In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata

IA (IB) No. PLAN/17/ (KB) /2024
In CP(IB) No. 201/(KB) /2023

Application under section 30(6) and section 31 of the Insolvency & Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of Resolution Plan.

In the Matter of:

Mr. Rajen Sharma

...Financial Creditor

And

M/s Epitome Plast-O-Pack Private Limited

(CIN No. U25209WB2005PTC103944)

.... Corporate Debtor

And

In the matter of:

Mr. Swapnil Jain, Resolution Professional of M/s Epitome Plast-O-Pack Private Limited, having his office at Poddar Court, 18 Rabindra Sarani, Gate No.2, 5th Floor, Room No. 517, Kolkata – 700001.

.... Applicant / Resolution Professional

Date of Pronouncement of order: 13.12.2024

Coram:

Smt. Bidisha Banerjee	:	**Member (Judicial)**
Shri Balraj Joshi	:	**Member (Technical)**

<u>Counsel appeared physically / through video Conferencing</u>

Mr. Raj Singhania, PCS] For the RP
Mr. Swapnil Jain, RP

<u>ORDER</u>

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Ld. Counsel for the parties were heard at length.

3. This application has been preferred by the Resolution Professional of **M/s Epitome Plast-O-Pack Private Limited** to seek approval of Resolution Plan in its entirety along with all annexures, Schedule, Appendixes including the claims contained therein as submitted by **M/s Anjali Packaging**, the Successful Resolution Applicant (SRA in short) along with reliefs and concessions sought for under the Plan.

4. The CoC has approved the Resolution Plan of **M/s Anjali Packaging** by **100% vote and M/s Anjali Packaging was declared as Successful Resolution Applicant (SRA)** in respect of the Corporate Debtor.

5. **Brief facts of the CIRP process are as submitted by the Resolution Professional:**

5.1. Vide its order dated **2nd May 2024** this Adjudicating Authority was pleased to admit the petition numbered as ***CP(IB) No. 201/(KB) /2023*** and vide an order dated **2nd May 2024** the Applicant Mr. Swapnil Jain was appointed as the Interim Resolution Professional ("RP") of the Corporate Debtor.

5.2. That pursuant to resolution passed in the CoC meeting, Form-G was published by the Applicant. As per Form-G published on 04.07.2024, the last date for receipt of Expression of Interest was 19.07.2024.

5.3. Pursuant to publication of Form G, only one Prospective Resolution Applicant submitted EoI. The final list of eligible Resolution Applicants for submission of Resolution Plan pursuant to Regulation 36A (12) of IBBI, Regulations 2016 was communicated to all CoC Members as well as to the eligible Resolution Applicants on 6th August, 2024.

5.4. The final list comprised of only one applicant viz. Anjali Packaging.

5.5. The Resolution Plan received in sealed envelope was opened before the CoC members in its 5th meeting held on 19.09.2024. The RP conducted due diligence of the submitted resolution plans regarding compliance of Section 29A, Section 30(2) and other mandatory provisions of the Code and its Regulations.

5.6. In the 6th CoC meeting held on 26.09.2024, representative of the Resolution Applicant was called upon to have discussion with CoC so that the CoC can negotiate on the financial aspects of the Resolution Plan with the Resolution Applicant. The RA was requested to reconsider the financial aspect of the submitted Resolution Plan and to submit his revised plan by 30.09.2024.

5.7. The Resolution applicant disclosed the details of the valuation report of the assets of the CD obtained by him with the CoC. The valuation was conducted for only one class of asset being the Security and Financial Assets. There was no Land and Building or Plant & Machinery owned by the CD as on the Insolvency Commencement date. The summary of the valuation report is as under:

Name of the valuer	**Fair Value in Rs**	**Liquation Value in Rs**
Anurag Singhal	22,69,342	21,67,840
Omnifin Valuation Services OPC Private Ltd	22,69,342	20,66,342
Average	**22,69,342**	**21,17,091**

5.8. In the 7th CoC Meeting held on 04.10.2024, CoC reviewed the revised Resolution Plan submitted by the Resolution Applicant. It is also deliberated in detail about the feasibility and viability of the Resolution Plan so submitted. Thereafter, the CoC was requested to approve the Resolution Plan if deemed fit.

5.9. In view of the aforesaid facts, in the 7th CoC meeting held on 04.10.2024, the compliant Resolution Plan was put up for voting for approval of under Sub-Section 4 of Section 30 of the Code which meets the requirements as prescribed in Sub-Section 2 of Section 30 of the Code. The voting of the 7th CoC meeting concluded on **04.10.2024** wherein the Resolution Plan submitted by M/s Anjali Packaging **approved with 100%** voting share in its favour.

5.10. The Resolution Professional / Applicant would further submit that the Plan value of **M/s Anjali Packaging is for Rs. 21 Lakhs**.

