THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH
(through web-based vide conferencing platform)

IA No.243 of 2021
In
CP(IB) No.223/Chd/PB/2019
(Admitted)

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016

In the matter of:-
Shri Vardhman Rice Mills Private Limited …Operational Creditor

Versus

M/s J J Solvex Private Limited …Corporate Debtor

And in the matter of:-

Mr. Rakesh Kumar Singhala, Resolution Professional
(IBBI/IPA-001/IP-P01290/2018-2019/12151)
M/s J J Solvex Private Limited
R/o 257, I Block, Bhai Randhir Singh Nagar, Ludhiana, Punjab- 141012
…Applicant/Resolution Professional

Order delivered on 08 .07.2022

Coram: HON'BLE SHRI HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SHRI SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through Video Conferencing :-

For the Applicant	:-	Mr. Rakshit Gupta, Advocate
For the Resolution Applicant	:-	Mrs. Munisha Gandhi, Senior Advocate, with Mr. Viraj Gandhi, Advocate and Ms. Salina Chalana, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

ORDER

IA No.243/2021

The present application has been filed on behalf of the Resolution Professional of M/s J J Solvex Private Limited (for short the '**corporate debtor**') under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (for short the

'**Code**') read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (for short '**CIRP Regulations**') seeking approval of the Resolution Plan as approved in the meeting of the committee of creditors held on 01.01.2021.

2. Brief facts necessary for adjudication of the present application are that Shri Vardhman Rice Mills Private Limited (for short the '**operational creditor**') had filed a petition bearing CP(IB) No.223/Chd/PB/2019 under Section 9 of the Code before this Tribunal for initiation of Corporation Insolvency Resolution Process (for short the '**CIRP**') against the corporate debtor. This Tribunal, vide its judgment dated 10.02.2020 (Annexure A-1) admitted the petition filed by the operational creditor declaring the moratorium and appointed Mr. Vishawjeet Gupta, as Interim Resolution Professional ('**IRP**'). After initiation of the CIRP, the IRP within 3 days issued a public announcement as per Regulation 6 of the CIRP Regulations read with Section 15 of the Code in Form A (Annexure A-2) as prescribed under the schedule attached thereto in two newspapers i.e. 'Financial Express' and 'Rojana Spokesman Punjabi' on 13.02.2020 thereby inviting claims from the creditors of the corporate debtor as envisaged in the Code.

3. In pursuance of public announcements, the claims were received both from financial and operational creditors. The IRP verified the claims of all the creditors except the claim of Excise and Taxation Department which was subsequently verified by the Resolution Professional, as per provision of Regulation 13 of CIRP Regulations and after collating the claims as per the provisions of Section 18 of the Code, the IRP constituted a committee of creditors on 04.03.2020 as per the provisions of Section 21 of the Code, comprising of State Bank of India as the only

financial creditor having 100% voting share. The IRP filed its report (Annexure A-3) certifying constitution of committee of creditors as per Regulation 17 of the CIRP Regulations.

4. After constituting committee of creditors, IRP convened the 1st Meeting of the committee of creditors on 11.03.2020 as per time stipulated in Regulation 17 of the CIRP Regulations. In the said meeting, the committee of creditors resolved to appoint Mr. Rakesh Kumar Singhala as the Resolution Professional of the corporate debtor. Accordingly, this Tribunal vide order dated 19.03.2020 (Annexure A-6) appointed Mr. Rakesh Kumar Singhala as the Resolution Professional of the corporate debtor.

5. After appointment of the applicant as Resolution Professional, the Resolution Professional as per Regulation 17(3) of CIRP Regulations conducted the 2nd Meeting of the committee of creditors held on 17.06.2020, wherein the main agenda was to approve the eligibility criteria for the prospective resolution applicants, evaluation matrix and amount of performance security to be deposited by the Resolution Applicants. It is stated that two valuers were appointed by the Resolution Professional and as per the valuation report (Annexure A-10 colly), the fair value of the corporate debtor was assessed as Rs.4,42,83,937/- and the liquidation value was assessed as Rs.3,19,72,500/- in terms of Regulation 35 of the CIRP Regulations. Further, in the same meeting, the claims as received by the Resolution Professional were also discussed and the same are as follows:-

a) Financial Creditors

Sr.No.	Name of Financial Creditor	Amount of Claim (Rs.)	Amount Admitted (Rs.)

