

IN THE NATIONAL COMPANY LAW TRIBUNAL

JAIPUR BENCH

IA No. 361/JPR/2020

IA No. 01/JPR/2019

In CP No. (IB) 35(ND)/2018

TA No. 118/2018

**CORAM: SHRI AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER
SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

IN THE MATTER OF:

CP No. (IB) 35(ND)/2018

SARDAR SINGH

...Applicant

VERSUS

M/S ANIL SPECIAL STEEL INDUSTRIES LTD. & ORS.

.... Respondents

AND IN THE MATTER OF

IA No. 01/JPR/2019

**Mr. Vikram Bajaj
Resolution Professional for Anil Special Steel Industries Limited
313A, Vardhman North- Ex Plaza,
Netaji Subhash Place,
Pitampura, Delhi-110034**

...Applicant

Sardar Singh
Versus
M/s Anil Special Steel Industries Ltd. & Ors.

VERSUS**1. SGSM Ispat Rollings Mills Pvt. Ltd. (SGSM Group)****Resolution Applicant**

Office at: Sharma Steels & Alloys, Opp. Panchayat Ghar,
Sohna Road, Dharuhera-123106

.... Respondent No. 1

2. Prudent ARC Ltd.

Unit No. 611, 6th Floor,
D Mall, NSP, Pitampura,
New Delhi-110034

.... Respondent No. 2

3. Allahabad Bank

Jeevan Nidhi Building,
Bhawani Singh Road,
Jaipur-302005 (Rajasthan)

.... Respondent No. 3

4. Bank of Maharashtra

6th Floor, Fortune Heights,
Ahinsa Circle, C-Scheme,
Jaipur-302001

.... Respondent No. 4

5. State Bank of India**Through Assistant General Manager, SBI**

Stressed Assets Recovery Branch (SARB)
3rd Floor, Matrix Mall, Sector 4, Jawahar Nagar,
Near Lal Jain Mandir, Jaipur-302004

.... Respondent No. 5

6. Indian Overseas Bank

SB-57, Riddhi Towers, Opposite SMS Stadium,
First Floor, Babu Nagar, Tonk Road,
Jaipur-302015 (Rajasthan)

.... Respondent No. 6

7. Jindal Aluminium Ltd

11, Green Avenue, Behind Section D3,
Vasant Kunj, New Delhi-110010

.... Respondent No. 7

Sardar Singh

Versus

M/s Anil Special Steel Industries Ltd. & Ors.

For the Applicant : Abhishek Anand, Adv. (For RP)
For the Respondent : Sushil Dagga, Adv. (For R-1)
 Shivam Goel, Adv. (For R-2)

AND

IA No. 361/JPR/2020

Rajendar Sharma

Representative of Group of Employees
 Of Anil Special Steel Industries Ltd.
 28, Ganga Sagar-B, Vaishali Nagar,
 Jaipur-302001

...Applicant

VERSUS

1. Mr.Vikram Bajaj

Resolution Professional

For Anil Special Steel Industries Ltd. & Ors.

313a, Vardhman North-Ex Plaza, Netaji Subhash Palace,
 Pitampura, Delhi -110034

.... Respondent No.1

2. SGSM Ispat Rolling Mills Private Limited

House no. 99, Basement, Palam,
 Gugraon Road, VPO Samalekha, New Delhi,
 South West Delhi-110097

.... Respondent No.2

3. Shrishti Alloys Private Limited

House No. 38, Kundan Bhawan,
 Near Telephone Exchange,
 Samalkha Extension (East)
 New Delhi-110037

.... Respondent No.3

4. Arvind Sharma,

House no. 118, Village Maheshwari, Tehsil,
 Dharuhara, District-Rewari Dharuhera
 123106, Haryana

.... Respondent No. 4

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M/s Anil Special Steel Industries Ltd. & Ors.

5. Yachna Sharma

House No. 118, Village Maheshwari, Tehsil,
Dharuhara, District-Rewari Dharuhara
123106, Haryana

... Respondent No. 5

6. Sushma Sharma

House No. 118, Village Maheshwari, Tehsil,
Dharuhara, District-Rewari Dharuhara
123106, Haryana

.... Respondent No. 6

For the Applicant : Prateek Kedawat, Adv.
Mudit Manohar, Adv.

