) provides for 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.	Not Applicable as there is only one Financial Creditor who has voted in favour of the Resolution Plan with 100% voting rights.	
(c) Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Provided in clause 8.2 and 8.3 of Resolution Plan	Page 373-376 (Page 35-38 of Resolution Plan) read with Page 544 (Page 10 of 1 st Addendum dated 23.10.2021)
(d) Implementation and Supervision.	Provided in clause 8.3 of Resolution Plan	Page 373-375 (Page 35-37 of Resolution Plan) read with Page 544 (Page 10 of 1 st Addendum dated 23.10.2021)



(e) Plan does not contravene any of the provisions of the law for the time being in force.	Provided in clause 11.7 of the Resolution Plan	Page 403 (Page 65 of Resolution Plan)
(f) Conforms to such other requirements as may be specified by the Board.	Provided in the different parts of the Resolution plan	

Measures provided in Resolution Plan in terms of Regulation 37 of CIRP Regulations.

Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Compliance under Resolution Plan	Relevant Page Number of Section 30 Application
a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed by the Resolution Applicant. Only transfer of shareholding in the name of Resolution Applicant is proposed.	
b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed by the Resolution Applicant.	
ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not proposed by the Resolution Applicant.	

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c) the substantial acquisition of shares of the corporate debtor, or the merger or the consolidation of the corporate debtor with one or more persons;	The Resolution Applicant Proposes to acquire entire shareholding of the corporate debtor post approval of Resolution Plan as specified under Clause 8.5 of Resolution Plan	Page 376 (Page 38 of Resolution Plan)
ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Not proposed by the Resolution Applicant.	
d) satisfaction or modification of any security interest;	Provided in Clause 6.5.5 of Resolution Plan	Page 568 (Page 4 of 2 nd Addendum dated 15.12.2021 to Resolution Plan)
e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	A specific averment in this regard Provided in clause 9.22 of the Resolution Plan.	Page 390 (Page 52 of Resolution Plan)
f) reduction in the amount payable to the creditors;	Provided in Clause 5.2.1. read with Clause 6.7	5.2.1.- Page 354-355 (Page 16-17 of Resolution Plan) 6.7.- Page 568-572 (Page 4-8 of 2 nd Addendum dated 15.12.2021 to Resolution Plan)



g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not proposed by the Resolution Applicant.	
h) amendment of the constitutional documents of the corporate debtor	Not proposed by the Resolution Applicant. Only change in management and shareholders is proposed.	
i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not proposed by the Resolution Applicant.	
j) change in portfolio of goods or services produced or rendered by the corporate debtor;	Provided in Clause 9.5 of Resolution Plan	Page 379 (Page 41 of Resolution Plan)
k) change in technology used by the corporate debtor; and	Not proposed by the Resolution Applicant.	
l) Obtaining necessary approvals from Central and State Governments and other authorities	Provided in Clause 9.21 of Resolution Plan	Page 389-390 (Page 51-52 of Resolution Plan)



Mandatory contents of Resolution Plan in terms of Regulation 38(1) of CIRP Regulations:

Regulation 38(1) and (2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Compliance under Resolution Plan	Relevant Page Number of Section 30 Application
38(1)(a) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors	Operational creditors - NIL Hence Not Applicable	
38 (1) (b)The amount payable under a resolution plan - (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.	NOT Applicable as Sole COC Member voted in favour of Resolution Plan	



38 (1A) Shall include a statement as to how it has dealt with the interests of all the stakeholder, including financial creditors and operational creditors of the Corporate Debtor	An undertaking in this regard has been provided. Clause 11.1 of Resolution Plan	Page 402 (Page 64 of Resolution Plan).
38 (1B) Shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past;	An undertaking in this regard has been provided. Clause 11.2 of the Resolution Plan	Page 402 (Page 64 of Resolution Plan).
38 (2)(a) shall provide for the term of the plan and its implementation schedule	Term of Plan is provided in Clause 8.1. Implementation schedule with regard to the payment of Financial Creditor and CIRP cost has been provided at Clause 6.5.2 and Clause 6.7.	Page No. 566 (Page 2 of 2 nd Addendum dated 15.12.2021) 6.5.2.- (Page No. 566 and 567) 6.7.- (Page No. 568-572) 7.2.- Page 574 (Page 10 of 2 nd Addendum dated 15.12.2021)