1.	State Bank of India	27,57,25,170.67	27,57,25,170.67
	Total	27,57,25,170.67	27,57,25,170.67

b) Operational Creditors

Sr.No.	Name of Operational Creditor	Amount of Claim (Rs.)	Amount Admitted (Rs.)
1.	Shri Vardhman Rice Mill Pvt. Ltd. (Under CIRP)	6,96,985	6,96,985
2.	Assistant Excise and Taxation Commission	9,13,76,698	9,13,76,698

6. As per Regulation 36A of the CIRP Regulations, Form G inviting Expression of Interest is needed to be published on or before the 75th day from the commencement of CIRP date. The original date was falling on 25.04.2020 but due to the lockdown on account of COVID-19 outbreak, the timelines of the CIRP were extended in view of the Regulation 40C of the CIRP Regulations and under the extended timelines 75th day for publication of Form G was on 05.07.2020. The same was discussed in 2nd meeting of the committee of creditors at Item No.11, the same was approved and was published in two newspapers on 26.06.2020 inviting express of interest.

7. In lieu of the publication of Form G, following parties showed interest:-

a. M/s Prudent ARC Ltd. - Submitted their documents
b. Sh. Naveen Jain - Did not submit the documents
c. Sh. Pankaj Kapoor - Did not submit the documents
d. Sh. Vikas Gupta - Showed interest after submission of EOI was over
e. Sh. Mohit Jain (Direct of CD) - Ineligible

The Resolution Professional in consultation with the sole member of the committee of creditors extended the time for submission of EOI till 05.08.2020 so that more Resolution Applicants can submit their EOI and invited Expression of interest by publishing Form G dated 29.07.2020 (Annexure A-12 (Colly). On the basis of EOI submitted after the extended time, the applicant issued provisional list of eligible Resolution Applicants dated 07.08.2020 as per Regulation 36A (10) of the CIRP Regulations.

8. In the 3rd Meeting of the committee of creditors held on 10.08.2020, the provisional list of eligible prospective Resolution Applicants was discussed. As no objections were raised against the provisional list, the Resolution Professional issued the final list of prospective Resolution Applicants as per Regulation 36A(12) dated 14.08.2020 (Annexure A-15). It is stated that in the same meeting, one M/s Avnish Sharma & Associates was appointed to conduct the transaction audit of the books of accounts of the corporate debtor to determine the transactions under Section 43, 45, 50 and 66 of the Code.

9. It is further stated that Request for Resolution Plan ('**RFRP**') dated 10.08.2020 (Annexure A-16) was issued to the prospective Resolution Applicants in terms of Regulation 36B of the CIRP Regulations. Thereafter, in the 4th Meeting of the committee of creditors held on 18.09.2020, the Resolution Professional had received 3 resolution plans from 3 prospective Resolution Applicants i.e. Shri Vikash Gupta, Shri Navneet Jain and Shri Pankaj Kapoor.

10. In the 5th Meeting of the committee of creditors held on 09.10.2020, the Resolution Professional placed before the committee of creditors the resolution plan received by him from three prospective Resolution Applicants. The Resolution Professional also placed before the committee of creditors the evaluation matrix along with the scores earned by each Resolution Applicant, which were calculated

based on the Resolution Plans submitted by the Resolution Applicants in consultation with the committee of creditors. Accordingly, H1 Resolution Applicant Shri Vikas Gupta placed before the committee of creditors the financial terms and well as the future plan for the corporate debtor.

11. Thereafter, in the 6th Meeting of the committee of creditors held on 14.10.2020, H1 Resolution Applicant, Shri Vikas Gupta, who earlier submitted an offer to the stakeholder of Rs.2.51 Crores plus Rs.3.00 Crores for setting up the new plant in the earlier committee of creditors meeting, was given another opportunity to improve the said offer. The H1 Resolution Applicant, Shri Vikas Gupta further increased the offer to Rs.2.60 Crores and then finally to Rs.2.74 Crores and informed the committee of creditors that he would have to revise his plan and reallocate the amount to different segments by making some adjustments. It is further stated that the H1 Resolution Applicant also apprised the committee of creditors that he had already deposited Rs.5 Lacs as EMD and will further deposit Rs.75 Lacs as performance security within 5 days of the approval of the plan by committee of creditors and further Rs.75 Lacs within a period of 90 days of the approval of the plan by this Adjudicating Authority and the balance amount within 270 days. However, the committee of creditors was not inclined to give such a long period and requested the Resolution Applicant to reduce the overall repayment period for the balance amount to 180 days from the date of approval by the Adjudicating Authority and the same was agreed to by the Resolution Applicant.

