

**In the National Company Law Tribunal
Mumbai Bench**

MA 2166 of 2019 in CP No.1138/I&BC/MB/MAH/2017

Application Under **Section 30(1) & (6)** and **Order under section 31** of Insolvency &
Bankruptcy Code 2016

In the matter of

State Bank of India
V.
Dunar Foods Ltd. & Ors.

By Mr. Anil Kohli
.....Applicant/ Resolution Professional

Heard on 03.09.2019
Order delivered on: 26.11.2019

Coram: Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant : Advocate Rahul Gaikwad i/b Gravitas Legal

Per: Chandra Bhan Singh, Member (Technical).

ORDER

1. An Application has been moved on 13.06.2018 by the Learned Resolution Professional by invoking the Provisions of Section 30(6) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) 2016 for approval of a Resolution Plan. On receiving this Application along with Resolution Plan an Order is hereunder passed as prescribed **U/s 31(1) of The Code.**
2. The Financial Creditor State Bank of India had filed a Petition against the Corporate Debtor **Dunar Foods Limited** by invoking the Provisions of Section 7 of The Code read with Rule 4 of The Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 on **27.06.2017.**
3. After considering the merits of the case, the said Petition was **admitted** vide an **Order dated 22.12.2017 (CP No.1138/I&BP/NCLT/MB/2017).** Mr. Anil

Kohli was appointed as the Interim Resolution Professional (IRP). The said IRP was confirmed as the Resolution Professional (RP) in the first CoC meeting dated 02.02.2018.

4. In the second CoC meeting dated 21.02.2018, the Applicant apprised the CoC that a minimum eligibility criteria be fixed for potential Resolution Applicants for body corporates. The minimum net worth was to be fixed at ₹50 Crores. The Applicant published Invitation for Expression of Interest for submission of Resolution Plans for the Corporate Debtor in Times Group newspapers on 26.02.2018 on pan India Basis with the last date of submission as 09.03.2018. The publication for invitation of expression of interest was again done on 18.04.2018 in Times group Newspapers in Delhi NCR publications as some of the prospective investors sought time to submit their Resolution Plan.
5. Thereafter, the RP sought extension of CIRP period for 90 days, which was granted by this Bench vide order dated 20.06.2018. A fresh invitation for submission of resolution plans was issued on 22.06.2018 in two newspapers i.e. Business Standard (English) and Rashtriya Sahara (Hindi) on PAN India basis.
6. During the sixth CoC meeting dated 04.08.2018, the CoC discussed and deliberated on the sole Resolution Plan received by the Resolution Professional from one Mr. Amit Gupta. The Earnest Money Deposit of INR 5 Crore had also been received in the designated account maintained with SBI along with the plan in a sealed envelope. During the course of CIRP proceedings, the Enforcement Directorate had passed a Provisional Attachment Order dated 26.12.2017.
7. The RP presented the contours of the resolution plan presented by Mr. Amit Gupta to the CoC. The CoC also deliberated upon the issue of hindrances and impediments created by the attachment of assets of the Corporate Debtor by various statutory authorities and the adverse impact thereof on the value of

assets. The CoC enquired from the RP the steps undertaken by the RP to get over the hindrances due to attachment of assets. The RP apprised the CoC that the said order of Enforcement Directorate has been appealed against before the Hon'ble NCLAT and before the Appellate Tribunal for Prevention of Money Laundering. The appeals are pending adjudication as on 16.07.2019.

