

18/07/2022

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD  
(COURT NO. II)**

**IA/32/2022  
IN  
CP (IB) 690/9/NCLT/AHM/2019**

[Application under Section 30(6) r.w. Section 31(1) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons), 2016]

**In the Matter of**

**Mr. Jigar Tarunkumar Bhatt  
Resolution Professional of  
M/s ALM Metal & Alloys Ltd.**

**...Applicant**

**Versus**

**Committee of Creditors  
of ALM Metals & Alloys Ltd.**

**...Respondent**

**Order Pronounced On: 13/07/2022**

**Coram:**

**DR. DEEPTI MUKESH,  
HON'BLE MEMBER (JUDICIAL)  
AJAI DAS MEHROTRA,  
HON'BLE MEMBER (TECHNICAL)**

IA/32/2022  
IN CP (IB) 690/9/NCLT/AHM/2019



**MEMO OF PARTIES**

**Mr. Jigar Tarunkumar Bhatt**  
**Resolution Professional of**  
M/s ALM Metal & Alloys Ltd.  
Office at:  
B-101, Arvind Citadel,  
B/h. BSNL Office, Off C G Road,  
Navrangpura, Ahmedabad-380009.

**...Applicant**

**VERSUS**

**Central Bank of India,**  
Sole Member of Committee of Creditors  
Having its Regional Office at:  
PB No. 51, Nagindas Chambers,  
1<sup>st</sup> Floor, Dhebar Road, Rajkot  
Gujarat-360001.

**...Respondent**

**Appearance:**

For the Applicant: Mr. Jigar Tarunkumar Bhatt RP in person.

**ORDER**

1. This application has been filed by Mr. **Jigar Tarunkumar Bhatt**, Resolution Professional of M/s ALM Metal & Alloys Ltd. under Section 30(6) read with Section 31(1) of the Insolvency & 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 the Resolution Plan.

2. The facts in brief are that the Corporate Debtor M/s ALM Metal & Alloys Ltd. was admitted into CIRP by this Adjudicating Authority vide order dated 05.04.2021, in an application filed by the operational creditor (M/s. Sunil Metal Corporation) u/s 9 of the IBC, 2016 wherein the moratorium was declared and the Corporate Insolvency Resolution Process (hereinafter referred to as **CIRP**) was initiated. Mr. Sanjay Badrilal Punglia was appointed as Interim Resolution Professional (hereinafter referred to as **IRP**), who made a public announcement in Form-A on 18.04.2021 and collated claims and constituted a Committee of Creditors (hereinafter referred to as CoC) comprising of sole Financial Creditor, viz., Central Bank of India.
3. It is submitted by the applicant that the CoC in its 1<sup>st</sup> meeting held on 26.05.2021 resolved to replace the IRP Mr. Sanjay Badrilal Punglia by resolution professional (hereinafter referred to as **RP**) Mr. Jigar Tarunkumar Bhatt and replacement was confirmed vide order dated 22.06.2021 in IA 363 of 2021. The registered valuer was appointed on 04.06.2021 and invitation for Expression of Interest (EOI) through Form-G was published on 05.07.2021. The detail of the final list of eligible resolution applicants was issued on 04.08.2021. It is submitted that the last date of submission of the Resolution Plan was fixed on 08.09.2021.

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4. The CoC in its 3<sup>rd</sup> meeting held on 16.09.2021 were informed by the applicant that 2 EOIs were received from Consortium of Ankit Kansagra & Kanchan Kansagra and Mansukhbhai Raghavjibhai Prajapati.
5. The CoC in its 4<sup>th</sup> meeting held on 21.09.2021 discussed both the resolution plans and had also resolved that an application for extension of the CIRP period by further 90 days from 02.10.2021 be filed. Thereby IA 691 of 2021 was filed for extension of period of CIRP and the same was allowed by the Adjudicating Authority vide order dated 18.10.2021.
6. The applicant submits that the CoC in its 5<sup>th</sup> meeting held on 30.10.2021 received revised resolution plan from the earlier Prospective Resolution Applicants ('PRA'). However, in order to explore for better value discovery of corporate debtor, the CoC resolved to publish revised Form G for invitation of fresh EOI. The revised form G was published on 03.11.2021.
7. It is submitted that the CoC in its 6<sup>th</sup> meeting held on 16.12.2021 were informed that no fresh EOI was revised after publication of Form G on 03.11.2021. Thus, the CoC decided to consider in the next meeting, the revised resolution plans received from the 2 prospective resolution applicants namely, 1. Rajat Minerals-consortium of Ankit Kansagra & Kanchan Kansagra on 11.12.2021; 2. Mansukhbhai Raghavjibhai Prajapati on 05.10.2021.
8. The applicant submits that in the 7<sup>th</sup> CoC meeting held on 20.12.2021 the resolution applicants were called upon to improve their offer, wherein Mr.