For the Respondent : Abhishek Anand, Adv. (For RP)

Order Pronounced On: 16.07.2021

ORDER

Per: Shri Raghu Nayyar, Technical Member

IA No. 361/JPR/2020

1. IA No. 361/JPR/2020 is filed by Mr. Rajendra Sharma, representative of group of 51 employees of the Corporate Debtor against the Resolution Professional of Corporate Debtor and five others under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 11 of the NCLT Rules, 2016 ('Rules') seeking following relief:

1. *The present application of the Applicant be allowed.*
2. *The resolution plan submitted by the resolution applicant be declared as unjust, arbitrary, unlawful, illegal and perverse;*

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3. *The resolution applicant be directed to propose a fresh resolution plan or modify the present resolution plan, keeping in view the payment of entire dues of applicant and the group of employees represented by the applicant;*
 4. *Any other or further relief in favour of the Applicant may also be passed which the Hon'ble Tribunal may deem fit.*
2. As per the Applicant, the Corporate Debtor had failed to make payment of salary and other dues of the Applicant and group of employees from the year 2014-15 to November 2017. Respondent No. 2,3,4,5 and 6 comprising of SGSM group submitted their resolution plan wherein it proposed only a sum of Rs. 10,00,000 for the purpose of payment to all the operational creditors including statutory liabilities, employees, EPFO dues and other operational creditors and such allocation is in contravention of Section 30 (2) (b). The resolution plan cannot be accepted until it does not propose to make entire payment of the employees dues.
3. The Applicant herein was impleaded as Respondent No. 5 in IA No. 32/60/JPR/2018, wherein this Adjudicating Authority vide order dated 01.10.2019 had directed Tarun International Limited, purchaser of Unit No. 1, to bear all claims of the Applicant / Respondent No. 5 in IA No. 32/60/JPR/2018. The relevant extract is reproduced below:

“a. The Respondent No. 2 shall bear all the claims of the Respondent No. 1 and Respondent No. 5.

- b. *In the event any money which has been deducted towards statutory dues of EPF and is still lying with the Corporate Debtor, the RP shall forthwith credit the same to the appropriate accounts of the concerned Authority.*
 - c. *For recovery of the claims of any statutory dues it is open for the Respondent Nos. 1 and 5 to proceed against the Respondent Nos. 2 and 3.*
 - d. *So far, the Corporate Debtor is concerned it cannot be fastened with any of the liabilities of Unit No. 1 which was sold under the SARFAESI Act, 2002 by the Respondent No. 3 except with regard to the statutory dues of EPF in case, if it is lying still with the Corporate Debtor as stated afore at (b).”*
4. This Adjudicating Authority has already determined the right of the Applicant in above order dated 01.10.2019 in IA No. 32/60/JPR/2018. In view thereof the Applicant herein should not have any right / claim over insolvency resolution proceedings of Corporate Debtor.
 5. In view of foregoing, IA No. 361/JPR/2020 is dismissed and accordingly disposed of.

IA No. 01/JPR/2019

1. The Application bearing IA No. 01/JPR/2019 is filed by Resolution Professional (RP) under Section 30 (6) & 31 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') also read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') seeking

- sanction of resolution plan as approved through e-voting by Committee of Creditors on 06.12.2018.
2. It is submitted that the application for initiation of Corporate Insolvency Resolution Process (CIRP) of M/S Anil Special Steel Industries Ltd. ('Corporate Debtor') was filed by the Operational Creditor i.e. Sardar Singh on behalf of Workmen (207 in no.) under Section 9 of the Code and the same was admitted vide order dated 05.03.2018 and Mr. Brij Kishore Sharma was appointed as Interim Resolution Professional (IRP). Thereafter the IRP issued a public announcement as per Regulation 6 of the Regulations read with Section 15 of the Code in Form A in two newspapers i.e. Economic Times, (English) and Punjab Kesari (Hindi), both dated 10.03.2018 thereby inviting claims from creditors of the Corporate Debtor as envisaged in the Code.
 3. It is submitted that till the last date for the submission of claims i.e. 21.03.2018, the IRP collated all claims and after determination of the financial position of the Corporate Debtor, constituted the Committee of Creditors (CoC) comprising of six financial creditors. In the first CoC meeting, which was held on 31.03.2018, one of the financial creditors proposed to replace the IRP. Consequently, the Adjudicating Authority vide order dated 14.05.2018 appointed Applicant i.e. Mr. Vikaram Bajaj as the Resolution Professional ('RP') of the Corporate Debtor. The copy of minutes

