



IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No. 144
IA/616(AHM)2022 in CP(IB) 81 of 2019

Order under Section 30(6) r.w. 60(5) IBC, 2016 & Rule 11 of NCLT, 2016

IN THE MATTER OF:

Vijay P. Lulla
Resolution Professional of H.M. Industrial Pvt. Ltd.
V/s
Mangalam Global Enterprise Limited & Ors.

.....Applicant

.....Respondent

Order delivered on 20/09/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in open Court vide separate sheet.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
Dr. MADAN B GOSAVI
MEMBER (JUDICIAL)

Rajeev Kr. Sen/Stenographer



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
AHMEDABAD BENCH
COURT-I**

**IA/616(AHM)2022
In
CP(IB) No. 81 of 2019**

[An application under Section 30(6) r.w. 60(5) of Insolvency and Bankruptcy Code, 2016 & Rule 11 of NCLT Rules, 2016]

In the matter between:

Vijay P. Lulla,
Resolution Professional of
H. M. Industrial Pvt. Ltd.
Having its address at:
201, Satchitanand Bldg.,
2nd floor, 12th Road, Khar,
Mumbai, Maharashtra-400052.

....Applicant

Versus

**1. A) M/s. Mangalam Global Enterprise Limited
(Resolution Applicant)**

Having its address at:
101, Mangalam Corporate House, 42,
Shrimali Society, Netaji Marg,
Mithakhali, Navrangpura, Ahmedabad-380009

B) Mangalam Worldwide Limited

Having its address at:
102, Mangalam Corporate House, 42,
Shrimali Society, Netaji Marg,
Mithakhali, Navrangpura, Ahmedabad-380009

2. Bank of Baroda

(Lead Member of Committee of Creditors)
Having its address at:
Stressed Assets Management Branch,
1st Floor, Kamdhenu Complex,
Nr. Panjara Pole Char Rasta,
Ambawadi, Ahmedabad-380015.



3. Hardik Kumar Paresh Kumar Patel

(Member of the Suspended Board of Directors)
Having its address at:
A/3, Shakti Nagar, Dana Road,
Kapadvanj, Kheda, Gujarat-387620

4. Jigar Kumar Paresh Bhai Patel

(Member of the Suspended Board of Directors)
A/3, Shakti Nagar, Dana Road,
Kapadvanj, Kheda, Gujarat-387620

5. Paresh Hargovindas Patel

(Member of the Suspended Board of Directors)
A/3, Shakti Nagar, Dana Road,
Kapadvanj, Kheda, Gujarat-387620

6. Income Tax Department

Through Commissioner/Principal Commissioner
Joint Commissioner of the Income Tax (OSD),
Having its address at:
Anand Circle, Anand-3888001

....Respondents

In the matter of:

C.P. (IB) No. 81/9/NCLT/AHM/2019

M/s. Shah Kirtikumar Babulal Ni Company

Having its address at:
Plot No. 16, Sardar Krushi Ganj Thara
Taluka Kankrej, Banaskantha,
Gujarat.

....Operational Creditor

Versus

M/s. H. M. Industrial Private Limited

Having its address at:
RS No. 1035/1+2+3,
Modasa Road, Kapadvanj,
Kheda, Gujarat-387620.

....Corporate Debtor

**Order Reserved on: 29.08.2022
Order pronounced on: 20.09.2022**

**Coram: Dr. MADAN B. GOSAVI (MEMBER JUDICIAL)
KAUSHALENDRA KUMAR SINGH (MEMBER TECHNICAL)**

**Appearance:**

For the RP : Mr. Navin Pahwa, Ld. Sr. Adv. along with
Mr. Mayur Jugtawat, Ld. Adv.
For the RA : Mr. Tirth Nayak, Ld. Adv.
For the CoC : Mr. Nipun Singhvi, Ld. Adv.
For the Suspended Management : Mr. Jaimin R. Dave, Ld. Adv.

ORDER

[Per: MADAN. B. GOSAVI, MEMBER (J)]

1. This application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) is filed by Mr. Vijay P. Lulla - Resolution Professional (in short “RP”) of the Corporate Debtor – M/s. H. M. Industrial Pvt. Ltd.