8. The RP further sought exclusion of time period from 26.12.2017 to 05.10.2018 which is lost in litigations, from the CIRP period vide order dated 05.10.2018. In the eighth CoC meeting dated 16.11.2018, the RP apprised the CoC that Mr. Amit Gupta has expressed his intention to enhance the consideration to ₹65-70 crore as compared to ₹40 crore earlier, in the event he gets the unit free from all encumbrances like attachments by different authorities. The CoC decided that fresh resolution plans may be invited. Hence, the CoC decided and directed the RP to issue fresh publication inviting resolution plans latest by 17.11.2018 and allow a period of 30 days for submission of resolution plans. The CoC further approved the eligibility criteria of net worth of ₹25 crore and total EMD of ₹10 crore (₹5 crore on submission of plan + ₹5 crore on approval by CoC). This lowering of the eligibility criteria net worth was done to attract more Prospective Resolution Applicants.
9. The Applicant has stated that out of the 27 Prospective Resolution Applicants (PRAs), who approached the RP, EOIs were received only from 9 PRAs. However, only two resolution plans were finally submitted to the RP for the Corporate Debtor. One of the Resolution plan which was submitted was from Mr. Amit Gupta and other was from M/s. PCL Foods Pvt. Ltd. (PCL). Both the plans were placed before the CoC for discussion. The CoC took both the proposals on record and decided to seek opinion from their respective legal departments on the plans.
10. In the 10th CoC meeting dated 11.01.2019, the RP apprised the CoC that pursuant to the last meeting, Mr. Amit Gupta has filed a revised plan while PCL pursued their original plan. The resolution plan of PCL was considered

non-compliant and Mr. Amit Gupta was advised to further cure the plan because of the two major conditions precedent. The first condition was in respect of the two land parcels and other being the removal of the attachments on assets, were impediment in the resolution plan process.

11. The RP has submitted that Mr. Amit Gupta submitted the revised plan (both technical and financial) on 14.01.2019 removing conditions precedent and agreeing to the CoC observations. Thereafter, in the 11th CoC meeting dated 28.03.2019, Mr. Amit Gupta filed a revised resolution plan on the advise of CoC to further cure the plan.
12. The CoC of the Corporate Debtor constitutes the following financial creditors and their voting share is given herein below:

Sr. No.	FINANCIAL CREDITOR	CLAIM AMOUNT ADMITTED (₹)	VOTING SHARE (%)
1.	State Bank Of India	783,19,47,562	80.03
2.	Bank Of Baroda	109,23,98,141	11.16
3.	Canara Bank	56,04,69,901	5.73
4.	IDBI Bank ltd.	30,08,92,804	3.08
	Total Amount	978,57,08,408	100.00

13. During the 12th CoC meeting dated 04.06.2019, the Resolution Plan filed by Mr. Amit Gupta was approved by the CoC by a majority of 96.92%. IDBI Bank initially abstained from voting. Later on, IDBI Bank vide an email also approved the Resolution Plan thus approving the Resolution Plan by 100% voting.
14. The RP states that the Resolution Applicant has submitted an affidavit confirming that it is not prevented from submitting the resolution plan as a result of S. 29A, IBC. The Resolution Professional has annexed a certificate under Regulation 39(4) of the CIRP Regulations to certify that the resolution plan as approved by the CoC meets all the requirements of the IBC and Regulations thereunder.

15. The eligibility of the resolution applicant under section 29A of the I&B Code has been looked into. It can be seen from the affidavit of Resolution Applicant under section 29A that the Resolution Applicant is not ineligible under section 29A to submit a Resolution Plan for the Corporate Debtor.
16. The Applicant has duly submitted Form H stating that the resolution plan is complaint of the provisions of the code. The Applicant has preferred the present application for approval of the resolution plan by this Adjudicating Authority.
17. The details of the Resolution Plan as approved by CoC are as under:

["RESOLUTION PLAN"](#)

A. OVERVIEW OF THE CORPORATE DEBTOR

M/s Dunar Foods Limited (DFL/ "Corporate Debtor") was incorporated on 23rdSeptember, 1997. DFL is engaged in business for processing/trading /exports of Basmati Rice. After having gained significant experience in the trading for over four decades. In year 2008 the company launched branded rice under brand name "DUNAR" and expanded aggressively. In 2011, the company launched its brand "DUNAR" in international market. It was also awarded the status of a star export house.

