

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

**IA No. 150/2020**

**IN**

**CP.NO(IB) 42/ALD/2019,**

*(Under Section 30 (6) of Insolvency and Bankruptcy Code, 2016) (r/w Regulation  
39(4) of Insolvency and Bankruptcy Board of India ( Insolvency Resolution  
Process for Corporate Persons) Regulation, 2016)*

**IN THE MATTER OF:**

**Corporation Bank**

**..... Financial Creditor**

**v/s**

**Multiwal Duplex Pvt Ltd.**

**..... Corporate Debtor**

**AND IN THE MATTER OF:**

**Manish Agarwal  
(Resolution Professional)**

**..... Applicant**

**ORDER DELIVERED ON : 16.12.2020**

**CORAM:**

**Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial**

**For the Resolution Professional: Mrs. Babita Jain; Advocate  
For the Respondent: Mr. Gaurav Dwivedi; Advocate**

**Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)**

**ORDER**

1. The instant application is filed under Section 30 (6) & 31(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (CIRP Regulations) for seeking approval of Adjudicating Authority, under Section 31 of the IBC, of the resolution plan submitted by the successful resolution applicant i.e **M/s Marina India Traexim Pvt Ltd.**



2. The Corporate Insolvency Resolution Process ("CIR Process") of the Corporate Debtor was initiated vide order of this tribunal dated 12.09.2019 upon admission of an application filed by the Financial Creditor under Section 7 of the Code and Mr. Manish Agarwal was appointed as the IRP who was later confirmed as RP during 1<sup>st</sup> CoC meeting dated 11.10.2019.
3. Accordingly, the RP published the Form G in "The Pioneer" in English Newspaper in English language dated 15.09.2019 and "Shah Times" in Hindi Newspaper in Hindi language dated 15.09.2019. After verification of claims received pursuant to the Public Announcement within 7 days from the last date of receipt of the claims and made list of creditors available for inspection and filed the list of creditors with this Tribunal on 05.10.2019.
4. Further, the Resolution Professional issued Form-G inviting Expression of Interest to put forward Resolution Plan for the Corporate Debtor on 31.10.2019. In response to Form G the RP received emails from 3 persons seeking expression of interest to which RP has provided the document to the aforesaid persons.
5. Further, in pursuance to Form-G for invitation of Expression of Interest, the Resolution Professional received one Resolution Plan from M/s Marinaindia Traexim Pvt Ltd. Which was being negotiated and deliberated by CoC in its Third to Seventh Meetings and thereafter put to vote in accordance with the final deliberations held in Seventh Meetings of CoC on 23.03.2020 which was passed with 100% Voting rights as under:

Sl. No.	Name of the Creditor	Voting Rights	Votes in favour (%)	Votes for against (%)
1.	Corporation Bank	31.35	31.35	-
2.	Punjab National Bank	30.29	30.29	-
3.	Phoenix Arc Pvt Ltd.	38.36	38.36	-

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	<b>Total</b>	<b>100</b>	<b>100</b>	
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6. It is stated that, under Regulation 39(4) of the CIRP Regulations, the Resolution Professional is required to submit the Resolution Plan approved by the CoC to this Tribunal at least 15 days before the maximum period for completion of the CIRP period under Section 12, alongwith the compliance certificate. In the present case, the CIRP ends on 10.03.2020, however the extension application has been submitted to this Tribunal upto 25.03.2020 for 15 days beyond 180 days. The 7<sup>th</sup> COC meeting wherein the Resolution plan was discussed was raised on 23.03.2020 and thereafter put for voting. The voting was concluded on 31.05.2020. Because of nationwide lockdown due to pandemic Corona Virus COVID-19 which period was prayed to be excluded.
7. Accordingly, the Resolution Professional has filed the present application seeking approval of the Resolution Plan in terms of Section 31(1) of the Code.
8. Heard the Ld. Counsel for the Applicant and perused the record available.
9. The Resolution Professional has examined the Resolution Plan and has found it to be in compliance with Section 30 (2) of the IBC read with Regulation 38 of the CIRP Regulations. In accordance with Regulation 39 (4) of the CIRP Regulations, the Resolution Professional vide his Affidavit certified that:
- a) The contents of the Resolution Plan submitted by **M/s Marinaindia Traexim Pvt Ltd** meet all the requirements of the IBC and the Regulations thereunder; and

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b) The Resolution Plan submitted by **M/s Marinaindia Traexim Pvt Ltd** has been approved by the Committee of Creditors by 100% voting share under Section 30 (4) of the IBC in its meeting.

c) Further, Resolution Professional has submitted compliance certificate in Form-H as required under Regulation 39(4) of the CIRP regulations, *interalia*, certifying eligibility of Resolution Applicant under Section 29 A of the Code and feasibility & viability of the Resolution Plan.

