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22-10-2021

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IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No. 3
IA/549(AHM)2021
in
CP(IB) 221 of 2019

Order under Section 30(6) & 31 IBC, 2016

IN THE MATTER OF:

Ravi Kapoor RP of Pradip Overseas Limited

.....Applicant

Order delivered on ..14/10/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)



**IN THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

**IA 549(AHM) 2021
In
CP (IB)/221/ 2019**

IA 549(AHM) 2021:

[An Application under Section 30(6), Section 31 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Debtor) for approval of resolution plan]

Mr. Ravi Kapoor,
Resolution Professional of
Pradip Overseas Limited
office at: 402, Shaival Plaza, Near
Gujarat College, Ellisbridge, Ahmedabad
Gujarat, 380006

**...Applicant/
Resolution Professional**

In the matter of CP (IB)/221/ 2019:

Standard Chartered Bank

...Financial Creditor

Versus

Pradip Overseas Limited

...Corporate Debtor

**Order reserved on: 04.10.2021
Order pronounced on: 14.10.2021**

**Coram: MADAN B. GOSAVI, MEMBER (J)
VIRENDRA KUMAR GUPTA, MEMBER (T)**

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Appearance:

For the Applicant: Mr. Navin Pahwa, Advocate along with
Mr. Lalit Patel, Advocate

Resolution Professional: Mr. Ravi Kapoor

ORDER

[PER: VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. This Application is filed by Mr. Ravi Kapoor, Resolution Professional of Pradip Overseas Limited under Section 30(6), Section 31 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as “**CIRP Regulations**”) for approval of Resolution Plan of the Pradip Overseas Limited (hereinafter referred to as “Corporate Debtor”).



2. The facts, in brief, are that the Corporate Debtor was admitted into CIRP by order of this Adjudicating Authority dated 09.11.2020. The Applicant herein was appointed as

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IRP who made public announcement in Form-A on 11.11.2020 and collated claims and constituted Committee of Creditors (in short "CoC") comprising of 4 financial creditors namely; Standard Chartered Bank, Invent Assets Securitization & Reconstruction Private Limited, Phoenix ARC Pvt. Ltd. and State Bank of India, with voting share of 4.40%, 86.98%, 2.61% and 6.02% respectively. IRP was later confirmed as Resolution Professional by CoC in the 1st meeting held on 09.12.2020. The RP with the consent of CoC in the said meeting appointed valuers. Form G was published on 23.01.2021 and thereby four EOIs were received. The provisional list and final list of Resolution Applicants was issued within the prescribed time on 15.02.2021 and 01.03.2021 respectively. In the 5th meeting of COC held on 05.04.2021, RP apprised the COC that two resolution plans were received from prospective resolution applicants namely, Mr. Pradip J Karia & Ors (Suspended Management) and CA Patel Textile Pvt. Ltd. and the same was opened before CoC. CoC in its 6th meeting held on 15.04.2021 discussed the resolution plan and requested the



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resolution applicants to modify the plan. It is submitted by the RP that the resolution plans were in compliance of the provisions of Section 30(2) of IBC, 2016 and Regulation 37, 38 and 39(1) of the CIRP Regulations and the report in respect to this was circulated among the CoC members. COC in its 8th meeting held on 12.07.2021, through e-voting resolved to approve the resolution plan submitted by Mr. Pradip Karia with others by 95.60% votes.

3. The Applicant received valuation reports from the registered valuers wherein the average Fair Value and Liquidation Value are Rs. 1,54,00,43,476/- and Rs. 1,01,40,57,376/- respectively.
4. It is asserted in the Application that the Corporate Debtor was a registered MSME, thereby in view of Section 240A of the IBC, 2016, Section 29A (h) is not applicable upon the successful Resolution Applicants who were the suspended members of the board of directors of the Corporate Debtor. Further the Resolution Applicants have filed separate affidavits clarifying their eligibility to submit a resolution



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plan under Section 29A of IBC, 2016. The learned counsel for the Applicant also drew our attention to the Udyam Registration Certificate wherein Corporate Debtor is classified as medium enterprise.