In 2013, the company got embroiled into National Spot Exchange Ltd (NSEL) scam wherein one of the associated company, M/s. P.D. Agroprocessors Pvt. Ltd, was indicted with a net liability of Rs.637.35 Cr to NSEL on account of settlement. It was alleged that the money received by M/s. PD Agro was diverted to Dunar Foods Ltd (Corporate debtor). The Corporate Debtor raised huge debts which carry high interest costs, and during the period between 2011-2015, for storage of rice and paddy, which has witnessed huge volatility both in prices and in demand. This has resulted into huge operational loss and erosion of working capital of Corporate Debtor. The Huge interest cost to the financial creditors as well as operational creditors has resulted into operational losses to the Corporate Debtor. The company was classified as NPA by consortium of Banks in August 2014 i.e. FY 2014-15 after it failed to repay the interest and principal amount on the loan facilities availed. The company has been operating, though at a very low level as it faces the liquidity crunch due to working capital constraints.

In compliance to regulation 38(3)(b) and (c) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 as amended from time to time, the Resolution Applicant is willing to provide a Resolution Plan for the Corporate Debtor to make it economically feasible and viable as a going concern. Resolution Applicant, with its strong business aptitude and a very experienced and proficient management team,

feels confident that it shall be able to invest necessary human resources and financial capital to revive the rice units and turn-around its operations. The Resolution Applicant believes that it shall be able to contribute significantly to the society and government by putting the natural resources to best use and contributing significantly direct and indirect employment and income generation opportunities in the region.

The Resolution Applicant represents and confirms that the Resolution Applicant has sufficient funding capability to perform its obligations under this plan.

The Resolution Applicant plans to revive the operations of the Corporate Debtor through:

Infusion of funds for Settlement of Past Creditors – *With strong financial background, the Resolution Applicant shall infuse requisite liquidity into the Corporate Debtor for payment of past creditors in terms of Resolution Plan as detailed subsequently in this plan*

Management Expertise and best practices – *The Resolution Applicant, being a serious player, plans to strengthen the existing management of the Corporate Debtor to help revive and turnaround the operations. Further, it would introduce some of the best practices for greater operational efficiencies.*

Talent pool – *Change of management and turnaround of the Corporate Debtor, would enable attract best talent pool from the market*

B. OVERVIEW OF THE APPLICANT

The present resolution plan for the revival of M/s Dunar Foods Limited (“Corporate Debtor”) is presented by applicant Mr. Amit Gupta.

The Resolution Applicant and his family members and have been in the business of Rice milling and trading for over 30 years. Mr. Amit Gupta (the Resolution Applicant) had been operating a rice mill as a sole proprietor, in the name and style of M/s Amit Rice General Mills.

His brother Mr. Yashit Gupta is also operating a rice trading sole proprietorship firm under the name and style of M/s Baijnath Uggarsen. The Resolution Applicant at a later date may convert into partnership firm or incorporate into a private limited company to manage the shareholdings and business affairs of the Corporate Debtor following the Corporate Insolvency Resolution Process (CIRP).

Details of associates/ affiliates

The Resolution Applicant solely or as an entity, is not a promoter of any other firm or registered company and hence the Certificate of corporate structure of the Applicant, group companies, affiliates, parent company, and the ultimate parent as mandated in the process memorandum is not provided.

The only affiliates for the Resolution Applicant is the individual proprietorship firm in his name which has been referred to as above.

Authority

Since the Resolution Applicant is an individual and himself presenting the resolution plan, has the entire rights to negotiate with the Committee of Creditors and swears to be bound by his action with respect to this resolution plan. Accordingly, no power of Attorney is required.

Background of Resolution Applicant

Mr. Amit Gupta is a Commerce Graduate and is well renowned and respected in the Rice milling and trading community for his business dealings and fair-trading practices. He runs a rice mill in the name and style of M/s Amit Rice General Mill which has been in existence for over 30 years.

He has employed over 20 people and is compliant to all the applicable provisions of law.

As has been previously mentioned, he has been engaged in the business of Rice milling and trading for over a decade. The turnover of his individual businesses during the recently concluded financial year is over Rs. 50 crores. The audited financial statements/ IT returns of the Applicant for the past three years is attached herewith as **Annexure – B.**

Unique value proposition

Rice is a very peculiar commodity to deal in owning various complexities at every step of the value chain from sowing to processing to storage to transportation and finally to selling. There are over 100 types of grains (paddy) available for procurement thereafter a large number of finished, semi-finished and finished products which can be sold. Given the fact that procurement is seasonal and the overall industry is cyclical, the processing and inventory levels are required to be optimally maintained. The Promoter group have several decades of experience in the Rice industry, clean reputation, strong business network of suppliers and buyers, stable finances and are hence perfectly positioned to take the mantle of revival of the Corporate Debtor.