of first CoC meeting and order dated 14.05.2018 is annexed as Annexure A-3 and A-4 to the Application.

4. It is submitted that as per Regulation 27 of the Regulations, the RP appointed two registered valuers i.e. Crest Capital Group Pvt. Ltd. and Peritus Advisory Pvt. Ltd. to determine the liquidation value as per Regulation 35 of the Regulations.
5. It is submitted that the respective shares of the members of CoC after incorporating all the claims of all creditors are as follows: -

Sr No.	Name of Financial Creditor	Amount Claimed by Creditor (Rs.)	Amount Claimed Admitted (Rs.)	Voting Share %
1.	Allahabad Bank	98,845,949.11	98,845,949.11	11.65
1.	Indian Overseas Bank	12,087,324.72	12,087,324.72	1.42
2.	Bank of Maharashtra	61,753,286	61,753,286	7.28
3.	State Bank of India	18,394,789.05	18,394,789.05	2.17
4.	Prudent ARC Limited	630,411,190.52	630,411,190.52	74.31
5.	Jindal Aluminum Limited	26,811,260	26,811,260	3.17
	TOTAL	84,83,03,799.40	84,83,03,799.40	100

6. It is submitted that after discussion in the 2nd CoC meeting held on 02.06.2018, the invitation for Expression of Interest (EOI) was published for submission of resolution plan in Business Standard on pan India basis in

English and Hindi editions on 07.06.2018 with last date of submission as 18.06.2018.

7. It is stated that in the 3rd CoC meeting held on 22.06.2018, the RP apprised the CoC that in response to the invitation of EOI, the RP has received EOI from 3 prospective resolution applicants. The CoC had decided to shortlist all the prospective resolution applicants, subject to completion of the pending documents. The CoC had further unanimously resolved to authorise RP to issue invitation for submission of Resolution Plan along with evaluation matrix approved by the CoC. Copy of minutes of 3rd meeting of CoC is annexed as Annexure A-7.
8. It is submitted that in the 4th meeting of CoC held on 17.08.2018, the RP apprised the CoC that the remaining time of CIRP which will end on 02.09.2018 will not be sufficient to evaluate the resolution plan received from resolution applicant, SGSM Ispat Rolling Mills Pvt. Ltd. and co-applicants ('SGSM'). Thus, the CoC resolved to seek extension of CIRP period of the Corporate Debtor by a period of 90 days under Section 12 of the Code. This Adjudicating Authority vide order dated 30.08.2018 extended the period of CIRP by 90 days.
9. In the 4th meeting, the CoC had also resolved to file an application for determination of liabilities of workers and employees and other liabilities

pertaining to Unit I sold prior to initiation of CIRP of the Corporate Debtor. Accordingly, RP filed an application bearing IA No. 32/60/JPR/2018.

10. It is submitted that the CoC in its 5th meeting held on 12.09.2018, decided that the Resolution Applicant shall submit a revised resolution plan. Thereafter in the 6th CoC meeting held on 06.10.2018, the RP had apprised the members that the resolution applicant had submitted the revised resolution plan. Copy of 5th and 6th CoC meetings are annexed as Annexure A-10 and A-11.
11. It is submitted that in the 7th CoC meeting convened on 17.11.2018, it was decided that a view upon the distribution of funds provided under the resolution plan cannot be taken unless there is clarity on admissibility of liabilities pertaining to Unit-I, for which an application was pending. Thus, the CoC decided that the RP must seek exclusion of time spent in the process of adjudication of IA No. 32/60/JPR/2018. Thus, RP had filed IA No. 83/JPR/2018 seeking exclusion of certain period. Copy of minutes of 7th CoC meeting annexed as Annexure A -14.
12. While the IA No. 83/JPR/2018 was pending, in the 8th CoC meeting held on 29.11.2018, the RP apprised the CoC that the updated list of claims was circulated to the resolution applicant which included claims in respect of EPFO and employee's gratuity, however the resolution applicant has not

submitted any revised resolution plan. Thus, CoC had decided to ask the resolution applicant to submit the revised resolution plan. Copy of minutes of 8th meeting of CoC is annexed as Annexure A-16.