5. The Resolution Applicant has given the performance security under sub-regulation (4A) of Regulation 36B of the CIRP Regulations, 2016 amounting to Rs. 10 crores on 07.08.2021 after issuance of letter of intent dated 06.08.2021 by RP in terms of clause 4.9 of the Resolution Plan.
6. Learned Senior Counsel for the Applicant appeared and narrated the above facts. He drew our attention to the Resolution Plan in detail. Based upon the contents of the Plan, it was submitted that Resolution Plan approved by CoC complies with all the requirements of Section 30(2) of IBC, 2016 and relevant regulations made thereunder. Learned Senior Counsel also drew our attention to the relief and concessions. However, the Bench in respect of such relief and concession made it clear that only such reliefs would be granted which this Adjudicating Authority is

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empowered to in view of the decision of the Hon'ble Supreme Court in the case of M/s Embassy Property Developments Pvt. Ltd. and Gujarat UrjaVikas Nigam Limited.

7. We have considered the submissions made by both sides and the material on record. As far as amount provided for various stakeholders in the resolution plan is concerned, the following chart is reproduced:

(Amount in Rs. Lakh)

Sr. No	Category of Shareholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan#	Amount provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	11654.22	11654.22	554.40	4.76%
		(ii) who voted in favour of the resolution plan	253315.77	253315.77	12045.60	4.76%
		Total [(a)+(b)]	264970.00	264970.00	12600.00	4.76%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-



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		(b)Other than (a) above: (i) who did not vote in favour of the resolution plan (ii) who voted in favour of the resolution plan	-	-	-	-
		Total[(a)+(b)]	-	-	-	-
3	Operational Creditors	(a)Related party of the Corporate Debtor	-	-	-	-
		(b)Other than(a) above: (i) Government (ii) Workmen (iii)Employees (iv) Others	1274.74 - 37.56 62.85	1274.74 - 37.56 43.40	63.74 - 37.56 2.17	5% - 100% 5%
		Total[(a)+(b)]	1375.15	1355.70	103.47	7.63%
4	Other debts and dues		N.A.	N.A.	N.A.	N.A.
	Grand Total	[1+2+3]	266345.15	266325.70	12703.47	4.77%

8. It is noted that Form-H has been filed by Resolution Professional wherein all information's / details as regard to conduct of CIRP as well as process adopted for Resolution Plan have been given. The total outstanding debt claims of all stakeholders is Rs. 2,66,345.15 Lakhs and Resolution Applicant has committed for payment to them at Rs. 12,703.47 Lakhs which amounts to 4.77% of total outstanding debt. It is stated in the plan that CIRP costs are met out of the operating revenues of the Corporate Debtor,



being a going concern. Hence, no provision for payment of CIRP costs is made in the plan. However, the Resolution Applicant has agreed to pay the actual costs of CIRP if any, which could not be met from operating revenue in priority to any other payment to be made as per the provisions of the IBC, 2016.

9. The sources of funds for making payments to various stakeholders by the Resolution Applicant as provided at clause 4.5 of the Resolution plan is reproduced below:

		(Rs. in Crores)
a)	From the sale proceeds to be realised against slump sale/ divestiture of narrow width plant	25.00
b)	From the sales proceeds to be realised against demerger of industrial park division	60.00
c)	Balance by way of infusion of additional unsecured loans by RA through friends, relatives and associates, infusion on new equity share capital and partly from internal cash accruals of the Corporate Debtor during the plan implementation period.	42.04
Total		127.04



10. It is further noted that certificate as regard to eligibility of resolution applicant under Section 29A alongwith undertaking of the Resolution Applicant to this effect has been filed. We have also perused the contents of Resolution Plan, we are of the view that requirements of Regulation 36

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to 39 of CIRP Regulations, 2016 have been complied with. We further note that Resolution Plan complies with all requirements provided under Section 30(2) (b) of IBC, 2016. We also find that the Resolution Plan addresses the cause for failure and also contains measures to run the Corporate Debtor in future. We also find that Resolution plan is both feasible and viable as held by CoC and it also contains provision for its effective implementation. Accordingly, we, being satisfied, approve the Resolution Plan and pass following order:

- 1) The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- 2) The order of moratorium dated 09.11.2020 passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of this order.
- 3) The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.

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- 4) The monitoring committee as proposed in clause 5.3 of the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- 5) Since the suspended management of the Corporate Debtor are itself the Resolution Applicant as the Corporate Debtor is registered under MSME as a medium enterprise. Hence, exemption sought under Section 32A of the IBC, 2016 cannot be granted. Accordingly, prayer (d) of part V (Relief sought) of the Application is rejected.
- 6) The Resolution Professional, Mr. Ravi Kapoor shall be released from the duties of the resolution professional of the Corporate Debtor as per the provisions of the IBC, 2016 and rules/ regulations made thereunder.
- 7) The matter pending with respect to Section 43 of the IBC, 2016, being IA No. 484(AHM) 2021 may be proceeded by Resolution Applicant and if any amount is realised from such proceedings, the same shall be distributed among the creditors as per provisions of Section 53 of IBC, 2016.