C. CREDIT WORTHINESS AND FINANCIAL CAPABILITY OF THE APPLICANT

The resolution applicant currently has the following credit facilities with his bankers and he has ever been under default or classified as NPA.

Amit Gupta

Bank	Type of facility	Sanction Amount	Balance outstanding As on 31-03-2018
Bank of Baroda, Karnal	Cash Credit (CC)	Rs. 8.00 crore	Rs. 7.75 crore
	Term Loan	Rs. 2.30 crore	Rs. 1.70 crore
ICICI Bank, Karnal	Car Loan	Rs. 0.36 crore	Rs. 0.12 crore

The certificate of net-worth of the Resolution Applicant duly certified by his chartered accountant is attached herewith as **Annexure –C.**

The copy of valuation reports to support the net-worth of Resolution Applicant as specified above is attached herewith as **Annexure –D.**

D. PREVIOUS EXPERIENCE

The Resolution Applicant and his family has several decades of experience in the Rice industry, clean reputation, strong business network of suppliers and buyers, stable finances and are hence perfectly positioned to take the mantle of revival of the Corporate Debtor.

E. FINANCIAL PROPOSAL

The financial proposal for takeover of the Corporate Debtor is attached herewith as [Annexure –E](#).

F. OTHER INFORMATION*Term of the plan and its implementation schedule*

The financial proposal envisages to pay an amount of Rs. 87 .10 Crore as total consideration under the resolution plan; the mode and manner of which is laid down in the Annexure - E. The Resolution Applicant commits to pay the entire payment laid down in the financial proposal within 3 Months of the approval of the resolution plan in the form submitted by the Resolution applicant.

The Resolution Applicant propose that the balance amount after adjusting the EMD-I and EMD-11 is proposed to be paid as detailed in Annexure E, on completion of which the resolution plan will come to an end. The details of payment/balance payment is proposed as under:-

S.No.	Term of the Plan	Implementation Schedule
1.	EMD-I	Already paid
2.	EMD-II	(Within 3 days from issuance of LOI)
3.	Expected date of approval of Resolution Plan by Hon'ble NCLT	Resolution Applicant Cannot comment upon it
4.	Handing of Operations of DFL (to be conducted under supervision of Monitoring Committee)	Immediately after approval by Hon'ble NCLT
5.	Moratorium Period Required	3 Months
6.	Payment of Balance Payment	Within 3 months from approval of resolution plan by Hon'ble NCLT

Management and control of the business of the corporate debtor

The Resolution Applicant note that post approval of the plan by Hon'ble NCLT, till the time the financial obligations proposed by him is not paid, the RA will be allowed to carry the operations and Management of the Corporate Debtor under the supervision and control of a Monitoring Committee appointed by COC which consists of existing RP, an Independent person representing CoC and a representative of resolution applicant. Further though no cost will be leviable or borne by the Resolution Applicant in any manner for such supervision. The remuneration for the Resolution Professional in Monitoring Committee, may continue at the current fee till the complete handover of CD

to RA Any act been performed by the Monitoring Committee will be done under the trust and for the benefit of the Resolution applicant as well as corporate Debtor.

The ownership along with 100% shareholding without any interference of existing Promoters/existing shareholders (individual as well as Corporate)/ Financial Creditors/Operational Creditors/Statutory Authorities shall be transferred to Resolution Applicant upon receipt of complete payment as per terms of the approved resolution plan. It will be responsibility of the Monitoring Committee to get the complete issued shareholding of the Corporate Debtor is transferred in the name of Resolution Applicant including his any nominee. Simultaneously the Resolution Applicant can change in the composition of board of directors of the corporate debtors and its authorised signatory, the applicant may run the corporate debtor as a separate entity and preserve its identity and brand.