Manshukhbhai R. Prajapati offered to improve offer by 10%, i.e., total plan amount revised to Rs. 166.10 lakh and conveyed that it would be final offer from their side. Further CoC members informed to Mr. Manshukhbhai R. Prajapati that their offer is still below minimum expected value and accordingly they shall not be considering his resolution plan. Since, PRA denied to improve his offered plan amount, CoC member conveyed their dissent on plan to Mr. Manshukhbhai R. Prajapati. Further, resolution professional invited Mr. Dhaval Khamar, authorized representative of Rajat Minerals-Consortium of Ankit Kansagra and introduced them with CoC members. CoC members requested to improve their offer with respect to total plan amount and payment timelines. After much deliberations, Mr. Dhaval Khamar conveyed not to increase plan amount but offered to improve payment timeline by 30 days i.e. from 270 days to 240 days. CoC members suggested authorized representative of PRA to bring timeline to 210 days, for which authorized representative requested for 24 hours' time to revert which CoC agreed. Members also raised query with regard to clause no. 15.7 of resolution plan which demanded discount of 8% on prepayment and insisted for removal of the said clause. Subsequently, as requested by CoC members, resolution professional (RP) received an addendum from Rajat Minerals- Consortium of Ankit Kansagra on 21.12.2021, wherein PRA revised timeline to 210 days and removed clause no. 15.7 from the resolution plan. RP had shared the addendum with CoC members on same day for their



evaluation. Thereby CoC had unanimously resolved to approve the resolution plan of Rajat Minerals - Consortium of Ankit Kansagra by e-vote on 29.12.2021. The resolution passed by CoC is reproduced hereunder;

*“RESOLVED THAT, the consent of the Committee of Creditors be and is hereby accorded, under section 30(4) with 100% voting share of the financial creditors, for the approval of Resolution Plan submitted by Rajat Minerals - Consortium of Ankit Kansagra and Resolution Professional be and is hereby authorized to do the necessary formalities thereof as per section 30(6).”*

*“RESOLVED FURTHER THAT Resolution Professional is authorised to appoint legal counsel for filing required application before Adjudicating Authorities at a maximum fee of Rs 25,000/-” for seeking approval on the Resolution Plan.”*

The copy of the e-voting is also annexed with the application.

9. The Applicant received valuation reports from the registered valuers wherein the Fair Value and Liquidation Value are Rs. 3,22,31,952/- and Rs. 2,34,91,781/-, respectively.
10. Mr. Aftab Ur Rab, one of the member of the suspended board of corporate debtor filed compromise offer for one time settlement to the sole member of CoC through e-mail dated 08.03.2022 of Rs. 4,10,00,000/- and also made compromise offer for one time settlement to the operational creditor, viz., Sunil Metal Corporation of Rs. 10,00,000/- and prayed to allow the creditors to consider the settlement proposed by the suspended board of corporate debtor and further sought direction to the resolution professional to call CoC



for the purpose of considering the settlement and decide on application u/s 12A of the IBC if the settlement is accepted by the creditors.

11. It is further submitted by the Applicant RP that the resolution plan complies with provisions of Section 30(2) of IBC, 2016 and Regulation 38 (3A) of the CIRP Regulations.
12. The amount provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. Lakh)

Sr. No.	Category of Shareholder*	Sub-Category 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	NA	NA	NA	NA
		(b) Other than (a) above:	NA	NA	NA	NA
		(i) who did not vote in favour of the resolution Plan (b) (ii) who voted in favour of the resolution plan	1080.05	1011.27	238.00	23.54%
		Total [(a)+(b)]	1080.05	1011.27	238.00	23.54%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA



		(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	NA  NA	NA  NA	NA  NA	NA  NA
		Total[(a)+(b)]	NA	NA	NA	NA
3	Operational Creditors	(a)Related party of Corporate Debtor	NA	NA	NA	NA
		(b)Other than(a) above:	51.30	51.30	0.00	0.00%
		(i) Government	766.69	766.69	0.00	0.00%
		(ii) Workmen	NA	NA	NA	NA
		(iii)Employees	NA	NA	NA	NA
		Total[(a)+(b)]	817.99	817.99	0.00	0.00%
4	Other debts and dues		NA	NA	NA	NA
	Grand Total		1898.04	1829.26	238.00	13.01%

\*If there are sub-categories in a category, add rows for each sub-category.  
#Resolution Plan has provided for Rs 13.00 Lakh as a CIRP Cost over and above plan amount of Rs. 238.00 Lakh.