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- 8) The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).
- 9) 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.
- 10) As regard to various reliefs and concessions which are being sought, we hereby grant following reliefs and concessions only as against reliefs and concessions claimed by Resolution Applicant: -
- I. After the payment of the dues to the Secured Creditors, Unsecured Creditors, Operational Creditors, as per the Resolution Plan all the liabilities of the said stakeholders shall stand permanently extinguished after the approval of the Resolution Plan. We further hold that other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand



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extinguished after the approval of the Resolution Plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;

- II. On the effective date, all claims of the suspended management, erstwhile directors, and erstwhile shareholders shall stand permanently extinguished;
- III. On the effective date and with effect from the appointed date, all encumbrances on the assets of the Corporate Debtor prior to the plan shall stand permanently extinguished subject to concurrence of the Financial Creditors and on completion of procedural formalities as provided in the Companies Act, 2013;
- IV. The Resolution Applicant shall be entitled to review, revise or terminate any appointments/agreements entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements/MoUs/contracts;



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- V. The Resolution Professional shall complete the accounting entries to give effect to the Resolution Plan in the Books of Account as per the applicable Accounting Standards and provisions of the Companies Act, 2013;
- VI. The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the Resolution Applicant for proper running of the business and operations of the Corporate Debtor;
- VII. The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances under applicable law shall be done to give effect to such reconstitution;
- VIII. The Resolution Applicant shall, pursuant to the Resolution Plan approved under Section 31(1) of IBC, 2016 obtain the necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority



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under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;

IX. All the approvals of shareholders / members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the Resolution Plan as regard to the reduction of share capital and / or Scheme of Arrangement (De-merger). However, procedural formalities will be done by Corporate Debtor / Resolution Applicant as per applicable provisions of law.

X. On the effective date and with effect from the appointed date, the entire existing share capital of the Corporate Debtor shall stand extinguished without any payment (including any cancelled value of the said equity shares or preference shares) to shareholders of the Corporate Debtor holding such existing share capital. The Resolution Applicant would be entitled to issue new equity share capital in accordance with the provisions of



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the Companies Act, 2013 read with rules and regulations made there-under. However, the Resolution Applicant shall maintain public shareholding at minimum 5% as per the norms prescribed by IBBI and remaining 95% share capital shall be held by Resolution Applicant.

XI. For specific exemption / deemed approval sought under clause 4.6.4 at point (ii) & (iii) of the Resolution Plan in regard to SEBI Regulations, we direct the Resolution Applicant to approach the concerned Authorities who shall decide the issues including exemption / approval for de-listing the securities of the Corporate Debtor. Further in respect to clause 5.7 of the Resolution Plan which relates to all inquiries and investigations, cannot be allowed by this Adjudicating Authority.

XII. In light of aforesaid relief and concessions granted, the proposed Memorandum of Understanding (MOU) and Scheme of Arrangement between the Corporate Debtor and Gujarat Aluminium Alloy

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Pvt. Ltd. for de-merger of undertaking of the Corporate Debtor as defined under the draft Scheme annexed with the Resolution Plan and MOU between promoters group of Corporate Debtor and M/s Mittal Dyeing Pvt. Ltd. for sell of narrow width division of the Corporate Debtor is allowed.

XIII. As far as right of Financial Creditors against the personal guarantees / corporate guarantees in connection with loan / debt obtained by Corporate Debtor is concerned, such guarantors shall be at liberty to pursue their rights independent of approval of Resolution Plan. We further make it clear that there will not be any right of subrogation of such guarantors qua Corporate Debtor.



11. Accordingly, IA 549 of 2020 in CP (IB) No. 221 of 2019 is allowed and stands disposed of in terms of the above directions.

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12. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.



(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

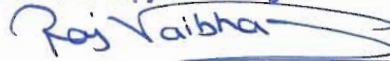


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Mansi J./LRA



Certified to be True Copy of the Original



Assistant Registrar
NCLT, Ahmedabad Bench
Ahmedabad

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