5.11. The Resolution Professional Issued Letter of Intent to the SRA on 05.10.2024 and asked for depositing of Performance Bank Guarantee (PBG). The SRA remitted the PBG on 07.10.2024.

6. **The Successful Resolution Applicant Namely M/s Anjali Packaging**, under revised Resolution Plan dated has provided for a total plan value for the Corporate Debtor of **Rs. 21 Lakhs.** The amounts claimed, amount admitted and the amount provided under the Resolution Plan are as under:

(Amount INR)

Sl. No.	Category of Creditor	Sub-Category of Stakeholders	Amount of Claim (Amount in Lakh)	Claim Admitted (Amount in Lakh)	Amount provided in the Plan (Amount in Lakh)
1.	**Secured Financial Creditor**	(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	-	-	-
		(ii) Who voted in favour of the resolution plan	-	-	-
		Sub-total			
2.	**Unsecured Financial Creditor**	Creditors not having a right to vote under sub-section (2) of section 21	-	-	-
		Other than (a) above:	-	-	-
		Who did not vote in favour of the resolution plan	-	-	-
		(ii) Who voted in favour of the resolution plan	3,72,12,734	3,72,12,734	20,75,000
		Sub-total	**3,72,12,734**	**3,72,12,734**	**20,75,000**
3.	**Operational Creditors**	(a) Related party of Corporate Debtor	-	-	-
		(b) Other than (a) above	-	-	-
		(i) Government dues	2,22,22,552	2,22,22,552	25,000
		(ii) Workmen	-	-	-
		(iii) Employees	-	-	-
		(iv) Suppliers	-	-	-
		Sub-total	**2,22,22,552**	**2,22,22,552**	**25,000**
4.	**Other debts and dues**	CIRP Cost	-	-	Any shortfall out of available funds of the CD
5.	**Contingencies**	OC-SD in line with SC matter	-	-	-

Grand Total – (1+2+3+4+5)	**5,94,35,286**	**5,94,35,286**	**21,00,000**

7. Synopsis of mandatory Provisions / Sections / Regulations and their compliance are as under:

Sl. No.	Provisions	Requirement	Compliance established
A. For Resolution Applicant			
1)	25(2)(h)	The Resolution Applicant must meet the criteria approved by the CoC having regarded to the complexity and scale of operations of business of the CD.	Yes
2)	Section 29A	The Resolution Applicant must be eligible to submit resolution plan.	Yes Clause 4.4(Pg. 31) of Resolution Plan
3)	Section 30 (1)	The Resolution Applicant must submit an affidavit stating that it is eligible.	Yes Annexed with Resolution Plan in the prescribed form.
B. For Resolution Plan			
1.	Section 30 (2)(a)	The Resolution Plan must provide for the payment of CIRP costs.	Yes Sub Clause 7(H) and Clause 12
2.	Section 30	The Resolution Plan must provide for the payment to	Yes

Sl. No.	Provisions	Requirement	Compliance established
	(2) (b)	the Operational Creditors.	Clause 7 and Clause 12
3.	Section 30 (2)(c)	The Resolution Plan Must provide for the payment to the Financial Creditors who did not vote in favour of the Resolution Plan.	Yes Clause 7
4.	Section 30 (2) (d)	The Resolution Plan must provide for the management of the affairs of the corporate debtor.	Yes Clause 12F
5.	Section 30 (2) (e)	The Resolution Plan must provide for the implementation and supervision of the resolution plan.	Yes Clause 12 C & 13
6.	Section 30 (2) (f)	The Resolution Plan should not contravene any of the provisions of the law for the time being in force.	Yes No such contravention has been found
7.	Section 30 (4) (a)	The Resolution Plan is feasible and viable, according to the CoC.	Yes Approved in 7th COC meeting by 100% voting shares

Sl. No.	Provisions	Requirement	Compliance established
8.	Section 30 (4) (b)	The Resolution Plan has been approved by the CoC with 66% voting share.	Yes Approved in 7th COC meeting by 100% voting shares
9.	Section 31(1)	The Resolution Plan must provide provisions for its effective implementation plan, according to the CoC.	Yes
10.	Regulation 38 (1)	The amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors.	Yes Clause 7 and Clause 12
11.	Regulation 38(1A)	The resolution plan includes a statement as to how it has dealt with the interest of all stakeholders.	Yes Clause 15 (Pg.61)
12.	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	No Clause 16 (Pg. 61)

Sl. No.	Provisions	Requirement	Compliance established
		Resolution Applicant has submitted the statement giving details of such non-implementation?	NA
13.	Regulation 38 (2)(a)	The Resolution Plan must provide for the term of the plan and its implementation schedule.	Yes Clause 12 &13
14.	Regulation 38 (2)(b)	The Resolution Plan must provide for the management and control of the business of the corporate debtor during its term.	Yes Clause 12 &13
15.	Regulation 38 (2)(c)	The Resolution Plan must have adequate means of supervising its implementation provision.	Yes Clause 12 &13
16.	Regulation 38 (3)(a)	The Resolution Plan should demonstrate that it addresses the cause of default.	Yes Clause 6.1
17.	Regulation 38 (3)(b)	The Resolution Plan should demonstrate that it is feasible and viable.	Yes The present plan is feasible and viable in the opinion of the RA
18.	Regulation	The Resolution Plan must demonstrate that it has	Yes