12. It is also mentioned that CIRP period of the corporate debtor was to expire on 18.10.2020, however, since due to COVID-19 outbreak, the lockdown w.e.f. 25.03.2020 was imposed by the Government of India, the Resolution Professional

filed an application under Regulation 40C of the CIRP Regulations read with Rule 11 of the NCLT Rules, 2016 for exclusion of the period of lockdown w.e.f. 22.03.2020 to 31.08.2020 and this Tribunal vide order dated 29.10.2020 (Annexure A-22) granted exclusion from 25.03.2020 to 31.07.2020.

13. In the 7th Meeting of the committee of creditors held on 01.01.2021, the main agenda was the discussion and approval of Resolution Plan, as submitted by the Resolution Applicant- Shri Vikas Gupta. It is stated that plant and machinery of the corporate debtor was already sold by the secured creditor-SBI and as such, the corporate debtor was not in operation and as such the committee of creditors opined that it will be difficult to sell the corporate debtor as a going concern in the absence of plant and machinery, as per Regulation 39C of the CIRP Regulations and accordingly, decided not to sell the corporate debtor as a going concern and the fees of liquidator as per Regulation 39D of the CIRP Regulations was approved in the same meeting.

14. It is further stated that Resolution Applicant Shri Vikas Gupta submitted his final resolution plan dated 03.11.2020 vide e-mail dated 04.11.2020 to the Resolution Professional and the same was placed before the sole member of the committee of creditors for approval and accordingly, the State Bank of India being the sole member of the committee of creditors and having 100% voting share in the 7th Meeting of the committee of creditors held on 01.01.2021 voted in favour of the Resolution Plan. Copy of Resolution Plan dated 03.11.2020 submitted by the Resolution Applicant Shri Vikas Gupta along with all affidavits, undertakings and compliances is attached as Annexure A-25 (colly) with the application.

15. It is further stated that the committee of creditors while approving the Resolution Plan of the Resolution Applicant i.e. Shri Vikas Gupta had taken care of all the provisions of the Code and the CIRP Regulations. The Resolution Professional has also submitted his compliance certificate in Form H certifying that the Resolution Plan as approved by the committee of creditors complies with all the provisions of the Code and CIRP Regulations.

16. Thus, it is prayed that the present application may kindly be allowed and the resolution plan as approved by the committee of creditors in the CIRP process of M/s J J Solvex Private Limited may kindly be approved so as to bind the corporate debtor, its employees, members, guarantors and stakeholders involved in the resolution plan in view of the fact that the same was perfectly in conformity with the provisions of the Code and CIRP Regulations.

17. The list of financial creditors of the corporate debtor, being members of the Committee of Creditors and distribution of voting share among them, as given in Para 5 of Form H, along with details of claims summary is as under :-

S.No.	**Name of the Creditor**	**Voting Share %**	**Voting for Resolution Plan (Voted in favour/Dissented/ Abstained)**
1.	State Bank of India	100%	Voted in favour

18. It is submitted that Section 30(6) of the Code mandates the applicant as a Resolution Professional to submit the resolution plan as approved by the Committee of Creditors to the Adjudicating Authority for approval under Section 31(1) of the Code. Accordingly, as the resolution plan submitted by the resolution applicant has been duly approved by the members of the committee of creditors by a voting share

of 100% which is more than the requisite voting share required i.e. 66%, the Resolution Professional has thus, filed the present for approval of the resolution plan before this Adjudicating Authority.

19. It is also submitted that Committee of Creditors while accepting the bid and as per Form H (Annexure A-27) had taken care of all the provisions and regulations of the Code. Thus, it is prayed that the instant application for approval of resolution plan, as approved by the Committee of Creditors, in the matter of corporate debtor be allowed.