G. TERMS AND CONDITIONS

Shareholding

The ownership along with 100% shareholding without any interference of existing Promoters/existing shareholders (individual as well as Corporate)/ Financial Creditors shall be transferred to Resolution Applicant upon receipt of complete payment as per terms of the approved resolution plan. It will be responsibility of the Lenders to get the complete issued shareholding of the Corporate Debtor transferred in the name of Resolution Applicant including his nominee.

Upon receipt of complete payment as per terms of the Resolution plan entire shareholding of the Corporate Debtor shall vest with the Resolution Applicant i.e. the entire paid up share capital of the Corporate Debtor will stand transferred in the name of the Resolution Applicant or its nominee. Entire security including pledge of shares shall be released by the Lenders and the same will be assigned to the Resolution Applicant. On receipt of the complete payment as per the Financial Proposal, the existing lenders will do the needful to remove all the charges created on the assets of the Corporate Debtor.

The Resolution Applicant may offer a part of equity to its associate firms, Individuals or Asset Reconstruction Companies or Non-Banking Financial Companies in order to raise required finances for the acquisition of Corporate Debtor. Notwithstanding S1.lch offer by the Resolution Applicant it shall not affect the resolution plan and/or its implementation. However, the Resolution Applicant undertakes that any such dilution of shareholding and transfer of assets would be in compliance with the requirements of Section 29-A of the Insolvency and Bankruptcy Code.

Asset Takeover

All the assets in the name of Corporate Debtor as listed in the Information memorandum will continue to remain as assets of the Corporate Debtor and taken over by the Resolution Applicant on "As Is Where Is and As Is What Is basis".

It is also understood that all the assets of the corporate debtor, tangible and intangible, will be free from any encumbrances, liens, charges, etc of the lenders, upon the approval of the Resolution Plan and. available for use by the Resolution Applicant without any fetters.

Statutory Dues

As per Provisional financials as on 03.01.2018, other current liabilities including duties & taxes along with other payables total amounting to Rs. 73.82 lacs and duties and taxes

payable total amounting to Rs. 79.20 lacs towards VAT including interest, no payment to be made to any of Statutory dues since claims of financial creditors submitted is not expected to be fully paid out from the value of assets, any claim related to statutory dues (taxes/ duties/ cess, etc) arise in future pertaining to business/ event/ transactions before acquisition of the Corporate Debtor shall not be paid by the Resolution Applicant. Further, no payment shall be made by Resolution Applicant in future post acquisition of the Corporate Debtor, if claims arise on account of past transactions/ business made pre acquisition of the Corporate Debtor.

Any other dues and claims

As per Information Memorandum, 17 matters are pending before various judicial forums (9 NSEL related matters + 2 Central Excise related matters + 1 Enforcement Directorate + 2 Shareholders related matter + 1 Statutory Auditor related matter + 2 Corporate Creditor related matter). There are two Income Tax related matters against the corporate debtor. The claims of two corporate creditors matter have been admitted by the Resolution Professional as per the Information Memorandum and are accordingly addressed in the Financial Proposal accompanied. Claims arising from the Operational Creditors are also addressed in the Financial Proposal. However, claims arising from other pending matters have not been crystallized and admitted by the Resolution Professional therefore no payment has been assigned towards them as a part of this Resolution Plan.

The Adjudicating Authority under the Insolvency and Bankruptcy Code has wide powers and Section 238 of the Code providing the widest possible non obstante clause, makes it clear that the decision of the Hon'ble Adjudicating Authority under the Code shall have effect notwithstanding any provision of another law which is inconsistent.