2. The Corporate Debtor was admitted in Corporate Insolvency Resolution Process (in short “CIRP”) on 07.06.2019 and Shri Sunil Kumar Agarwal was appointed as the Interim Resolution Professional (in short “IRP”). On 14.06.2019, the IRP made the public announcement of the CIRP of the Corporate Debtor. He called upon the creditors of the Corporate Debtor to submit the claims supported with requisite proof. The IRP constituted the Committee of Creditors (in short “CoC”) consisting of the Financial Creditors and allotted them voting shares as indicated hereinbelow:

- I. Bank of Baroda, having 98.25% voting share
- II. Nice Sesame Agro Industries, having 0.96% voting share
- III. HDFC Bank, having 0.60% voting share
- IV. Indiabulls Consumer Finance Limited (Formerly known as “IVL Finance Limited”), having 0.19% voting share

3. The First CoC meeting was held on 10.07.2019. On the basis of information of the assets and liabilities of the Corporate Debtor, the IRP prepared the Information Memorandum.



4. In the first CoC meeting, the CoC passed resolution replacing the IRP by appointing the Applicant-Mr. Vijay P. Lulla as the RP. That decision of the CoC was confirmed by this Adjudicating Authority.

5. On 23.09.2019, the RP published Form-G in “Indian Express” (in English) and “Financial Express” (in Gujarati) calling upon Prospective Resolution Applicants to submit Expression of Interest (in short “EoI”)/ Resolution Plans for the Corporate Debtor. In pursuant thereto, the RP had received one Resolution Plan submitted by M/s. Maxim Tubes Company Private Limited. It was presented before the CoC but the CoC rejected the same. The RP proceed to file an application for the liquidation of the Corporate Debtor (IA No. 409 of 2020). When that application was pending for consideration, the RP and Learned Counsel for the CoC requested this Adjudicating Authority not to pass the order of liquidation on the ground that the CoC had then received one more Resolution Plan and they may be allowed to consider the same. Even Suspended Management of the Corporate Debtor filed an application (IA/260(AHM) 2022) opposing the prayer of passing the order of liquidation of the Corporate Debtor on the ground that the CIRP is carried in contravention of the provisions of the IBC, 2016. This Adjudicating Authority directed the RP and CoC to file the reply thereto.

6. The RP, CoC, and Suspended Management did not press for hearing of their respective applications because the CoC showed readiness to consider the resolution plan then pending for its consideration subject to the approval of this Adjudicating Authority.

7. This Adjudicating Authority considered the request of the CoC on the ground that there were chances of revival of the Corporate Debtor by way of resolution. We directed the RP to complete the entire process within two weeks. Accordingly, the CoC approved the Resolution Plan submitted by M/s. Mangalam Global Enterprise Limited (MEGL) and



the RP filed this application under section 30(6) of the IBC, 2016 for approval of that Resolution Plan.

8. We heard Learned Senior Counsel for the RP and Learned Counsel for the CoC as well as Learned Counsel appearing for the Resolution Applicant.

9. It is seen that the Resolution Plan, as submitted for our consideration, has been approved by the CoC with 97.20% votes. This Adjudicating Authority did not pass the order of liquidation of the Corporate Debtor. We have taken note of the fact that there was a pandemic and lockdown. Moreover, in this case, it appears to us that CoC is keen to resolve the insolvency of the Corporate Debtor rather than pushing the Corporate Debtor into liquidation. We take this plan for our consideration on merit.

10. In the plan, the RP stated that once the plan is approved, the Resolution Applicant is proposing the Composite Scheme of Arrangement whereby the steel division of Corporate Debtor would demerge into Mangalam Worldwide Limited (MWL) and amalgamation of the Corporate Debtor with its agro products division into Mangalam Global Enterprise Limited. We hold that the Successful Resolution Applicant is entitled to resolve the insolvency of the Corporate Debtor by way of Scheme of Arrangement, Amalgamation, Demerger etc. Explanation to section 5(26) of the IBC, 2016 makes it clear that *“For removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger”*;

11. With this, we proceed to examine the Resolution Plan in view of sections 30(2) and 31 of the IBC, 2016 r.w. Regulation 38, 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Once we find that the plan is in conformity with the above provisions of law, the



Resolution Applicant has to follow the procedure of Scheme of Arrangement, Merger, and Demerger as stated under section 230-232 of the Companies Act, 2013 as contemplated under section 31(4) of the IBC, 2016.