20. We have heard Mr. Rakshit Gupta, learned counsel for the applicant/Resolution Professional and Mrs. Munisha Gandhi, learned senior counsel for the Resolution Applicant. We have also gone through the record before us and have carefully considered the submissions made by learned counsel for the parties.

21. The CIRP proceedings under Section 9 of the Code, against the corporate debtor were initiated vide order dated 10.02.2020, and Committee of Creditors was constituted on 04.03.2020.

22. The Resolution Plan includes a statement under Regulation 38(1A) of the CIRP Regulations as to how it has dealt with interests of all stakeholders in compliance with the Code and Regulations made thereunder. The amounts provided for the stakeholders under the Resolution Plan, as given in Para 7 of Form H, is are as under:-

(Amount in Rs.lakh)

Sr. No.	Category of Stake-holder	Sub-category of stake-holder	Amount Claimed (in Rs.)	Amount Admitted (in Rs.)	Amount Provided under the Plan	Amount provided to the amount claimed (%)
1.	Secured Financial Creditors	(a) creditors not having a right to vote under sub-section (2) of Section 21	Nil	Nil	--	--
		(b) Other than (a) above: (i) who did not vote in favor of resolution plan	Nil	Nil	--	--
		(ii) who voted in favour of the resolution plan	27,57,25,170.67	27,57,25,170.67	2,52,00,000	9.14%
		Total [(a)+(b)]	27,57,25,170.67	27,57,25,170.67	2,52,00,000	9.14%
2.	Unsecured Financial Creditors	(a) creditors not having a right to vote under sub-section (2) of Section 21	Nil	Nil	--	--
		b) Other than (a) above: (i) who did not vote in favor of resolution plan	Nil	Nil	--	--

		(ii) who voted in favour of the resolution plan				
		Total [(a)+(b)]	Nil	Nil	--	--
3.	Operational Creditors	(a) Related party of the corporate debtor	Nil	Nil	--	--
		(b) Other than (a) above: (i) Government	9,13,76,698	9,13,76,698	99,243	0.11%
		(ii) Workmen	Nil	Nil	--	--
		(iii) Employees	No claim submitted	No claim submitted	1,00,000	--
		(iv) Shri Vardhman Rice Mills Pvt. Ltd.	6,96,985	6,96,985	757	0.11%
		Total [(a) + (b)]	9,20,73,683	9,20,73,683	2,00,000	0.22%
4.	Other debts and dues	(i) Municipal Council Samana	No claim submitted	No claim submitted	600	--
		(ii) PSPCL Samana	No claim submitted	No claim submitted	400	--
	Grand Total		36,77,98,853.67	36,77,98,853.67	2,54,01,000	6.90%

23. The compliance of resolution plan has been given in Para 9 of the Form H, which is as under:-

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Clause 2 [Page 10-11]	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	The Resolution Applicant has separately submitted affidavit declaring his eligibility under Section 29A of the Code	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	The Resolution Applicant has separately submitted an affidavit declaring his eligibility under Section 29A of the Code	Yes
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process (b) provides for the payment of debts of operational creditors? (c) provides for the payment of the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor?	Clause 6 & 13.1 [Page 26 & 39] Clause 6 & 13.1 [Page 26 & 39] There is only one financial creditor in the committee of creditors Clause 7 [Page 28]	Yes Yes Yes Yes

	(e) provides for the Implementation and supervision of the Resolution plan? (f) Contravene any of the provisions of the law for the time being in force?	Clause 11 [Page 36] Clause 10.7.1 [Page 35]	Yes Yes
Section 30(4)	Whether the Resolution Plan		Yes
	(a) is feasible and viable, according to the CoC?	Clause 13.1(7) [Page 40]	
	(b) has been approved by the CoC with 66% voting share?	The plan is approved by 100% votes in the committee of creditors meeting held on 01.01.2021	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 13.1(7) [Page 40]	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under Sections 43, 50 or 66 before the one hundred and fifteenth day of insolvency commencement date, under intimation to the Board?	The Resolution Professional made an opinion that the corporate debtor was subject to transaction covered under Section 66. Accordingly, Resolution Professional appointed transaction auditor for determining the transactions covered under Section 43, 45, 50 or 66. The Transaction Auditor submitted its report on 02.09.2020 i.e. on seventy sixth day from the insolvency commencement date. The Resolution Professional has filed an application under Section 66 and intimated the same to the Board.	Yes

Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 13.1(2) [Page 39]	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 13.1(6) [Page 39]	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code? (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Clause 13.2(1) [Page 41] NA	Yes NA
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Clause 11.3 & 12 [Page 37 & 38] Clause 7 [Page 28] Clause 11 [Page 36]	Yes Yes Yes
38(3)	Whether the resolution plan demonstrates that- (a) it addresses the cause of default?	Clause 13.1(8) [Page 40]	No. The cause of default of corporate debtor is not covered in

			information memorandum and not known to Resolution Applicant. However, to restart the operations of corporate debtor the Resolution Applicant proposes to infuse funds for capital expenditure and working capital in the corporate debtor after the transfer date.
	(b) it is feasible and viable?	Clause 13.1(7) [Page 40]	Yes
	(c) it has provisions for its effective implementation?	Clause 11 & 13.1(7) [Page 36-37 &40]	Yes
	(d) It has provisions for approvals required and the timeline for the same?	Clause 8 [Page 29-31]	Yes. The Resolution Applicant has sought time to assess the status of necessary business permits and sought time to apply for the same.
	(e) the resolution applicant has the capability to implement the resolution plan?	Clause 13.1(7) [Page 40]	Yes

39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		The Resolution Applicant has deposited performance security of Rs.75.00 lacs on 05.01.2021 through bank deposit in the account of corporate debtor which was converted into term deposit on 07.01.2021 value 06.01.2021.

24. The approval of the Resolution Plan has been sought under Section 31 of the Code, which reads as under:-

31. Approval of resolution plan. -

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and 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, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1), -

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and
(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.
[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval 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 under sub-section (1) or within such period as provided for in such law, whichever is later:
Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]

25. The conditions provided for in Section 31(1) of the Code, for approval of resolution plan are:-

a. The Resolution Plan is approved by the Committee of Creditors under Section 30(4) of the Code;

b. The Resolution Plan so approved meets the requirement as referred to in Section 30(2) of the Code;

c. The Resolution Plan has provisions for its effective implementation.

26. It is submitted by learned counsel for the Resolution Professional that the resolution plan has been approved by a vote of 100 % of the committee of creditors, therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

27. The provisions of Section 30(2) of the Code are as under:-

30. Submission of resolution plan

xxx xxx xxx

"(2) 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 [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 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.
Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-
(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;
(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or
(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]
(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.
[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]"

28. The compliance of Section 30(2) of the Code is given in Para 9 of Form H (supra), the same is being examined further as under:-

i.) Section 30(2)(a): The resolution plan at Clause 6 at Page 13 of the plan (Page 418 of the application) and at Clause 13.1(1) at Page 39 of the plan

(Page 444 of the application) states that the total CIRP cost of the corporate debtor till the effective date is not known to the Resolution Applicant that's why Resolution Applicant has assumed the CIRP cost incurred or to be incurred till the effective date is Rs.20,00,000/-. Resolution Applicant proposed to pay CIRP cost on actual basis as contemplated by Resolution Professional. In the event, the CIRP cost is more than Rs.20,00,000/-, the Resolution Applicant proposes to pay such excess amount of CIRP cost on actual basis and in the event the CIRP cost is less than Rs.20,00,000/- then the same will be adjusted to the payment of financial creditor in the ratio of their voting rights in the committee of creditors. Further, it is stated in the resolution plan that the payment of CIRP cost will be given priority in payment over any other payments/debts of the corporate debtor.

ii.) Section 30(2)(b): The resolution plan at Clause 6 at Page 13 of the plan (Page 418 of the application) and at Clause 13.1(1) at Page 39 of the plan (Page 444 of the application) states that as per the information memorandum shared by the Resolution Professional claim of Rs.6,80,000/- of workmen and/or employees is pending as on the insolvency commencement date and the amount is due and payable to the workmen and employees and accordingly, the Resolution Applicant proposes to pay Rs.1,00,000/- towards their claims as full and final settlement. Further, it is stated that since the liquidation value of the corporate debtor is not known to the Resolution Applicant, however, the Resolution Applicant has assumed that the liquidation value of the operational creditor (which includes Assistant Excise and Taxation Commissioner, Patiala) is Rs.1,00,000/- accordingly, the Resolution Applicant proposes to make payment of towards settlement/discharge of the entire amount of all the operational creditor (except workmen & employee & related party creditor) of Rs.1,00,000/-. Further, it is stated that no claim is received by the Resolution Professional w.r.t. the dues of the Municipal Council, Samana, the Resolution Applicant proposes to make payment of Rs.600/- towards full and final settlement of any dues of Municipal Council, Samana, if any. It is further stated that no claim is received by the Resolution Professional w.r.t. the dues of the PSPCL, the Resolution Applicant proposes to make payment of Rs.400/- towards full and final settlement of any dues of PSPCL, if any. It is also mentioned in the resolution plan that the Resolution Applicant proposes to make a NIL payment towards full and final settlement of the entire claim of other creditors, related party debt, related party creditors.