13. Further in the 9th CoC meeting held on 01.12.2018, the RP placed the revised resolution plan dated 20.09.2018 before the CoC and apprised the CoC that the resolution plan was non-compliant of the provisions of Section 30 (2)(b) of the Code read with decision of the Hon'ble NCLT, Mumbai in case of Precision Fastners Ltd. with respect to the provisions for dues of EPFO and Employees Gratuity. However, the representative of Prudent ARC Ltd. submitted that as per legal report of its counsel, the Resolution Plan is in compliance of the provisions of the Code. Further the CoC observed that resolution has to be given preference over liquidation and it was also noted that 01.12.2018 is the last day of CIRP, therefore resolution should be put to vote. Thus, through e-voting process, the resolution plan as submitted SGSM ISPAT & Rolling Mill Pvt. Ltd. and Associates dated 20.09.2018 as modified by their letter dated 30.11.2018, was approved unanimously by members of CoC. Copy of the complete resolution plan is at Annexure A-11 of the Application.
14. It is further submitted that pursuant to approval of the resolution plan by the CoC, the RP issued a Letter of Intent dated 06.12.2018 to the resolution

applicant informing about approval of the resolution plan by the CoC, subject to following conditions:

“3. The Resolution Plan is now proposed to be filed with the Hon’ble Adjudicating Authority for approval as per Section 31 of IBC, subject to your acceptance of following:

a) The Compliance of resolution plan with the provisions of IBC, 2016 shall be determined by the Hon’ble Adjudicating Authority.

b) The Earnest Money Deposit (EMD) of Rs. 1 crore made by SGSM shall remain deposited till the final decision of the Hon’ble Adjudicating Authority.

c) The EMD amount shall be appropriated towards the Resolution Plan on its approval by Hon’ble Adjudicating Authority.

d) You are requested to furnish performance guarantee of Rs. 2 crore, in respect of the upfront amount of Rs. 3 crore to be contributed as part of the Resolution Plan (Payment to made within 30 days of approval of Resolution Plan), after considering the EMD of Rs. 1 crore.

e) In case the Resolution Plan is not approved by the Hon’ble Adjudicating Authority for any reason, the EMD shall be refunded to SGSM and performance guarantee shall be released.”

It is stated that the letter of intent was accepted by the SGSM vide its letter dated 09.12.2018, however they requested for submission of Performance Guarantee on decision of the Adjudicating Authority on the resolution plan.

15. It is stated that the Applicant has filed the instant Application for approval of resolution plan as approved by the CoC subject to determination of the resolution plan to be compliant with the Code by the Adjudicating Authority.

16. Respondent No. 2, Prudent ARC Ltd. had filed reply vide Dairy No. 404/2019 dated 07.03.2019 and submits that the resolution plan is compliant with the provisions of the Code as well as decisions of this Adjudicating Authority and Hon'ble NCLAT.
17. IA No. 83/JPR/2018 was dismissed vide order dated 01.02.2019. However, Hon'ble NCLAT vide order dated 11.03.2019 directed that the period from 10th September 2018 to 1st December 2018 and period of IA No. 32/60/JPR/2018 which is pending since 10th September 2018 be excluded for the purpose of counting the period of 270 days.
18. On 01.10.2019, IA No. 32/JPR/2018 had been disposed of with following order:

“25. A perusal of all the above pleadings, the Judgements and Annexures thereon clearly reveals that the Respondent No. 3 made it very clear to the Respondent No. 2 to acquire the Unit No. 1 of the Corporate Debtor on “AS IS WHERE IS BASIS, AS IS WHAT IS BASIS, WHATEVER THERE IS BASIS” which implies that it shall also acquire all the liabilities thereon.

