



*Per: Janab Mohammed Ajmal, Member (Judicial)*

**ORDER**

This is an Application filed by the Resolution Professional of the Corporate Debtor under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the Code), seeking approval of the Resolution Plan submitted by CIAN Agro Industries and Infrastructure Limited (CIAN Agro/Resolution Applicant).

2. The facts leading to the Application are as under.

- a) Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 01.02.2018 upon admission of a Petition under Section 7 of the Code and Mr.Ranjit D Jain was appointed as Interim Resolution Professional (IRP).
- b) The IRP published public announcement on 10.02.2018 inviting claims from the creditors of the Corporate Debtor. After receipt of claims the IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor on 03.03.2018. Following is the voting share of the COC members:

Name of Financial Creditor	Voting Share (%)
1. Bank Of India	32.43
2. IDBI Bank Limited	20.92
3. Punjab National Bank	17.63
4. Allahabad Bank	9.41
5. Indian Overseas Bank	7.15
6. Union Bank of India	5.65
7. ICICI Bank Limited	3.44
8. Vijaya Bank	3.19
9. Federal Bank Limited	0.18
Total	100

- c) The CoC in its 1<sup>st</sup> meeting held on 08.03.2018 confirmed the IRP as the Resolution Professional (RP). The RP conducted the CIRP of the Corporate Debtor in compliance of the provisions of the Code and Rules framed there under.
3. The RP appointed M/s Agarwal Biyani & Associates and PVRs & Associates for valuation of financial assets. He also appointed Pravin G Zadgaonkar & Associates and Mr. Suhrud Bokare for valuation of land and building. Average Liquidation value of financial assets of the Corporate Debtor is ₹. 37,26,223/- and the fair market value is ₹.47,94,597/- and average liquidation value for land and building of the corporate debtor is ₹.64,83,99,001/- and the fair market value is ₹.92,62,84,286/-.
4. The Applicant issued Form-G on 28.04.2018 inviting expressions of interest (EOI) from prospective resolution applicants (PRAs). The Applicant received EOIs from 2 PRAs. The last date for submission of resolution plan was extended till 31.08.2018 with the consent of the CoC. The Applicant received Resolution Plan from the following PRAs :
- a) CIAN Agro Industries and Infrastructure Limited.
  - b) Dr. Vidya Sagar Garg.
5. The RP filed an Application (MA No. 720 of 2018) for extension of the period of CIRP by 90 days as the CIRP period ended on 31.07.2018. This Bench by order dated 27.07.2018 allowed the same and extended the period by 90 days i.e., up to 29.10.2018.
6. The CoC filed an Application (MA No. 791 of 2018) for replacement of RP as the earlier RP Mr. Ranjit D Jain submitted his resignation on health grounds to the CoC in its 5<sup>th</sup> meeting held on 21.07.2018. This bench by its order dated 27.08.2018 appointed the present Applicant as the RP of the

Corporate Debtor. The Applicant took charge of the Corporate Debtor on 07.09.2018.

7. The CoC in the 9<sup>th</sup> meeting held on 28.09.2018 considered the Resolution Plans received from the PRAs. On appraisal of the Plans the CoC rejected the Plan (H2) submitted by Dr. Vidya Sagar Garg and informed him of the decision. The CoC in the 10<sup>th</sup> meeting held on 12.10.2018 considered the Resolution Plan of CIAN Agro and suggested certain changes in Plan. The CoC in its 11<sup>th</sup> meeting held on 23.10.2018 after due verification of the eligibility of the PRA in terms of Section 29A of the Code, considered the revised and final Resolution Plan of CIAN Agro. It approved the Plan submitted by CIAN Agro with the voting share of 99.82%.

The Manner of voting by the CoC is as below:

Sr. No.	Financial Creditors	Voting %	In Favour	Against	Abstained
1	Bank of India	32.43	32.43%	-	-
2	IDBI Bank Limited	20.92	20.92%	-	-
3	Punjab National Bank	17.63	17.63%	-	-
4	Allahabad Bank	9.41	9.41%	-	-
5	Indian Overseas Bank	7.15	7.15%	-	-
6	Union Bank of India	5.65	5.65%	-	-
7	ICICI Bank Limited	3.44	3.44%	-	-
8	Vijaya Bank	3.19	3.19%	-	-
9	Federal Bank Limited	0.18	-	0.18%	-
Total		100	99.82%	0.18%	-

8. The Applicant submitted that the present Application was filed in 2018. In the meantime in view of the order dated 16.09.2020, CIAN Agro filed a revised Resolution Plan incorporating revised payment schedule due to the passage of time and the situation arising out of Covid-19. The said revised payment schedule was submitted by way of affidavit dated 30.09.2020. The CoC, in terms of the above order, discussed and approved the revised payment schedule with voting percentage of 82.19% as follows:

Sr. No.	Financial Creditors	Voting (%)	In Favour	Against	Abstained
1	Bank Of India	32.43	32.43%	-	-
2	IDBI Bank Limited	20.92	20.92%	-	-
3	Punjab National Bank	17.63	-	-	17.63%
4	Allahabad Bank	9.41	9.41%	-	-
5	Indian Overseas Bank	7.15	7.15%	-	-
6	Union Bank of India	5.65	5.65%	-	-
7	ICICI Bank Limited	3.44	3.44%	-	-
8	Vijaya Bank	3.19	3.19%	-	-
9	Federal Bank Limited	0.18	-	0.18%	-
Total		100	82.19%	0.18%	17.63%