Therefore, it is expected and understood that upon the approval of the Resolution Plan by the Hon'ble Adjudicating Authority under Section 31 of the Insolvency and Bankruptcy Code, no future claims would lie against the Corporate Debtor from any other proceeding pending against the Corporate Debtor and it will only be responsible for the liability which is crystallized as on the date of the approval of resolution plan and addressed in the financial proposal. Furthermore, it is expected and understood that upon the approval of the resolution plan and after making the payment agreed to lenders the assets of the Corporate Debtor would be available for use free from any attachment or encumbrance under any other act or proceedings. Prayer to Hon'ble NCLT is made accordingly their kind approval in this regard and also waiver of any other claims against the Corporate Debtor, by whatever name called, including but not limited to claims by any operational creditors, guarantors, employees, statutory authorities, etc, which came into existence, or the cause of action for which came into existence, prior the date of approval of the resolution plan are deemed to be settled in full against the Corporate Debtor and no claims therein will lie in future against the Corporate Debtor or the Resolution Applicant.

H. Proposed Conduct Until Effective Date:

Upon the approval of the Plan by the Committee of Creditors with the requisite majority: Unless and until permitted under the code, the Resolution Professional, any creditor (including any Financial Creditor), any stakeholder involved in this Plan or otherwise connected with this Plan, the Committee of Creditors or the Corporate Debtor shall not:

- (i) Take any of the actions specified in Section 28 of the Code; or
- (ii) Take any action or omission that could reasonably be expected to have a material adverse impact, direct or indirect, on the plan or its successful implementation; and
- (iii) Institute or continue any proceedings against the Corporate Debtor or transfer, encumber, alienate, or dispose of any of the assets or interest of the Corporate Debtor or enforce any Encumbrance or Security interest created by the Corporate Debtor, without the

prior written consent of the Resolution Applicant

I. Important Terms & Conditions for Validity of Resolution Plan

The following matters are critical and necessary for the successful outcome of the above stated offer/ Resolution Plan . Wherever required, the matter is requested to be put up to Hon'ble NCLT for waiver of any liability if crystallized pertaining to this matter:-

1. *Entire assets of the Corporate Debtor including but not limited to Current Assets and Fixed Assets shall be free from any charge/security interest of the lenders.*
2. *Entire assets of the Corporate Debtor shall be unencumbered and be free from any claims of any of the lenders and shall be transferred to Resolution Applicant as on date of acquisition i.e. on the day when the complete payment of INR 87.10 Crore has been made by the Resolution Applicant.*
3. *No payment shall be made to financial creditor/ operational creditor/ existing promoters/ statutory dues/ contingent liabilities/ pending claims/ or any other claims except as mentioned above arises out of business/ transaction made before acquisition of the Corporate Debtor (if arises in future also).*
4. *Prayer be made to Hon'ble NCLT of waiver of All contingent liability past or future till the date of acquisition.*
5. *Any other liability, whether known or unknown except as mentioned above shall be fully waived until the date of acquisition of the Corporate Debtor.*
6. *All the licenses, approvals, brand registrations of the business of Corporate Debtor shall be valid as on at the date of transfer to Resolution Applicant without any attachments.*
7. *Resolution Applicant shall have the right to terminate/renegotiate/modify all contracts including but not limited to lease of space in the Rice Units premises/vendors/consultants entered into by existing management of the Corporate Debtor without any liability or legal implication with the approval of all the vendors until the entire payment under the Resolution Plan is paid.*
8. *Prayer is made to Hon'ble NCLT for waiver of Income Tax/MAT or any other statutory liability on account of implementation of resolution plan in view of Corporate debtor is proposed to be acquired below the book value of assets as per provisional financials as on 03.01.2018.*
9. *The matter be put up to Hon'ble NCLT for waiver of any liability towards any tax incidence on account of MAT and/or Direct tax provision consequent upon implementation of the present resolution plan.*
10. *No Claims has been received by Resolution Professional from the Employees as disclosed in the Information Memorandum. Employee dues including bonus, leave encashment and gratuity provision shall be taken over and discharge in due course out of operations of the Corporate Debtor as normal course of business as going concern entity.*
11. *In the event it is determined that any of the provisions or terms incorporated in the instant Resolution Plan is unenforceable either on its face or as applied to any claims or transactions and/or in the event any terms/provisions of the Resolution Plan becomes invalid for the reasons other than by breach of any of the parties, the Resolution*

Applicant may apply to the NCLT for appropriate modification of such provision of the Resolution Plan and such invalidity and/or unenforceability of the provision of the Resolution Plan shall not affect the other terms/provisions of the Resolution Plan nor will it render the whole Resolution Plan ineffective, unless otherwise ordered by the NCLT.