26. Under these circumstances, the following orders are issued by this Tribunal: -

a. The Respondent No. 2 shall bear all the claims of the Respondent No. 1 and Respondent No. 5.

b. In the event any money which has been deducted towards statutory dues of EPF and is still lying with the Corporate Debtor, the RP shall

forthwith credit the same to the appropriate accounts of the concerned Authority.

c. For recovery of the claims of any statutory dues it is open for the Respondent Nos. 1 and 5 to proceed against the Respondent Nos. 2 and 3.

d. So far, the Corporate Debtor is concerned it cannot be fastened with any of the liabilities of Unit No. 1 which was sold under the SARFAESI Act, 2002 by the Respondent No. 3 except with regard to the statutory dues of EPF in case, if it is lying still with the Corporate Debtor as stated afore at (b).”

19. Respondent No. 1, SGSM Group had filed reply vide Diary No. 2753/2019 dated 26.11.2019. As per the Respondent No. 1, Respondent No. 2 (Prudent ARC Ltd.) has first charge on the assets of the Corporate Debtor at village Ananthpura, Chimanpura, Tehsil Chomu, District Jaipur (Unit-II) and the said unit is closed since November 2019. It is further submitted that prior to admission of application for CIRP, the Corporate Debtor owned another manufacturing unit at Khasra No. 317, village Pithwas, Badarama, near Kanakpura Railway Station, PO Meenawala, Jaipur (Unit-I), which was sold by Respondent No. 3 (Allahabad Bank) under the provisions of Scrutinization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (“SARFAESI”).

20. It is further stated that after the pronouncement of order in IA No. 32/60/JPR/2018, the Respondent No. 1 sought details of revised stakeholders from RP vide letter dated 03.10.2019 and the same was provided vide letter dated 15.10.2019. In view thereof, Respondent No. 1 seeks liberty to amend the distribution plan to the following effect.

Sr. No.	Stakeholder	Amount (in Lacs)
1.	Employee Provident Fund Organisation	47.22
2.	Corporate Insolvency Resolution Process Cost *	50.00
3.	Prudent ARC Ltd. (Secured Creditor having first charge over Unit-II)	2842.78
4.	Allahabad Bank (Financial Creditor)	22.69
5.	Bank of Maharashtra (Financial Creditor)	14.17
6.	State Bank of India (Financial Creditor)	4.22
7.	Indian Overseas Bank (Financial Creditor)	2.77
8.	Jindal Aluminium Ltd. (Financial Creditor)	6.15
9.	All other Operational Creditors – amount to be distributed pari passu in proportion of admitted dues.	10.00
	TOTAL	3000.00

21. Respondent No.1 further submits that as regards claim of Employees Provident Fund Organisation, the Resolution Professional has informed that a sum of Rs. 18,82,760/- is immediately payable, which is paid in full. Further a sum of Rs. 28,39,199/- is yet to be crystallised and the resolution applicant seeks liberty to contest the same on merits before the appropriate authority. It is further submitted that the above distribution is in compliance

with the provisions of the Code and Rules and Regulations thereunder and also the Financial Creditor have reserved their rights to proceed against the guarantors.

22. In view of Order dated 01.10.2019 in IA No. 32/60/JPR/2018, the RP has filed an affidavit vide Diary No. 2815/2019 dated 02.12.2019 and contended that no funds were available with the Corporate Debtor on the insolvency commencement date i.e 05.03.2018 and Insolvency Resolution Process costs are being met through interim finance raised from Prudent ARC Ltd. It is also contended that no amount is lying with the Corporate Debtor in respect of EPF deducted from employees.
23. The RP had filed an additional affidavit vide Diary No. 304/2021 dated 01.02.2021 stating that during the course of hearing on 21.01.2021, the Applicant was directed to file revised and latest Form-H and also to enclose the submission with regard to aspect of Investor Education and Protection Fund (IEPF) in respect of the dividends of shareholders of the Corporate Debtor. In view thereof, RP has filed revised Form-H at Annexure A-2 and further submits that as per the audited financial statement of the company no dividend has been declared in last seven years and as such provision of Section 125 of the Companies Act, 2013 is not applicable.