iii.) Section 30(2)(c): The resolution plan at Clause 7 at Page 28 of the plan (Page 433 of the application) states that from the submission of the resolution plan upto the effective date, the Resolution Professional shall continue to manage the business and operation of the corporate debtor. It is stated that the Resolution Professional shall ensure that no material adverse change is caused to the business and operations of the corporate debtor, the assets of the corporate debtor are protected in the existing stage and the liabilities of the corporate debtor are not increased in any manner. Further, it is stated that during the period from the effective date and upto the transfer date, the corporate debtor shall be managed by the monitoring committee. The monitoring committee comprising three members (one member from Resolution Applicant, one member from committee of creditors and Resolution Professional) will be formed immediately after approval of the Resolution Professional from adjudicating authority to take care the operation of corporate debtor till all the assets of the corporate debtor are transferred by the financial creditor to the Resolution Applicant. After such transfer the monitoring committee shall stands dissolved. Further, it is stated that the Resolution Professional shall act as monitoring agent till the full payments are not made to stakeholder's as per clause 12.1 and for the same, he will get Rs.25,000/- per month as monitoring agency fees.

It has also been mentioned that on and from the transfer date upon implementation of Resolution Professional, the total equity shareholding of the corporate debtor shall be held as follows:-

Shareholder	**Percentage of total paid up Equity Share Capital**
Resolution Applicant	100%
Other	NIL
Total	100%

It is also mentioned that Resolution Applicant will reconstitute board of corporate debtor and also induct new shareholders to comply with the provisions of the companies for minimum number of members and directors for private companies after the payment of all stakeholder as mentioned in the resolution plan, on or after transfer date who will take care of operation of corporate debtor.

iv.) Section 30(2)(d): The resolution plan at Clause 11 at Page 36 of the plan (Page 441 of the application) states that from the approval date and until the transfer date, a monitoring committee, identified by Resolution Applicant with the consent of committee of creditors shall be appointed for corporate debtor. The monitoring committee shall supervise the implementation of the Resolution Professional and shall be required and entitled to do all the acts, deeds, matter and things as may be necessary, desirable or expedient in order to implement and give effect to this resolution plan, and shall act under supervision of NCLT. The monitoring committee shall have the same functions, powers and protections as assigned to Resolution Professional under the IBC. Until the transfer date, the committee of creditors shall continue with its roles and responsibilities, and have protections, asset out in the IBC. All the decisions of the monitoring committee shall be taken by the unanimous consent of the members of monitoring committee. The monitoring committee will arrange meetings on time to time basis with notice in advance to understand current stage of implementation of resolution plan and future course of action with respect to resolution plan. The fees and other cost relating to monitoring committee and meetings arranged by monitoring committee will be incurred and paid by the Resolution Applicant. It is also mentioned that the board of directors of the corporate debtor shall put in place an adequate mechanism for supervising the implementation of the resolution plan and the board of directors will take a detailed understanding of the status of corporate debtor from monitoring committee.

v.) Section 30(2) (e): The resolution plan at Clause 10.7.1 at Page 35 of the plan (Page 440 of the application) states that as per the requirement of Section 30(2)(e) of the Code, the Resolution Applicant declares that this resolution plan is not in contravention of the provisions of any applicable laws.

29. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan at Clause 13.1(7) at Page 40 of the plan (Page 445 of the application) states that all the points of this resolution plan collectively form basis of proof that this plan is feasible and viable, has provisions for effective implementation, has provision and timelines for the approvals required and the Resolution Applicant has the capability to implement the resolution plan. The provisions of effective implementation of the plan has already been discussed above and the same is not being repeated herein for the sake of brevity.

30. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No.4 of Form H (page 477 of the Application), the Resolution Professional has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The Resolution Professional has also certified that the resolution applicants Shri Vikas Gupta has submitted an affidavit dated 16.10.2020 pursuant to Section 30(1) of the Code confirming his eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The Resolution Professional has submitted that the resolution plan has been approved by the

Committee of Creditors with 100% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.

31. We shall now discuss the requirements of Regulation 39(4) of the Regulations. According to the learned counsel for the Resolution Professional, the compliance of Section 39(4) has also been taken care of as the Resolution Applicant has deposited performance security of Rs.75.00 lacs on 05.01.2021 through bank deposit in the account of corporate debtor which was converted into term deposit on 07.01.2021 value date 06.01.2021. Thus, the Resolution Applicant has duly complied with Regulation 39(4) and 36B(4A) of the CIRP Regulation, 2016.

32. It has been observed that in the Resolution Plan which has been submitted by Resolution Applicant there is change in management and control of the corporate debtor and such change satisfies the conditions stipulated under Section 32A of the Code, therefore the benefit of immunity under Section 32A of the Code will be applicable to the Resolution Applicant.

33. In this regard, it relevant to refer to the judgment of the Hon'ble Supreme Court in the matter of ***Manish Kumar v. Union of India & Anr***. in ***Writ Petition (C) No. 26 of 2020***, wherein the Petitioner challenged the constitutional validity of Section 32A of the Code. The Hon'ble Supreme Court held that there is no case made out to seek invalidation of Section 32A.

34. Since in the Resolution Plan which has been submitted by Resolution Applicant there is change in management and control of the corporate debtor and such change satisfies the conditions stipulated under Section 32A of the Code,

therefore the benefit of immunity under Section 32A of the Code will be applicable to the Resolution Applicant.

35. It is directed that any relief sought for in the resolution plan, where the contract/agreement/understanding/proceedings/actions/notice etc. is not specifically identified or is for future and contingent liability, is at this moment rejected.

36. It is further directed that the resolution applicant, on taking control of the corporate debtor, shall ensure compliance under all applicable law for the time being in force. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.

37. We shall clarify here that resolution applicant shall take over the corporate debtor with all its assets and liabilities as per terms of the approved resolution plan. If any relief concerning any identified liability of the corporate debtor is required, then that needs to be specifically mentioned and sought for in the resolution plan. This bench cannot allow any general power to any resolution applicant absolving him of liability of the corporate debtor without knowing about the liability against which such exemption is sought. In other words, reliefs/exemptions from only existing liabilities which are specifically identified can be sought and allowed in the resolution plan.

38. It is seen that the Resolution Plan seeks several dispensations, concessions and waivers. Approval of Resolution Plan does not mean automatic waivers. The Resolution Applicant on approval of the Plan may approach those competent

authorities/courts/legal forms/office(s) Government or Semi-Government/State or Central Government for appropriate relief(s) sought in the plan.

39. The resolution plan provides that there is a provision in the resolution plan for disbursement of amounts recovered from PUFE transactions to creditors. It is stated at Page 23 of the resolution plan (Page 427 of the application) that all proceedings, inquiries, orders, show causes notices, suits, litigation etc. initiated by the corporate debtor/Resolution Professional in respect of Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the Code claiming a certain amount shall remain outstanding and the financial creditors will be the sole beneficiary of the funds recovered out of such cases.

40. In view of the above discussions, the resolution plan submitted by the Resolution Applicant- Shri Vikas Gupta, as approved by the Committee of Creditors under Section 30(6) of the Code read with Regulation 39 of the CIRP Regulations, 2016, is hereby approved. The resolution plan so approved shall be binding on the corporate debtor and its employees, members, creditors including the Central Government, State Government or Local Authority, to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owned, guarantors and other stakeholders involved in the resolution plan.

41. Under the provisions of Section 31(3) of the Code, we direct as under:-

a. The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 10.02.2020 shall cease to have effect; and

b. The Resolution Professional shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

Thus, IA No.243 of 2021 is disposed of.

Sd/-	Sd/-
(Subrata Kumar Dash)	(Harnam Singh Thakur)
Member (Technical)	Member (Judicial)

July 08, 2022
MK