10. Sub-section 2 of Section 30 of the Code reads as under;

*"The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan-*

*a) Provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the Corporate debtor;*

*b) Provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;*

*c) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan;*

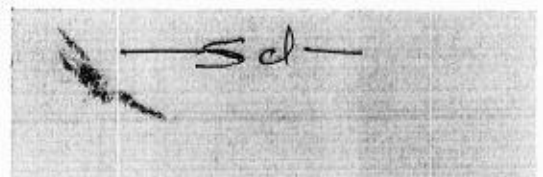
*d) The implementation and supervision of the resolution plan;*

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

*f) Confirms to such other requirement as may be specified by the Board."*

Further, Regulation 38 & 39 of CIRP Regulations specify certain mandatory contents of the resolution plan.

11. The resolution plan approved by the Committee of Creditors meets the requirements laid down in various Clauses of Section 29 A and Sec 30 (2) as per the compliance table below:



Section	Requirement	Compliance (yes/no)
Section 29 A	The resolution applicant is eligible to submit resolution plan as per final list of resolution professional or order, if any, of the Adjudicating Authority	Yes
Section 30	(1)The resolution Applicant has submitted an affidavit stating that he is eligible u/s 29A to the Resolution Professional prepared on the basis of information memorandum.	Yes, the Resolution Applicant submitted affidavit 29A
	(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan only one resolution plan received in the Insolvency resolution process of the CD)	
a)	Provides for payment of IRP cost in priority to repayment of other debts of C.D in the manner specified by the Board.	Yes, the Resolution Plan provided for the payment for CIRP cost in priority as per provisions of the Code. (Point 4.1 at page 11)
b)	Provides for repayment of debts of operational creditors (OCs) in such manner as may be specified by the Board, which shall not be less than the amount payable to them in the event of liquidation u/s 53.	The amount due to the Operational Creditors, shall be given priority in payment over financial creditors and shall be paid within 30 days after the approval of a Resolution Applicant by this Adjudicating Authority (Point 4.2 & 4.3 at page 11).
c)	Provides for management of the affair of the CD after approval of the resolution plan.	After the closing date, the Resolution Applicant shall be the shareholders of the Corporate Debtor and the reconstitute board of the Corporate Debtor shall manage the business and

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		operations of the Corporate Debtor. (Point 8 at page 16).
d)	Implementation and Supervision of resolution plan	The implementation of the Plan until the final payment shall be jointly supervised by the monitoring committee till the final payment of the resolution plan. The monitoring committee shall comprise of: <ul style="list-style-type: none"> <li>- A representative or an advisor of the financial creditor (CoC) (other than the relative party).</li> <li>- A representative of the Resolution Applicant and the Resolution Professional (an IBBI registered insolvency professional). ( Point 7 at page 15).</li> </ul>
e)	Plan does not contravene any of the provisions of the law for the time being in force.	Resolution Plan has been prepared in terms of the provisions of IBC 2016 and amendments thereon and does not contravene any provisions of the Act.

12. The following table shows that the requirements of Regulation 38 & Regulation 39(2) CIRP Regulation are met by the approved plan:

Reference of relevant Regulations	Requirement	Compliance
37 (1) (1)	Obtaining necessary approvals from the Central and State Governments and other authorities.	Notwithstanding anything contained in this plan, the performance of the obligations of the Resolution Applicant under the plan is subject to the prior completion (unless waived in writing by the Resolution