J. Confidentiality:

By the receipt and deliberations of this Plan, the Resolution Professional and the Financial Creditors of the Corporate Debtor agree and undertake that they shall not reveal, and shall ensure that their directors, officers, managers, employees (including those on secondment), Affiliates, legal, financial and professional advisors and bankers (collectively, "Representatives") to whom Confidential Information is made available do not reveal, to any third party, any Confidential Information, without the prior written consent of the Resolution Applicant. The Resolution Applicant shall be entitled to injunctive relief, specific performance and other remedies to enforce this Clause.

K. DECLARATION

Transactions with Corporate Debtor in previous two years

The Resolution Applicant is mill operators and hence have had business dealings with the Corporate Debtor during the past several years. The total amount of transaction between the parties over the last two years would be approximately Rs. 3. 70 crores.

However, it is categorically stated that at no point of time did the Resolution Applicant hold any stake or management control in the Corporate Debtors or its affiliates. The dealing between the Corporate Debtor and the Resolution Applicant was purely professional in the ordinary course of business.

Information/declaration under Section 29-A of the Code and Rule 38 of CIRP Regulations

It is hereby declared that the Resolution Applicant, do not face any disqualification specified under Section 29-A of the Insolvency and Bankruptcy Code, 2016 and Rule 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Specifically:

- *The Resolution Applicant is not an undischarged solvent;*
- *The accounts of the Resolution Applicant have never been declared as a Non - Performing Asset by any bank;*
- *The Resolution Applicant has never been a promoter or in the management control of a corporate debtor in which preferential transaction, undervalued transaction, extortionate credit transaction, or fraudulent transaction has taken place and in respect of which there is an order of the NCLT;*
 - *The Resolution Applicant has not executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this code;*
 - *The Resolution Applicant have never been convicted for an offence*
- *The Resolution Applicant has no criminal proceedings pending against them*
 - *The Resolution Applicant is not disqualified under Companies Act, 2013, to act as a director;*
 - *The Resolution Applicant has not been declared a wilful defaulter, if any, by any bank or financial institution.*
 - *The Resolution applicant is not barred from accessing to, or trading in, securities markets under any order or directions of the Securities and Exchange Board of India;*
 - *The Resolution Applicant has not been a connected person who is ineligible faces the disqualifications cited above*

It is further declared that the Resolution Plan presented herein above is not in contravention to the provisions of the Insolvency and Bankruptcy Code, 2016 or any other applicable law.

It is further declared that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the code.

Mr. Amit Gupta

Resolution

Applicant

56, Janta Grain Market, Karnal, Haryana

Phone Nos:+91-94160-32288”.

SUMMARY OF THE RESOLUTION PLAN:

18. The total payment envisaged under the Plan is to the tune of ₹97.10 crore. An amount of ₹87 crore less CIRP Costs incurred by SBI is being paid to Financial Creditors as full and final settlement of their dues. In addition to the payment of ₹87 crore payable to financial creditors, ₹10 Lakh is being paid to Operational Creditors and an amount of ₹10 crore is proposed to be infused as Working Capital Requirement.

- a) Out of an amount of ₹87 crore (less CIRP cost incurred by SBI) to be paid to Financial Creditors, ₹10 crore is already deposited in Bank account of the Corporate Debtor as the Earnest Money Deposit-I and Earnest Money Deposit-II. The details of the funds to be allocated and their sources is discussed in the table below:

S. No.	Payment	Amount (₹ in Crores)	Remarks
1.	EMD-I	5.00	Already paid
2.	EMD-II	5.00	Already paid
3.	Balance Payment to Financial Creditors	77.00	EoI from HDFC Bank Ltd. Within 90 days from the approval of resolution plan
4.	Payment to Operational Creditors	0.10	Available in Bank Account of the Resolution Applicant
Additional Funding to revive the Corporate Debtor			

5.	Working Capital Requirement	10.00	From existing bankers as secured loans against the charge on the assets of the Corporate Debtor duly backed by the personal guarantee of the Resolution Applicant and his family members.
Total		97.10	