12. This resolution plan is approved by the CoC with 97.20% votes. Hence, it is not required for this Adjudicating Authority to go into the commercial viability of the Resolution Plan. Moreover, the plan is more than the liquidation value of the Corporate Debtor as assessed by the RP in Form-H.

13. Section 30(2)(a) of the IBC, 2016 mandates that the CIRP cost has to be paid in priority. In the Resolution Plan, the provision is made to pay the CIRP cost of Rupees One Crore within sixty days from the date of approval of the plan. Hence, provisions of section 30(2)(a) of the IBC, 2016 are complied with. The Operational Creditors are paid their dues in proportionate within ninety days. There are no dissenting Financial Creditors. There are no statutory dues pending for payment. Hence, we hold that provisions of section 30(2)(b) of the IBC, 2016 are complied with.

14. The following table shows the financial outlay as suggested by the Resolution Applicant:-

Particulars	Amount (Rs. lakh) Proposed under Resolution Plan	Scheme of Rs. (lakhs)	
		60 days from NCLT approval	90 days from NCLT approval
<i>Unpaid CIRP Cost</i>	<i>100.00</i>	<i>100.00</i>	<i>0.00</i>
<i>Secured FC</i>	<i>3121.25</i>	<i>0.00</i>	<i>3121.25</i>
<i>Unsecured Financial Creditors</i>	<i>5.00</i>	<i>0.00</i>	<i>5.00</i>
<i>Non Related</i>	<i>15.00</i>	<i>15.00</i>	<i>0.00</i>



<i>Operational Creditors including statutory dues</i>			
<i>Due towards Workmen/ Employee (Admitted amount)</i>	10.00	10.00	0.00
Total	3251.25	125.00	3126.25

It shows that the interest of stakeholders is taken care of in an equitable manner.

15. The Resolution Applicant has proposed to pay a sum of Rs. 3,151.25 Lakh (excluding CIRP Cost) against the total admitted claim of Rs. 14,360 Lakh meaning thereby the total haircut under the plan is 78.06%.

16. In the Resolution Plan, the mechanism is provided for management of the Corporate Debtor after approval of the Resolution Plan and pending its implementation by appointing Management Committee consist of two Directors of M/s. Mangalam Global Enterprise Limited and one Key Managerial Personal appointed by them. The same committee is given the task to implement the Resolution Plan. The RP has certified in Form-H that the Resolution Plan, does not contravene any provisions of law for the time being in force. Upon our examination of the plan, we also noted that it does not contravene any provisions of law. The term of implementation of the plan is ranging from 60 to 90 days from the date of its approval by this Adjudicating Authority. As already noted above, the financial outlay given in the table above shows that the Resolution Plan has dealt with the interests of all stakeholders in an equitable manner. We see no reason to reject this plan, although, it is submitted within a period of 330 days from the date of commencement of the CIRP of the Corporate Debtor.

17. While approving this plan, we have also taken note of the fact the liquidation of the Corporate Debtor may not be a proper solution. It



would be against the interests of all stakeholders. The plan value is more than the liquidation value of the assets of the Corporate Debtor.

18. As far as reliefs and concessions claimed by the Resolution Applicant, the law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021*** in the following words:

I. “The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

II. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief...”

19. In view of the above, we hold that the Resolution Applicant cannot be saddled with any previous claim against the Corporate Debtor prior to initiation of its CIRP. For the permits, licenses, leases, or any other statutory right vested in the Corporate Debtor shall remain with the Corporate Debtor and for the continuation of such statutory rights, the resolution applicant has to approach the concerned statutory authorities under relevant laws.

20. With these directions, we approve this Resolution Plan and pass the following orders:



ORDER

- I. Application is allowed.
- II. The Resolution Plan of M/s. Mangalam Global Enterprise Limited for Corporate Debtor i.e., M/s. H. M. Industrial Pvt. Ltd., stands allowed as per Section 30(6) of the IBC, 2016.
- III. We direct the Resolution Applicant to comply with the provisions of section 31(4) of the IBC, 2016 while submitting the scheme of 230-232 of the Companies Act, 2013.
- IV. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- V. The order of moratorium dated 07.06.2019 passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this order.
- VI. The Resolution Professional shall forthwith send a copy of this order to the participants and the Resolution Applicant(s).
- VII. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database
- VIII. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

Dr. MADAN B. GOSAVI
MEMBER (JUDICIAL)

Rajeev Kr. Sen/Stenographer