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		<p>Applicant) of the conditions set out in the plan, to the satisfaction of the Resolution Applicant on the effective date, if the conditions set forth in this plan are not met to the satisfaction of the Resolution Applicant, this plan shall not be effective or operative and the Resolution Applicant shall have no obligations whatsoever under this plan or otherwise to any person, including having no obligation with respect to any bid bond guarantee, or any other obligation and each such guarantee shall be promptly returned to the Resolution Applicant.</p> <p>The plan envisages the following relieves and concessions from various statutory authorities (Point 10 at page 16 to 27).</p>
38(1)	The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over financial creditors.	The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over financial creditors and shall be paid within 30 days after the approval of Resolution Plan by this Adjudicating Authority (Point 4.2 at page 11).
38 (1A)	Plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of Corporate Debtor.	According to the list of the company as mentioned in information memorandum of the company, total claims filed by the financial creditors of the company amount to INR 126.57 Crores out of which claims aggregating to INR 126.57 Crores have been verified and admitted

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		<p>for the purpose of CIRP by the Resolution Professional ("Admitted Financial Debt"):</p> <ul style="list-style-type: none"> <li>- The verified and admitted claims of the secured financial creditors ("Secured Financial Creditors") amount to INR 126.57 Crores.</li> </ul> <p>Resolution Applicant has proposed a total amount of Rs. 13 Crores distributable in all financial creditor as per section 53 of IBC, 2016 for payment of liquidation value of security interest of secured creditors.</p> <p>Out of the above proposed amount of Rs.13 Crores, Rs. 3.25 Crore will be paid upfront within 30 days of the approval of the plan by this adjudicating authority and remaining Rs. 9.75 Crores will be paid within 90 days from the date of approval of Plan by this Adjudicating Authority ( Point 4.4 at page 12)</p>
38(1B)	<p>A Resolution Plan shall include a statement within details if the Resolution Applicant or any of its related parties have 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.</p>	<p>The Resolution Applicant has also submitted Resolution Plan in Multiwal Pulp &amp; Board Mills Pvt. Ltd. But still pending for approval of NCLT. By virtue of the same, no plan submitted by the Resolution Applicant has been approved by NCLT and neither resulted in failure of implementation (Point 2.6 at page 8).</p>

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38(2) (a)	Plan shall provide the term of the Plan and its implementation schedule.	On and with effect from the closing date and all encumbrances, security interest, liens and/or attachments (including pursuant to applicable law and particularly section 281 of the IT Act and Section 81 of the Central Goods and Services Tax Act, 1961) created or suffered to exist over the assets of the Corporate Debtor or over the securities of the Corporate Debtor, whether by contract or by applicable law, whether or not in favour of persons receiving settlements under this plan or those who have provided debt to any third party, shall stands unconditionally and irrevocably released and all enforcement proceedings commenced by any person over any of the assets of the Corporate Debtor or any subsidiary or over any securities of the Corporate Debtor shall stands released and reversed, without the requirement of any further deed or action on part of the Resolution Applicant or the Corporate Debtor (Point 7 at page 15)
38 (2) (b)	Plan shall provide for the management and control of the business of CD during its term.	Resolution Plan provides the management and the control of the business of the Corporate Debtor during the term. (Point 8 at page 16)
38(2) ( c)	Plan shall provide for adequate means for supervising its implementation.	The implementation of the Plan until the final payment shall be jointly supervised by the monitoring committee till the final payment of the resolution

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		<p>plan. The monitoring committee shall comprise of:</p> <ul style="list-style-type: none"> <li>- A representative or an advisor of the financial creditor (CoC) (other than the relative party).</li> <li>- A representative of the Resolution Applicant and the Resolution Professional (an IBBI registered insolvency professional). (Point 7 at page 15).</li> </ul>
38 (3)	<p>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>Resolution Applicants takes necessary steps to address the cause of defaults of the Corporate Debtor (Point 9 at page 16)</p> <p>Resolution Plan demonstrate that it is feasible and viable (Point 4.4 and 5 at page 12 and 13)</p> <p>The implementation of the plan until the final payment shall be jointly supervised by the monitoring committee till the final payment of the resolution plan. The monitoring committee shall comprise of:</p> <ul style="list-style-type: none"> <li>- A representative or an advisor of the financial creditor (CoC) (other than the relative party).</li> </ul> <p>A representative of the Resolution Applicant and the Resolution Professional (an IBBI registered insolvency professional). (Point 7 at page 15)</p>