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	Further, the Resolution Plan provides for funding pattern in the Sources of Fund at Clause 7.2.	
38 (2)(b) shall provide for the management and control of the business of the Corporate Debtor during its term	<p>The implementation provisions are mentioned in the Resolution Plan and outlined in Clause 8.3. Implementation and supervision of the resolution plan has been provided.</p> <p>The Resolution plan proposes to constitute a monitoring Committee for the purpose of supervising and monitoring the progress in the implementation of the Resolution Plan Proposed. It shall constitute of the following members (refer to clause 8.3.3 at page):-</p> <ol style="list-style-type: none">i. Resolution Professional (Chairman)ii. One member nominated by Bank of India	Page No. 373-375 (Page 35-37 of Resolution Plan) read with Page 544.



	<p>iii. One member nominated by the Resolution Applicant</p> <p>Clause 8.3.4 provides for necessary representation by the nominee of the Resolution Applicant in order to form valid quorum. The said clause further provides for 7 days clear notice.</p>	
<p>38 (2)(c) Shall provide for the adequate means for supervising its implementation.</p>	<p>Provided as aforesaid</p>	<p>Page No. 373-375 (Page 35-37 of Resolution Plan) read with Page 544.</p>



<p>38 (3) A resolution plan shall demonstrate that –</p> <p>(a) it addresses the cause of default;</p> <p>(b) it is feasible and viable;</p> <p>(c) it has provisions for its effective implementation;</p> <p>(d) it has provisions for approvals required and the timeline for the same; and</p>	<p>(a) Provided in Clause 6.1 & 6.2 of Resolution Plan</p> <p>(b) Statement with regard to viability and feasibility has been made. Clause 6.4 of Resolution Plan</p> <p>(c) The Resolution Applicant has provided for the effective implementation under Clause 8.3 of the Resolution Plan.</p> <p>(d) Time of one year from the cut-off date or as required under the respective law whichever is more shall be provided for obtaining all necessary approvals, licenses and permissions (Including but not Privileged & Confidentiality to pollution/environment approvals) for running the Corporate Debtor in accordance with Section 31(4) of the</p>	<p>Page 356 (Page 18 of Resolution Plan)</p> <p>Page 358 (Page 20 of Resolution Plan)</p> <p>Page No. 373-375 (Page 35-37 of Resolution Plan) read with Page 544.</p> <p>Page 389-390 (Page 51-52 of Resolution Plan)</p>
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(e) the resolution applicant has the capability to implement the resolution plan.	Code provided at Clause 9.21 of the Resolution Plan (e) A specific averment in this regard Provided in clause 9.30 of the Resolution Plan.	Page 547 (Page 13 of 1 st Addendum dated 23.10.2021)
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20. The Applicant submits that the successful resolution applicant has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the successful Resolution Applicant, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations. The affidavit under section 29 A is at pg no 551 in the application which is reproduced there under:-

“ 2. I state that the present affidavit is sworn by me on behalf of the Resolution Applicant, in compliance of section 29A of the IBC.

“3. I on behalf of the Resolution Applicant and any other person acting jointly or in concert with the Resolution Applicant hereby confirm that:

- (i) The Resolution Applicant and any connected person as per the Explanation I provided under Section 29A of the IBC is not an undischarged insolvent; or
- (ii) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC, is not identified as a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949; or



- (iii) At the time of submission of the Resolution Plan, the account of the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC or an account of the corporate debtor under the management or control of such person of whom such person is a promoter, IBC is not classified as nonperforming asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or guidelines of a financial sector regulator issued under any other law at the time being in force and at least a period of one year or more has lapsed from the date of such classification till the date of commencement of corporate insolvency resolution process of the corporate debtor and that I have not failed to make the payment of all overdue amount with interest thereon and charged relating to non-performing asset before submission of Resolution Plan; or
- (iv) The Resolution Applicant and any connected person as per Explanation 1 provided under Section 29A of the IBC have not been convicted for any offence punishable with imprisonment for 2 years or more under any Act specified in the Twelfth Schedule or for seven years or more under any law for the time being enforce or a period of two years has expired from the date of release of such imprisonment; or
- (v) The Resolution Applicant and any connected person as per Explanation one provided under section 29A of the IBC have not been disqualified to act as a director under the Companies Act, 2013 or
- (vi) The Resolution Applicant and any connected person as per