24. It is submitted that resolution plan received from resolution applicant SGSM Ispat Rolling Mills Pvt. Ltd. and approved by CoC is in compliance 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. Also, the approval of the resolution plan was through 100 % voting share of the financial creditors on 01.12.2018.
25. We have carefully considered the submissions of the learned counsels and have also perused the record.
26. The Corporate Debtor was incorporated on 04.05.1968 and the CIRP proceedings were initiated under Section 9 of the Code vide order dated 05.03.2018. The present Application is filed for approval of the resolution plan submitted by SGSM (Successful Resolution Applicant). The approval has been sought under the provisions of Section 31 of the Code.
27. We may first of all state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditors, the distribution of voting share among them and the position of voting for the resolution plan is as under (Para No. 5 of Form H): -

S. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan
1	Prudent ARC Limited	74.31%	Approved

2	Allahabad Bank	11.65%	Approved
3	Bank of Maharashtra	7.28%	Approved
4	State Bank of India	2.17%	Approved
5	Indian Overseas Bank	1.42%	Approved
6	Jindal Aluminium Limited	3.16%	Approved
Total		100.00%	Approved- 100%

28. The details of stakeholders under the resolution plan given in Para 7 of Form

H is as under:-

S. No.	Category of Stakeholder*	Amount Claimed (Rs. in Crore)	Amount Admitted (Rs. in Crore)	Amount Provided under the Plan# (Rs. in Crore)	Amount Provided to the Amount Claimed (%)
1	Secured Financial Creditors				
A	Prudent ARC Limited	64.04	64.04	28.43*	44.39%
B	Allahabad Bank	9.88	9.88	0.23	2.32%
C	Bank of Maharashtra	6.17	6.17	0.14	2.26%
D	State Bank of India	1.83	1.83	0.04	2.18%
E	Indian Overseas Bank	1.20	1.20	0.03	2.50%
2	Other Unsecured Financial Creditors				
A	Jindal Aluminium Limited	2.68	2.68	0.06	2.23%
3	Operational Creditors				
A	Employee Provident Fund Organization (EPFO) Unit II	0.47	0.47	0.47#	100.00%
B	All other Operational creditors- except EPFO	9.88	9.88	0.10 (Amount to be distributed pari-passu)	1.01%

				in proportion of admitted dues.)	
TOTAL		96.15	96.15	29.50	30.68%
<p>Note – The distribution is as per Additional Affidavit dated 25-11-2019 filed by the Resolution Applicant in pursuance of order of Hon’ble NCLT dated 25-10-2019. PARCL (vote share 74.31% has vide letter dated 17-1-2020 accepted revised distribution as per the affidavit filed by the Resolution Applicant.</p> <p><i>*To be paid in full, any excess or shortfall shall be adjusted with share of Prudent ARC Ltd.</i></p> <p>#The Hon’ble NCLT Jaipur vide order dated 1-10-2019 in IA 32/2018 held that the Corporate Debtor cannot be fastened with any of the liabilities of Unit-I. Accordingly the claims which can be clearly identified exclusively for Unit I have not been considered</p>					

29. The compliance of the resolution plan has been given in Para No. 9 of Form-H which is as follows: -

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?	-	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?	-	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	-	Yes
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs?	Section 4- Clause 4.8	Yes

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	<p>(b) provides for the payment of the debts of operational creditors?</p> <p>(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?</p> <p>(d) provides for the management of the affairs of the corporate debtor?</p> <p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?</p>	<p>Section 4- Clause 4.6 & 4.7</p> <p>Not Applicable- as financial creditors voted in favour of the resolution plan and thus no dissenting Financial Creditor</p> <p>Section 4- Clause 4.12</p> <p>Section 4- Clause 4.11 / 4.13</p> <p>No</p> <p><i>Read with additional affidavit dated 25-11-2019 filed by the Resolution Applicant</i></p>	
Section 30(4)	<p>Whether the Resolution Plan -</p> <p>(a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	-	Yes
Section 31(1)	<p>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</p>	<p>Section 4- Clause 4.11 & 4.13</p> <p><i>Read with additional affidavit dated 25-11-2019 filed by the Resolution Applicant</i></p>	Yes
Regulation 35A	<p>Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?</p>	<p><i>The Resolution Professional has filed IA No. 84/JPR/2019 in respect of transactions of nature covered under Section 66, 45, 49 and 60(5)(a) of IBC, 2016 which is sub-judice.</i></p>	Yes