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	<p>(d) It has provisions for approval required and the timelines for the same</p> <p>(e) The resolution applicant has the capability to implement the resolution plan</p>	<p>Notwithstanding anything contained in this plan, the performance of the obligations of the Resolution Applicant under the plan is subject to the prior completion (unless waived in writing by the Resolution Applicant) of the conditions set out in the plan, to the satisfaction of the Resolution Applicant on the effective date, if the conditions set forth in this plan are not met to the satisfaction of the Resolution Applicant, this plan shall not be effective or operative and the Resolution Applicant shall have no obligations whatsoever under this plan or otherwise to any person, including having no obligation with respect to any bid bond guarantee, or any other obligation and each such guarantee shall be promptly returned to the Resolution Applicant.</p> <p>The plan envisages the following relieves and concessions from various statutory authorities (Point 10 at page 16 to 27).</p> <p>The upfront payment of Rs.3.20Crores (Rs. 5 Lacs given already as earnest money) say 24.39% of the total payment shall be brought within 30 days of approval of resolution plan by this adjudicating authority and rest of the payment of Rs.9.75Crore shall be paid within</p>
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		90 days of approval of resolution plan by the Adjudicating Authority from existing liquidity of Resolution Plan is attached herewith (Pointe 5 at page 13)
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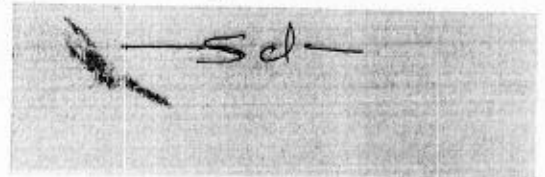
13. As per the list of the company as mentioned in information memorandum of the company, total claims filed by the financial creditors of the company amount to INR 126.57 Crores out of which claims aggregating to INR 126.57 Crores have been verified and admitted for the purpose of CIRP by the Resolution Professional ("Admitted Financial Debt").

- The verified and admitted claims of the secured financial creditors ("Secured Financial Creditors") amount to INR 126.57 Crores. Resolution Applicant has proposed a total amount of Rs. 13 Crores distributable in all financial creditor as per section 53 of IBC, 2016 for payment of liquidation value of security interest of secured creditors.

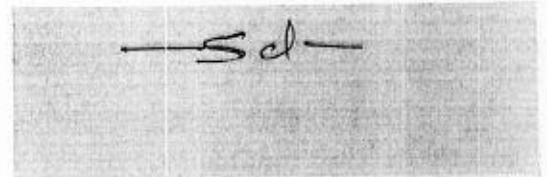
Out of the above proposed amount of Rs.13 Crores, Rs. 3.25 Crore will be paid upfront within 30 days of the approval of the plan by this adjudicating authority and remaining Rs. 9.75 Crores will be paid within 90 days from the date of approval of Plan by this Adjudicating Authority.

14. This bench directs the RP to act as the Monitoring Agency and thus appointed RP as "Monitoring Agency" to monitor and supervise the implementation of the Resolution plan and the remuneration of the monitoring agency shall be on Rs. 1,50,000/- plus taxes and out of pocket expenses at actual.

15. The Resolution Applicant is allowed to remove and/or substitute the Monitoring Agency with prior approval of this Adjudicating Authority if the Monitoring Agency is unable to satisfactorily perform its responsibilities or breaches terms of its appointment.



16. It is directed that the resolution plan so approved shall be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. With the approval of the resolution plan, the moratorium order passed by this Tribunal under Section 14 of the Code shall cease to have effect. The Resolution Professional is directed to forward all the record relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.
17. The Resolution applicant has to adhere to all the applicable law for the time being in force. The Resolution Applicant can seek clarifications, if any, from this Tribunal.
18. In view of the above discussion, the Resolution Plan submitted by *M/s Marinaindia Traexim Pvt Ltd.* is found in conformity of Section 30 (2) of the Code and the same is approved.
19. Accordingly, the resolution plan is hereby **approved** and IA 150/2020 is **disposed off.**



**JUSTICE RAJESH DAYAL KHARE**  
**MEMBER (JUDICIAL)**

**Dated: 16.12.2020**

Swati Gupta  
(LRA)