13. It is noted that Form-H has been filed by Resolution Professional wherein all information as regard to conduct of CIRP, as well as process adopted for Resolution Plan, has been given. The total claim amount admitted by the resolution professional from all stakeholders is Rs. 1829.26 lakhs and resolution applicant has committed for payment to all the stakeholders Rs.



238.00 lakhs which amounts to 13.01% of total claim admitted by Resolution Professional. It is stated in the resolution plan that as per the clause 5.3 of the resolution plan, resolution applicant shall be paid the actual CIRP cost, as ratified by the CoC within 30 business days from the effective date.

14. The Resolution Applicant undertakes to furnish performance security of Rs. 10 lakhs as envisaged under the RFRP ('Request for Resolution Plan') within 7 working days from the date of communication of approval of resolution plan by CoC in accordance with the provisions contained in Regulation 36B(4A) of the CIRP Regulations, 2016 in terms of clause 14 of the resolution plan.
15. During the hearing, while perusing Clause No. 5.5.2, a query was sought by the Bench vide order dated 26.04.2022 as to obligation of the payment of tranches as per the proposed timeline of the plan. It was also noted that the financial capacity of the Resolution Applicant is also not very well established, though the property details and balance sheets are filed, but it is not clarified how funding will be done in the plan for paying the Creditors. In response to these queries the RP Mr. Jigar Tarunkumar Bhatt filed an affidavit and clarified about the query raised by the Bench in the following manner:

- (i) Clarification about the Clause No. 5.5.2 page 30 of the resolution plan:

"The RA shall have right but no obligation to make payment of any tranche at any time mentioned under the "Proposed Timeline".



For clarification, we would like to submit that, "No obligation to make payment" was meant to be only for prepayment i.e., no creditor can demand the payment of the respective tranche any-time prior to the last day mentioned under the "Proposed Timeline".

For removal of doubts, we would like to amend and submit point no 5.5.2, Page 30 of the plan as below:

Point 5.5.2 - The payment of the resolution plan amount tranche shall be due for payment only on the last day of the respective proposed timeline; however, the Resolution Applicant shall be entitled to make pre-payment of any tranches earlier than the "Proposed Timeline".

- (ii) Financial strength and liquid fund position of resolution applicants in support of satisfying financial viability and arrangement of funding of the plan amount was explained as under:

Name of the Consortium Member	Fund Availability	Source of Fund	Supporting Document
Mr. Ankit Kansagra	Rs. 40,00,000	Withdrawable Share in Partnership Firm	Three Property agreement to sale and Partnership Firm MOU of M/s Shree Dev Enterprise
Mrs. Kanchan J Kansagra	Rs. 30,00,000	Sale of immovable property	Property Agreement to Sale
Mr. Jagdish Kansagra	Rs. 10,00,000	Bank balance	HDFC Bank Statement of A/C No. 09611000004558
	Rs. 14,00,000	Bank Loan	Sanction Letter of Bank of India
	Rs. 1,41,521	Bank Fixed Deposit	FD Receipt No. 4022148 of Rajkot Nagrik Sahakari Bank



Mr. Kantibhai Rankja	Rs. 95,23,000	Bank Balance	HDFC Bank Statement of A/C No. 03071000005572
Mr. Vasantbhai Fultariya	Rs. 49,72,000	Bank Balance	HDFC Bank Statement of A/C No. 59109825827878
	Rs. 30,00,000	Loan from Firm	Loan Letter from Partnership Firm M/s Pragati Machine Tools
<b>Total Available Funds</b>	<b>Rs. 2,70,36,521</b>		

