

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

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**IA No. 21/2020 in
TCP (IB) No. 35/10/AMR/2019
CP (IB) No. 188/10/HDB/2018**

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Dated 29th April 2020

The regular court proceedings have been suspended/closed as per Notice dated 22.03.2020 of NCLT, Principal Bench and subsequent follow up orders due to the COVID-19 pandemic. The order in this case is ready vide separate sheets. Resolution Professional (Applicant) is present in the Video Conference (VC). Order is pronounced through VC. IA allowed and Resolution Plan approved. No costs.

Upload the same into the NCLT website as per Circular dated 14.04.2020. A copy of the order may also be sent to the Registrar, NCLT for necessary action at his end.


MEMBER JUDICIAL

*NCLT Amaravati Bench
I A No. 21 of 2020 in
TCP (IB) No. 35/10/AMR/2019
[CP (IB) No. 188/10/HDB/2018]*

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**IA No. 21/2020 in
TCP (IB) No. 35/10/AMR/2019
[CP (IB) No. 188/10/HDB/2018]**

**In the matter of an Application under Section 30 (6) of the Insolvency
and Bankruptcy Code, 2016**

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In the matter of M/s Supraja Textiles Private Limited

Mr. J. Manivannan
Resolution Professional
For Supra Textiles Private Limited
Plot No.55B, 8/330, Vishalakshi Nagar,
Fourth Cross Street, Santhosapuram,
Chennai – 600 073.

... **Applicant**

Date of Order: 29.04.2020

CORAM:

Hon'ble Janab Mohammed Ajmal, Member Judicial

Appearance:

For Applicant: Mr. J. Manivannan, Resolution Professional.

ORDER

720 The Resolution Professional (in short the RP) in respect of Supraja Textiles Private Limited (the CD) seeks approval of the Resolution Plan (in short the Plan) in this Application under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (in short the Code) read with Regulation 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 (in short the Regulations).

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

i) This Authority vide its order dated 23.08.2018 directed initiation of Corporate Insolvency Resolution Process (CIRP) of the CD and appointed the Applicant as the Interim Resolution Professional (IRP). The Committee of Creditors (CoC) in its meeting on 25.09.2018, resolved to appoint him as the RP.

ii) The RP engaged two registered valuers under Regulation 27 of the Regulations, to determine the fair and liquidation value of the CD in accordance with Regulation 35 of the Regulations and prepared an Information Memorandum in accordance with provisions of Section 29 of the Code. The CoC approved the process and evaluation criteria for evaluating a Plan in accordance with requirements of the Code. The notice seeking Expression of Interest (EoI) was published in the New Indian Express (English Daily) and Andhra Jyothi (Telugu Daily) dated 07.01.2019 from prospective RAs. Last date for submission of EoI by the prospective RAs was 23.01.2019. In response four (4) prospective RAs furnished EoIs. The CoC evaluated all the proposals. Meanwhile, one of the Shareholders filed an Appeal before the Hon'ble NCLAT on 24.10.2018 challenging the CIRP. The same was dismissed by the Hon'ble NCLAT on 13.03.2019 for default.

iii) The term of the CIRP (180 days) was due to expire on 19.02.2019. The CoC in its second meeting on 27.12.2018 with 100% voting share authorised the RP to seek extension of the period of CIRP by 90 days. The RP filed IA No.112/2019 and the Authority by an order dated 14.12.2019 extended the period of CIRP by 90 days upto 19.05.2019. The CoC meeting held on 23.03.2019 discussed the Plan submitted by Priyanka Cotton Mill and requested them to enhance the bid value. In the fourth meeting of the CoC on 17.05.2019, Priyanka Cotton Mill submitted the revised Plan. The CoC decided to seek extension of CIRP period by 15 days beyond 270 days

(due to expire on 19.05.2019). The RP filed IA No. 430/2019 before the Adjudicating Authority on 20.05.2019 seeking extension. The Authority by an order dated 05.08.2019 rejected the prayer. The same was challenged before the Hon'ble NCLAT. The Hon'ble NCLAT by its order dated 22.10.2019 set aside the order and directed the CoC to consider the Plan preferably within three weeks. The Plan submitted by RA namely Sri Priyanka Cotton Mill was placed before the CoC in its 5th meeting on 13.11.2019. The RA however wanted to modify the Plan. The CoC allowed them to submit a revised Plan. The revised Plan was submitted on 14.11.2019 and the same was placed before the CoC in its 6th meeting held the same day. The CoC considered the same and approved the Plan with 100% voting rights.

iv) The Applicant/RP submitted that the Compliance Certificate in Form H under Regulation 39(4) of the Regulations showing the compliances of the Plan with mandatory required under the Code and Regulations and that the Plan had been approved by the CoC.

v) The following is the summary of the payment schedule as per the Resolution Plan:

(INR in lakhs)

Particulars	Resolution Debt	Final Resolution Amount	Upfront payment within 30 days**	Within 5 months from the NCLT Order
Secured Financial Creditors	1870.35	900.00	180.00	720.00
Employees and Workmen	0.00	0.00	0.00	0.00
Unsecured Financial Creditors (Related)	804.08*	0.00	0.00	0.00
Unsecured Financial Creditors (Unrelated)	0.00	0.00	0.00	0.00
Operational Creditors (Related)	340.48	0.00	0.00	0.00
Operational Creditors (Unrelated)	400.00*	0.00	0.00	0.00
Statutory Dues	81.58#	2.53	1.500	0.00
Sub total	3496.49	902.53	180.50	720.00
CIRP Cost	100.00	100.00	100.00	0.00
Total	3596.49	1002.53	280.50	720.00

* Unclaimed and unverified.

to the tune of Rs. 20.66 lakhs only claimed and verified. Balance is unclaimed and unverified.

vi) It is also submitted by the Applicant (RP) that the RA have also envisaged a Contingency Plan Payment of Rs. 1 Crore towards any other liabilities in aggregate stated in the Balance Sheet dated 31.03.2018 including unrelated creditors of the CD who have not submitted their claims. The claims made within 12 months from the date of the Order would be settled at 5% of their value. Apart from the above payment for the Resolution of Verified Debts, further infusion of funds will be made for upgradation of Plant & Machinery and Working Capital Funding within 12 months of the approval of the Resolution Plan. Hence this Application.

3. I have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.
4. Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan –
 - a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;
 - b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than -
 - i. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
 - ii. the 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 provides for the 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, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation - For the purpose of this section –

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and

(ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

- 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 requirements as may be specified by the Board.

5. Section 30 (4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.”

6. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the

CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

7. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
 - a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
 - e) The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code.
8. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through two registered valuers and the Liquidation value is Rs. 9,33,75,006/-, and the Resolution Plan offers more than the average liquidation value. (Page No.3)
9. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations. The Plan also provides for keeping the Company as a going concern and operate in its normal course of business upon implementation of Resolution Plan. No objection has been filed by any other person in this regard.

10. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of the Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.
11. The Resolution Plan has been approved by the CoC in its meeting held on 31.08.2019 with 100% votes.
12. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No. 10673/2018 decided on 05.02.2019) the Hon'ble Apex Court 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 Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble 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 conform to the stated requirements.
13. **In CoC of Essar Steel** (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

*“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

14. In view of the discussions 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 same needs to be approved. Hence ordered.

ORDER

- i. The Application be and the same is allowed. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date 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, guarantors and other stakeholders involved in the Resolution Plan.
- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of

Companies (RoC), Andhra Pradesh 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.

- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. 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.
- vii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant.


MOHAMMED AJMAL
MEMBER JUDICIAL

Kaladhar