- b) The Financial Creditors will be given a uniform of 8.73% of the admitted claim amount, cumulatively amounting to ₹85.40 Crore. The Operational Creditors will be given a uniform of 0.32% of the admitted claim amount, cumulatively amounting to ₹0.10 crore. An overview of the payments to Financial and Operational Creditors is given below:

FINANCIAL CREDITORS	ADMITTED CLAIM (₹)	AMOUNT PROVIDED UNDER PLAN (₹)
State Bank of India	783,19,47,562	68,35,52,204
Bank of Baroda	109,23,98,141	9,53,41,695
Canara Bank	56,04,69,901	4,89,16,369
IDBI Bank Ltd	30,08,92,804	2,62,61,149
TOTAL	983,67,64,090	85,40,71,417

OPERATIONAL CREDITORS	ADMITTED CLAIM (₹)	AMOUNT PROVIDED UNDER PLAN (₹)
Punjab State Power Corporation	60,03,020	19,176
Additional Commissioner of ITO (Income Tax)	30,70,41,687	9,80,824
Total	31,30,44,707	10,00,000

- c) It is submitted by the Resolution Professional that the net worth of the Resolution Applicant is around ₹30.29 crore. The Resolution Applicant holds property worth ₹16.51 crore. The Resolution Applicant intends to get the funding of the Resolution plan from HDFC Bank Ltd. In support of the same, the Resolution Applicant has also furnished an Expression of Interest for funding issued by HDFC Bank Ltd. The letter dated 14.01.2019 issued

by HDFC Bank Ltd. For funding of loan of ₹77 crore is annexed in the application. The RP further submits that the Resolution Applicant has already deposited a sum of ₹29.25 crores (₹10 crore for EMD and ₹19.25 Crore as performance Security) i.e. 25% of the Resolution Amount.

- d) The Resolution Applicant has sought a waiver of all outstanding statutory dues and other claims as on the date of approval of the Resolution Plan. Additionally, the Resolution Applicant has also sought waiver of all ascertained and contingent claim, dues, debts etc as on the date of approval of Resolution Plan.
- e) The RP has annexed the Compliance Certificate as per Form H of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, duly perused by this Bench.
- f) The Resolution Plan also provides for a Monitoring Committee comprising of
 - i. Resolution professional,
 - ii. Independent Representative of the CoC,
 - iii. Representative of the Resolution Applicant.

The aforementioned Monitoring Committee shall be in control of the Corporate Debtor till complete payment and execution of the Resolution plan is carried out.

- g) The total payment under the resolution plan shall be made within 30 months from the date of approval of resolution plan by this Bench.
19. The Liquidation Value and Fair Market Value of the Corporate Debtor is stated to be ₹67.79 Crore and ₹109.54 Crore respectively, as per Form H submitted by the RP. One of the justifications for approval of this resolution plan is that the amount proposed under the plan is higher than liquidation value of the Corporate Debtor.

FINDINGS

20. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, the Resolution Plan in hand satisfies the minimum threshold of approval by 66% majority of the CoC. Hence, as per the CoC, the plan stands the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.
21. As far as the question of waiver of outstanding statutory dues and other claims as on the date of approval of the Resolution Plan is concerned, the Resolution Applicant, who will step into the shoes of Corporate Debtor subsequent to approval of Resolution Plan by the Bench, shall not be held responsible for any outstanding statutory dues and other claims for the period before commencement of CIRP.
22. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 shall cease to have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. That liberty is hereby granted for moving any Miscellaneous Application if required in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Mumbai.

23. The RP is further directed to handover all records, premises/factories/documents to 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/premises/factories/documents through Resolution Professional to finalise the further line of action required for starting of the operation.
24. The directions embodied and period of implementation provided hereinabove shall be effective from the date of receipt of this Order.

SD/-

**CHANDRA BHAN SINGH
MEMBER (TECHNICAL)**

Date : 26.11.2019
JS

SD/-

**M.K. SHRAWAT
MEMBER(JUDICIAL)**