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explanation one provided under Section 29A of the IBC have not been prohibited by the Securities and Board of India from trading in securities or assessing the securities markets or

- (vii) The Resolution Applicant and any connected person as per explanation one provided under Section 29A of the IBC have not indulged in preferential transaction or under value transaction or fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under the IBC or
- (viii) The Resolution Applicant and any connected person as per explanation one provided under Section 29A of IBC have not executed a guarantee in favour of creditor, in respect of Corporate Debtor against which an application for insolvency resolution made by such creditor has been admitted under the IBC and no such guarantee has been invoked by the creditor or remain unpaid in full or part or.
- (ix) The Resolution Applicant and any connected person as per explanation one provided under Section 29A of IBC are not subject to any disability, corresponding to clauses mentioned above under any law in a jurisdiction outside India.
 - (i) That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as required under CIRP Regulations.
 - (ii) That the Resolution Applicant unconditionally and



irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as per the provision of the CIRP and the rules and regulations framed thereunder to submit a resolution plan that it shall provide all documents representation and information as may be required by the RP or the COC to substantiate the satisfaction of the RP and the COC that the Resolution Applicant is eligible under the IBC and the rules and regulations thereunder to submit a resolution plan in respect of corporate debtor.

- (iii) That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall provide all data, documents and information as may be required to verify the statement made under this affidavit.
- (iv) That the Resolution Applicant understand that the COC and the RP may evaluate the resolution plan to be submitted by the Resolution Applicant or any other person acting jointly with it and such evaluation shall be on the basis of the confirmation representation and warranties provided by the Resolution Applicant under this affidavit.
- (v) That the Resolution Applicant agrees that each member of the COC and the RP are entitled to rely on the statement and affirmation made in this affidavit for the purpose of determining the eligibility and assessing, agreeing and approving the Resolution Plan submitted by the Resolution Applicant.
- (vi) That in the event in any of the above statement are found to be untrue or incorrect, then the Resolution Applicant



unconditionally agrees to indemnified and hold harmless the RP and each member of the COC against any losses, claims or damages incurred by the RP and/or the member of the COC on account of such in eligibility of the Resolution Applicant.

- d. If at any time after the submission of this affidavit and before the approval of the Resolution Applicants resolution plan by the Adjudicating Authority under the IBC, the Resolution Applicant becomes in eligible to be a Resolution Applicant as per the provisions of the Code (and in particular section 29A of the IBC), the fact of such in eligibility shall be forthwith brought to the attention of the RP and the COC.

21. The Applicant has filed a Compliance Certificate in prescribed Form, i.e. Form 'H' in compliance with Regulation 39(4) of the CIRP Regulations. The RP has issued the Letter of Intent to the Successful Resolution Applicant and the Successful Resolution Applicant provided the Performance Bank Guarantee of Rs. 2,00,00,000/- (Rupees Two Crores Only) through Bank Guarantee dated 27.09.2021 is annexed as Annexure-30 at pg no 592 which is required under Regulation 36B (4A) of CIRP Regulations, 2016. It is submitted by the RP that the PBG expires on 30.06.2022 but it is also provided in the resolution plan that the claim date for PBG is 30.06.2023 and hence, after its expiry on 30.06.2022, the additional claim period of 365 days will apply thereafter.

Details of Resolution Plan/ Payment Schedule

22. The Applicant submits the relevant information about the amount claimed, the amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant, *i.e.*, ***Sirius Foods Private Limited***. under the said Resolution Plan which is tabulated as under:



Sl. No.	Types of debts	Resolution Amount (In Crores)	Payment Term
8.	CIRP Cost	1.0	The actual amount proposed to be paid in full and in priority within 30 days of approval of Resolution Plan by the Adjudicating Authority.
9.	Financial Creditors	16.27	<ul style="list-style-type: none">• 15.75 Cr to be paid within 30 days from the Cut-off date (upfront cash payment)• 0.5 Cr to be paid within 180 days from the Cut-off date. (deferred payment)• 0.02 Cr provisioned for interest on deferred payment
10.	Operational Creditors (Trade payables)	NIL	NIL