16. On perusal of the records, it is found from the reply of the suspended board of directors that it offered a one-time settlement ('OTS') to the CoC and operational creditors on 08.03.2022 after the filing of the instant Application for approval of resolution plan approved by the CoC through e-voting on 29.12.2021 in its 7<sup>th</sup> meeting. 31.12.2021. It is noted that suspended board of directors of the Corporate Debtor never participated in any of the CoC meetings. The resolution professional during finalisation of resolution plan had been in touch with Mr. Aftab Ur Rab but no resolution plan was submitted by him, as noted in dates and events of IA 32 of 2022. It appears that in order to delay the insolvency proceeding of the corporate debtor, one member of the suspended board of directors had offered the OTS at this late stage. No plan for raising funds or how the OTS will be funded was mentioned in the offer. It is also noted that neither the Resolution Professional nor any of the CoC member or any creditor has replied to the offer made by the said member of the suspended board of corporate debtor



at such a delayed stage, which implies that CoC does not want to take its step back and wants to proceed with the resolution plan of the resolution applicant. Considering the decision of the CoC, we are of the opinion that the OTS proposal of one of the members of the suspended board of corporate debtor cannot be entertained at this stage.

17. Resolution professional Mr. Jigar Tarunkumar Bhatt present in person 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 and also drew our attention to the relief and concessions, which are mentioned under clause 15, page No. 38 in the Resolution Plan. 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 empowered to in view of the decision of the Hon'ble Supreme Court in the case of *Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors.* (Civil Appeal No. 8129 of 2019) dated 13.04.2021 which is reproduced hereinbelow:



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

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

18. It is further noted that certificate regarding the 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 all requirements provided under Section 30(2) of IBC, 2016 and Regulation 36 to 39 of CIRP Regulations, 2016 have been complied with. We also find that the Resolution Plan addresses the cause for default 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:

- I. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- II. The order of moratorium dated 05.04.2021 passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of this order.



- III. 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.
- IV. The monitoring committee as proposed in point 8 page 32 of the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- V. The Resolution Professional, Mr. Jigar Tarunkumar Bhatt, 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.
- VI. The Resolution Professional shall forthwith send a copy of this Order to the participants and the resolution applicant(s).
- VII. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.
- VIII. As regards to various reliefs and concessions which are being sought, we hereby grant the following reliefs and concessions only as against reliefs and concessions claimed by the resolution applicant:
  - a) After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders prior



to CIRP against the corporate debtor shall stand permanently extinguished and other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;

- b) From the date of this order, all claims against the corporate debtor, except those provided in the resolution plan of the Corporate Debtor stand extinguished.
- c) From the date of this order, all encumbrances on the assets of the Corporate Debtor before the plan shall stand permanently extinguished.
- d) For reliefs and concessions sought from the Government/Statutory Authorities including environmental clearance as well as stamp duty, we direct the resolution applicant to approach the concerned Authorities. The concerned Authorities may decide the matter as per applicable provisions of law for effective implementation of the Resolution Plan.
- e) As regard to reliefs prayed under various provisions of the Income Tax Act, 1961, the corporate Debtor/ resolution applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the



resolution applicant in accordance with the provisions of Income Tax Act, 1961.

- f) 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 operations of the business of the Corporate Debtor;
- g) The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;
- h) The resolution applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain 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 under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;
- i) 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 restructuring of capital shall be binding on them. For concession of stamp duty as prayed in the resolution plan, the resolution applicant may approach the concerned Government Authority.



j) With respect to the grant of license/ Government approval if the license or approval is terminated, suspended and revoked, the resolution applicant may approach the concerned Department/ Authorities for such approval/ renewal and Government Authorities may consider the request of the resolution applicant as per applicable provisions of law for effective implementation of the resolution plan.

19. Accordingly, IA 32 of 2022 is allowed with the above-said observations and directions and stands disposed of.

20. An urgent certified copy of this order, if applied for, is to be issued to all concerned parties upon compliance with all requisite formalities.



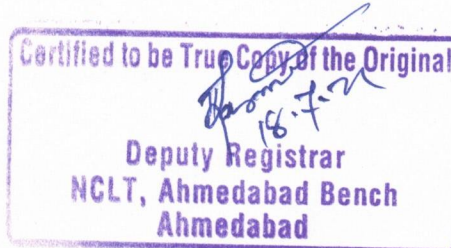
-SD-

AJAI DAS MEHROTRA  
MEMBER (TECHNICAL)

-SD-

DR. DEEPTI MUKESH  
MEMBER (JUDICIAL)

Prepared by Vinod  
Signature cel  
Date 18-7-2022



Date of pronouncement of Order: 18-7-2022  
Date on which application for Certified Copy was made: 18-7-2022  
Date on which Certified Copy was ready: 18-7-2022  
Date on which Certified Copy delivered: 18-7-2022

Abhishek Singh