Regulation 38 (1)	Whether the amount due to the Operational Creditors under the Resolution Plan has been priority in payment over financial creditors?	It is provided in the letter dated 30-11-2018 modifying the Resolution Plan	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Section 4- Clause 4.15	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 the 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?	Not Applicable (The Regulation was inserted w.e.f 24-1-2019 i.e. after approval of Resolution Plan by the Committee of Creditors)	No
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 the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Section 4- Clause 4.11 Section 4- Clause 4.12 Section 4, Clause 4.11 provides implementation schedule for the resolution plan. Section 4- Clause 4.13	Yes
38(3)	Whether the resolution plan demonstrates that –	The Resolution Plan details that it seeks to revive Unit-II which is lying closed and provides for capital expenditure and infusion of working capital. Further Section 4,	Yes

	<p>(a) it addresses the cause of default?</p> <p>(b) it is feasible and viable?</p> <p>(c) it has provisions for its effective implementation?</p> <p>(d) it has provisions for approvals required and the timeline for the same?</p> <p>(e) the resolution applicant has the capability to implement the resolution plan?</p>	<p>Clause 4.11 provides implementation schedule for the resolution plan. Clause 4.13 provides provisions for its effective implementation and Section 2 provides details regarding Resolution Applicant.</p>	
39(2)	<p>Whether the RP has filed applications in respect of transactions observed, found or determined by him?</p>	<p><i>The Resolution Professional has filed IA No. 84/JPR/2019 in respect of transactions of nature covered under Section 66, 45, 49 and 60(5)(a) of IBC, 2016 which is sub-judice</i></p>	Yes
39(4)	<p>Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B</p>	<p>Not Applicable (The Regulation 36B (4A) was inserted w.e.f. 24-1-2019 i.e. after approval of Resolution Plan by the Committee of Creditors)</p>	<p>RA has deposited EMD of Rs. 1 crore. Further RA vide letter dated 9-12-2018 requested for deposit of further Rs. 2 crore on adjudication of Resolution Plan as compliant by the Adjudicating</p>

			Authorit y in compla nce of terms of RFRP.
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30. The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading as follows: -

“Section 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.”

31. 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 CoC under Section 30(4) of the Code;*
- (b) The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*
- (c) The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

32. It is submitted by the RP that the resolution plan has been approved by a vote of 100% of voting share of the financial creditors and therefore, the condition provided for by Section 30(4) of the Code is satisfied.

33. The provisions of Section 30(2) of the Code are as follows: -

“(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-

(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.”

34. The compliance of Section 30(2) of the Code is given in Para-No.9 of Form H (supra). The same is being further examined as under: -

- (a) **Section 30(2)(a):** The resolution plan (Page 131-132 of the application and Clause 4.8 of the Resolution Plan) states that Resolution Applicant shall provide funds for payment of CIRP Cost and the CIRP Cost shall be fully paid and discharged before any payment is made to any of the creditors.
- (b) **Section 30(2)(b):** The counsel for the Applicant had submitted that in the event of Liquidation, there would be no sum payable to the Operational Creditors or Liquidation value for them would be NIL. In consequence of order in IA No. 32/60/JPR/2018, the Resolution Applicant through additional affidavit amended the distribution under the resolution plan. The said amendment provides for the payment of Rs. 47.22 lakhs towards the EPFO for Unit II employees and Rs. 10 lakhs towards all other operational

creditors, which is in compliance with amended Section 30(2)(b) of the Code. With respect to payment to the financial creditors who did not vote in favour of the resolution plan, it is submitted such provision is not applicable as there was no dissenting Financial Creditor for approval of the Resolution plan.