Sl. No.	Types of debts	Resolution Amount (In Crores)	Payment Term
11.	Workmen/ Employees	NIL	NIL
12.	Contingent Liabilities (Non Statutory)	NIL	NIL
13.	Statutory Dues as per Information Memorandum	NIL	NIL
14.	Infusion of funds for Capex	10	To be infused progressively as and when required

23. The Resolution plan size is approximately of **Rs.17.27 Cr.** (Rupees Seventeen crores and Twenty- seven Lakhs). The remaining amount of **Rs.10 Cr.** as included in the plan, is by way of raising equity in future by The Successful Resolution Applicant. The **“Effective Date”** will be the date on which the Adjudicating Authority approves the Resolution Plan.

Details on Management and Implementation as per the Resolution Plan

24. The Resolution Plan also provides for details of management and control, implementation and supervision of the Resolution Plan and term of plan and the same is already set out in Para 8.2 and 8.3 *supra*.

Details on fraudulent and avoidance transaction

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25. In the 1st addendum to the resolution plan, in clause 9.29 at page no.546 of the application IA 03/2022, it has been provided that:

“9.29. The Financial Creditor shall be entitled to receive any recovery made pursuant to any avoidance application filed by the Resolution Professional prior to the Cut-off date subject to the deduction of the cost/expenses/taxes and such other lawful deductions which has been incurred by the Resolution Applicant/Corporate Debtor for such recovery. Further, Resolution Applicant shall not be responsible to pursue any such avoidance application and it shall be the responsibility of financial creditor/Bank of India to pursue such avoidance application and cost of pursuing such avoidance application will be borne by Financial Creditor/Bank of India. However, The Resolution Applicant and/or Corporate Debtor undertakes to provide all reasonable and necessary support as may be sought from the Financial Creditor in pursuing such avoidance applications subject to the reimbursement of the cost incurred towards providing such assistance/support by the Financial Creditor/Bank of India.”

Waivers, Reliefs and Exemptions

26. The SRA has prayed for the reliefs, waivers and concessions as enumerated in the Resolution Plan approved by the CoC as under:-

“i . Neither the Resolution Applicant nor any of its affiliates, shall be disqualified from or considered ineligible under the IBC for proposing and or implementing a plan in relation to the insolvency



resolution of any person merely on account of the implementation of this Resolution Plan by the Resolution Applicant.

- ii. Any assets in the financial statement (including fixed assets, loans, advances, deposits, current assets, non-current assets, or any other assets of any nature) of “PL” which is considered as not recoverable realizable, and written off shall be allowed as expenses under the Companies Act, Income Tax Act.
- iii. Approval for the satisfaction of all charges in ROC apart from secured financial Creditors whose claims are admitted shall be granted.
- iv. May be allowed to file separate/fresh application for reliefs and concession with regard to any matter which may come to the notice of the Resolution Applicant after submission of this binding plan before CoC and such reliefs and concession necessary for successful implementation of Resolution Plan may be granted.”

Any order passed by NCLT or Higher Judicial Authority.

Sr. No.	Authority	Order dated	Bearing on CIRP
1.	NCLT, Allahabad Bench	22.10.2019 (CP(IB)/349/ALD/2018)	Section 7 Petition against the Corporate Debtor admitted by NCLT
2.	Hon’ble NCLAT	18.11.2019	Stay on CIRP from 18.11.2019 to 28.02.2020 on an appeal against order dated 22.10.2019 by the Suspended directors.
3.	Hon’ble NCLAT	28.02.2020 (CA. (AT) (Ins) 1182 of 2019)	Appeal of Suspended Director dismissed.
4.	Hon’ble Supreme Court	14.10.2020 (Civil Appeal No. 3183/2020	Stay on CIRP Proceedings from 14.10.2020 to 17.08.2021 granted while entertaining Appeal by Suspended director against order dated 28.02.2020 passed by NCLAT