Sl. No.	Provisions	Requirement	Compliance established
	38 (3)(c)	provisions for its effective implementation.	Clause 12 sufficient funds will be invested as and when required under this resolution
19.	Regulation 38 (3)(d)	The Resolution Plan must demonstrate that it has provisions for approvals required and the timeline for the same.	Yes Clause 17
20.	Regulation 38 (3)(e)	The Resolution Plan must demonstrate that the resolution Applicant has the capability to implement the Resolution Plan.	Yes The RA is capable to implement this resolution plan.
C. For Resolution Professional			
21.	Regulation 39 (2)	The Resolution Professional should file applications in respect of transactions observed, found or determined by him.	NA No such transaction have been found/observed/determined by RP
22.	Regulations 39 (4)	The Resolution Professional must provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	PBG received by bank transfer Amount received into the CD's CIRP Bank for Rs. 4,21,000 in terms of RFRP. The RP made a bank

Sl. No.	Provisions	Requirement	Compliance established
			deposit of the same and provided the copy.

8. A bare perusal of the extracts / excerpts from the Plan establishes that the Resolution Plan has been approved with 100% voting share. As per the CoC, the plan meets 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 its approval.

9. On perusal of the documents on record, supported by an affidavit of the Resolution Professional, we accord our satisfaction that the Resolution Plan as approved by the CoC, is in accordance with sections 30 and 31 of the IBC and also comply with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as enumerated supra.

10. We have also considered whether the reliefs, waivers and concessions have been sought for and as such given in the Resolution Plan. We would note that this Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act 2013 (within the powers of the NCLT), and these are granted keeping in mind the object of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. However, The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with the respective competent authorities/forums/offices, Government or Semi Government

of the State or Central Government with regard to the respective reliefs, waivers and concessions whenever sought for.

11. It is almost trite and fairly well settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving of the insolvency of the Corporate Debtor.

12. The reliefs sought with respect to subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.

13. With respect to the waivers regarding extinguishment of claims which arose Pre-CIRP, which have not been claimed, the ratio of **Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited reported in MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737**, will apply wherein the Hon'ble Apex Court has held that "*once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt., any State Govt. or any local authority, guarantors and other stakeholder*".

14. In this regard we also rely on the judgement of Hon'ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan, Civil Writ Petition No. 6048/2020 with 6204/2020 reported in (2023) ibclaw.in 42 HC** wherein it has been inter-alia held that "*Law is well-settled that*

with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date."

15. Thus on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan as per the law laid down by the Hon'ble Supreme Court in **Ghanashyam Mishra** supra.. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

16. All inquiries, litigations, investigations and proceedings shall be granted dealt with as per the section 32A of the Code and the provisions of the law as may be applicable.

17. All compliances with the statutory obligations/seeking sanctions from governmental authorities, if applicable, shall be done within one year as prescribed under section 31(4) of the Code.

18. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall have the right to forfeit the EMD amount already paid by the Resolution Applicant.

19. Subject to the observations made in this Order, the Resolution Plan in question is hereby **APPROVED** by this Bench. The Resolution Plan shall form part of this Order.

20. 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.

21. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.

22. 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.

23. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

24. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.

25. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.

26. Considering the haircuts mentioned above, we find that the resolution professional has not given any basis for not initiating PUFE application. The resolution professional did not bring on record any transaction audit report to substantiate his inaction of not filing any PUFE application.

27. Hence, although we approve the plan, we direct the CoC to appoint a transaction auditor and take action on PUFE applications based on the report of transaction audit. Copy of the transaction audit report may be submitted to this Court.

28. It is not on record that whether the Financial Creditors have invoked Personal Guarantees or not. It is essential for the purpose of maximization for wealth of the Corporate Debtor, personal guarantees need to be invoked. Therefore, we direct the Financial Creditors to invoke Personal Guarantees, if not already done.

29. The Resolution Professional may stand discharged from his duties with effect from the date of this Order, however, he is required to comply with our direction mentioned in Para 30 of the order subject to comply the direction, which the creditors should bear in mind.

30. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

31. The Resolution Professional is further directed to handover all records, premises/factories/documents to the 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 the Resolution Professional to finalise the further line of action required for starting of the operation.

32. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

33. The Interlocutory Application being **IA (IB) No. PLAN/17/ (KB) /2024 along with main Company Petition vide CP(IB)No 201/(KB)/2023 shall stand disposed of accordingly**.

34. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee,
Member (Judicial)

Signed on this, the 13th day of December, 2024

M. Jana(P.S.)