- (c) **Section 30(2)(c):** Under Clause 4.12 of the resolution plan (Page No. 134 of the application), it is stated that the current board of directors of the Corporate Debtor shall be deemed to have vacated the office and Mr. M L Sharma, Mr. Arvind Sharma and Ms. Yachana Sharma representing the Resolution Applicant shall be deemed to have joined the board of directors and shall have management and control of the Corporate Debtor on approval of the Resolution Plan. It is further stated that the new board of directors shall be authorized to make filing with the Registrar of Companies regarding removal/ resignation/ vacation of office of the present board of directors.
- (d) **Section 30(2)(d):** Clause 4.11 and 4.13 of the resolution Plan (Page No. 133-134 of the application), provides for a detailed mechanism for effective implementation of the resolution plan. It is stated that PARCL is the only secured creditor whose dues are proposed to be restructured and paid over the term of resolution

plan. Accordingly, any reasonable monitoring mechanism advised by PARCL for monitoring repayment of its dues shall be acceptable.

(e) **Section 30(2) (e)**: In Form H filed as Annexure A-2 of the Additional Affidavit filed vide Diary No.304/2021 dated 28.01.2021 the RP has certified that the resolution plan did not contravene any of the provisions of the law for the time being in force and thus the resolution plan is in compliance with the provisions of the Code and the CIRP Regulations.

35. The successful resolution applicants confirmed by way of their respective affidavits that they are not disqualified under Section 29A of the Code to submit a resolution plan or under any other law applicable, which further shows that the resolution plan conforms to the provisions of the law for the time being in force and did not contravene any such provision. The RP in the Form H referred above, has certified the same. Section 29A affidavits along with confidentiality undertaking under Section 29(2) of the Code are annexed as Annexure A-12.
36. With regard to compliance of Regulation 39(4), which relates to submission of the Performance Bank Guarantee by the successful resolution applicant, it is submitted that Regulation 36B (4A) was inserted w.e.f. 24-1-2019 i.e.

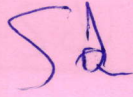
after approval of Resolution Plan by the Committee of Creditors. Thus, it is not applicable herein.

37. With regard to the compliance under Regulation 35A, it is stated that IA No. 84/JPR/2019 filed under Section 66, 45, 49 and 60(5)(a) of the Code, is pending before this Adjudicating Authority and the same could be continued even after approval of the resolution plan.
38. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of resolution plan as discussed in the preceding paragraphs in relation to Section 30 and Section 31 of the Code, the requirement of Regulation 38 also stands fulfilled. Thus, the resolution plan fulfills all the requirements of Regulation 38 of the CIRP Regulations.
39. The Resolution Plan inter-alia entails the following:
 - a. 100 % paid up capital of the Corporate Debtor shall stand written off on approval of the Resolution Plan and the resolution applicants / their representatives shall subscribe to fresh shares of the Corporate Debtor in the manner as provided at pg. 126 of the Application. Also, the resolution applicant shall not be liable for any outstanding fees, charges with respect to listing of shares at Bombay Stock Exchange.

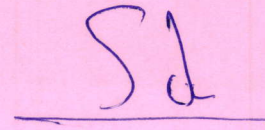
- b. No civil/ criminal /financial labilities shall be attracted to the resolution applicants/ its directors/ employees in relation to any non-compliance under any law for any period prior to the cut-off date.
 - c. The estimates for refurbishments / overhaul and revival of operations of the Unit II of the Corporate Debtor are Rs. 200 lakh and Rs. 922 lakh, respectively. The Resolution Applicant shall infuse the said / necessary funds towards the same.
 - d. The term of the Plan and its implementation schedule is envisaged to be a period of 5.5 years / 66 months.
40. In view of the above discussion, the resolution plan submitted by SGSM as approved by the CoC under Section 30 (4) of the Code is hereby approved. The resolution plan so approved 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.
41. Under the provisions of Section 31 (3) of the Code, we also direct as under:-

- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 05.03.2018 shall cease to have effect; and
- b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

42. In view of the foregoing, IA No. 01/JPR/2019 is disposed of.



**SH. RAGHU NAYYAR,
TECHNICAL MEMBER**



**SH. AJAY KUMAR VATSAVAYI,
JUDICIAL MEMBER**