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5.	NCLT Allahabad Bench	13.12.2021	The Adjudicating Authority granted both the Resolution Applicants to submit Second Addendum to Resolution Plan on an application filed by the unsuccessful PRA.
6.	Hon'ble NCLAT	13.01.2022 (CA. (AT)(Ins) 35 of 2022	The Appellate Tribunal dismissed the Appeal filed by the unsuccessful PRA
7.	Hon'ble Supreme Court	07.02.2022 (Diary No. 2729/2022	The Hon'ble Supreme Court declined to grant leave to file an appeal by suspend director against order dated 13.01.2022
8.	Hon'ble Supreme Court	25.02.2022 (Civil Appeal No.1385/2022	Order dated 13.12.2021 passed by Hon'ble NCLT Allahabad Bench was affirmed by Hon'ble Supreme Court
9.	Hon'ble Allahabad High Court, Lucknow Bench	23.08.2022 (Writ Petition (WRIT-C) No. 5464/2022- Manesh Agarwal V. Managing Director, Bank India)	Hon'ble HC refused to stay the proceedings before NCLT, Allahabad Bench by recording the same in the order.

Analysis & Findings

27. On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC with 100% of the members voting in favour of the Resolution Plan. As per the CoC, the Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

28. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 37, 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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29. The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws.
30. It may be clarified that litigations wherever pending against the corporate debtor would be governed by Section 32A of the Code.
31. It may be noted that the Successful Resolution Applicant has given an undertaking by way of an affidavit dated 07.11.2022 filed vide Diary No.173 dated 18.11.2022 and undertakes to pay PF and gratuity dues up to the date of the approval of the resolution plan in compliance of judgment of *Sikandar Singh Jamval v. Vinay Talwar [Company Appeal (AT) (Ins.) 483 of 2019], judgement dated 11.03.2022*
32. As far as the question of granting time to comply with the statutory obligations/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.
33. In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount of Rs. 1 Lakh already paid by the Resolution Applicant as well as the Performance Bank Guarantee of Rs. 2 crores.
34. The avoidable transaction application, IA 201/2020 shall be continued to be pursued by the Financial Creditor (Bank of India) after approval of this Resolution Plan and the benefits accruing, if any from avoidance transaction application shall accrue to the Financial Creditor (Bank of India). However, it is submitted by SRA in Resolution Plan that necessary help in this respect to Financial Creditor (Bank of India) shall be provided by the SRA/Corporate Debtor.
35. Vide a separate order dated 29.03.2022, the IA No.30/2022 filed by the suspended director challenging the Plan has been ordered to be dismissed.

Orders

36. Subject to the observations made in this Order, the Resolution Plan of **Rs.17.27 Cr.**

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(Rupees Seventeen crores and Twenty- seven Lakhs) (containing the mandatory contents of Resolution Plan in terms of Regulation 38(1), is hereby approved as per Section 31(1) , after satisfying ourselves that the resolution plan as approved by the COC under sub- section (4) of Section 30 on 22. 12.2020 meets the requirements as referred to in subsection (2) of Section 30. The remaining amount of Rs.10 Cr. as included in the plan, by way of raising equity in future by The Successful Resolution Applicant, is also hereby allowed. Thus, entire Resolution Plan of Rs 27. 27 crores as presented before us by the RP is approved. The Resolution Plan shall form part of this Order.

37. The reliefs, concessions and waivers sought/prayed by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws including Companies Act, 2013 and Income Tax Act, 1961, etc.
38. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
39. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
40. Financial Creditor (Bank of India) shall continue to pursue the avoidable transaction application IA 201/ 2020 and all the benefits accruing, if any, from such avoidance transactions application shall accrue to Financial Creditor (Bank of India). However, necessary help in this respect to Financial Creditor (Bank of India) shall be provided by the SRA/Corporate Debtor.
41. **IA No. 03/2022** and the main Company Petition, *i.e.*, CP (IB) No.349/ALD/2018 shall stand ***disposed of*** accordingly.
42. Liberty is hereby granted for moving appropriate application if required in connection with implementation of this Resolution Plan.
43. A copy of this Order shall be filed by the Resolution Professional with the Registrar

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44. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
45. The Resolution Professional is further directed to hand over all records, premises/factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalise the further course of action required for starting of operations of the Corporate Debtor.
46. The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
47. The registry is further directed to send the copy of the order to the IBBI also for their record.
48. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
49. File be consigned to the record.

-Sd-

Ashish Verma
Member (Technical)

-Sd-

Praveen Gupta
Member (Judicial)

Aditi Kharbanda
(LRA)

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