9. **Salient features of the Resolution Plan:**

a. **SUCCESSFUL RESOLUTION APPLICANT:**

The SRA was incorporated on 13.09.1985 (formerly known as M/s Umred Agro Complex Limited). The net worth of the SRA as on 31.03.2018 stood at ₹. 13.76 Crores. Jairam Infraventure Private Limited and Purti Agrotech Limited, are its subsidiaries.

b. **TERM OF RESOLUTION PLAN:**

The date of commencement of the implementation of the Resolution Plan is termed as “Closing Date/Effective Date” (i.e., date of approval of the Resolution Plan by this Authority). As per the Resolution Plan, the obligations of the SRA to implement the Resolution Plan shall be from the closing date in accordance with the Code.

c. **FINANCIAL TERMS:**

The Resolution Plan proposes the following dispensation qua the financial and operational creditors of the Corporate Debtor:

Particulars	Claim Amount Admitted (INR in Crores)	Amount Proposed (INR in Crores)															
CIRP Costs	-	As per Actuals															
Secured Financial Creditor (FC)	3327.29	<p style="text-align: center;">70.00</p> <p>The settlement of the outstanding dues of financial creditors are as follows:</p> <ol style="list-style-type: none"> <li>1. Upfront Payment of ₹. 25 Crores (35.71% of settlement amount) to be paid within 45 days from the Effective Date in following manner:-               <ol style="list-style-type: none"> <li>a) Amount of ₹. 5 Crores (20% of Upfront Payment) to be paid through deposit of amount in Escrow Account after approval of Resolution Plan by CoC and on or before the date of submission of resolution plan to Hon'ble NCLT.</li> <li>b) Amount of ₹. 10 Crores (40% of Upfront Payment) to be paid within 15 days from the effective date.</li> <li>c) Amount of ₹. 10 Crores (40% of Upfront Payment) to be paid within 45 days from the effective date.</li> </ol> </li> <li>2. After Upfront Payment as above remaining ₹. 45 Crores (65.29% of settlement amount) to be paid in 630 days (divided in 6 quarters of Calendar year) from effective date in 6 tranches by way of debt/unsecured loan from SRA/promoter Group of SRA. Schedule of Payment of remaining ₹. 45 Crores within 630 days from the Effective Date are more particularly provided here-in-below:</li> </ol> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Sr. No.</th> <th style="text-align: center;">Amt (₹.)</th> <th style="text-align: center;">Timeline of Payment</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">₹. 6 Crores</td> <td style="text-align: center;">To be paid in T+180 days</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">₹. 6 Crores</td> <td style="text-align: center;">To be paid in T+270 days</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">₹. 8 Crores</td> <td style="text-align: center;">To be paid in T+360 days</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">₹. 8 Crores</td> <td style="text-align: center;">To be paid in T+450 days</td> </tr> </tbody> </table>	Sr. No.	Amt (₹.)	Timeline of Payment	1	₹. 6 Crores	To be paid in T+180 days	2	₹. 6 Crores	To be paid in T+270 days	3	₹. 8 Crores	To be paid in T+360 days	4	₹. 8 Crores	To be paid in T+450 days
Sr. No.	Amt (₹.)	Timeline of Payment															
1	₹. 6 Crores	To be paid in T+180 days															
2	₹. 6 Crores	To be paid in T+270 days															
3	₹. 8 Crores	To be paid in T+360 days															
4	₹. 8 Crores	To be paid in T+450 days															

		5	₹. 8 Crores	To be paid in T+540 days
		6	₹. 9 Crores	To be paid in T+630 days
		Note- T = Effective Date.		
		The SRA will endeavour to make payment of last instalments of ₹. 9 crores within 540 days from the Effective date, failing which, it undertakes to pay interest at rate of 10% per annum on said amount. The SRA in addition to ₹. 70 crores, would pay the entire amount lying in the Bank received by way of lease rent of Gupta Towers.		
Operational Creditors	-	The SRA proposes to pay Liquidation Value to the Operational Creditors. Since the surplus available is Nil, no amount is proposed to be paid to the Operational Creditors.		
Asst. Commissioner CGST & Central Excise	1.14			
Sales Tax Department, Govt. of Maharashtra	-			
Employees	-			
Trade Creditors	-			
Shareholders	-	Extinguishment of entire existing share capital		
Security Deposit	3.13	SRA proposes to adjust the security deposit against rent payable by the tenants.		

d. SOURCE OF FUNDS:

The SRA would infuse ₹. 20 crores from Equity Contribution and ₹. 50 Crores from Debts/Unsecured Loan from the Promoter Group. The SRA proposes to infuse entire cost of Resolution Plan through a SPV in the form of Secured/Unsecured Debts, Equity Capital, Preference Capital, Debentures, Quasi-Equity, Internal Accruals of SRA and Corporate Debtor.

e. **GOING CONCERN:**

The Company shall continue as a 'Going Concern' and carry on its normal business operations upon implementation of the Resolution Plan.

f. **MANAGEMENT OF THE CORPORATE DEBTOR:**

The SRA proposes to appoint Mr. Suneet Pande, the CEO of the SRA and Mr. Deepak Saptarshi, the Director of Purti Agrotech (a subsidiary of the SRA) as the Directors of the Corporate Debtor after the approval of the Resolution Plan.

g. **SUPERVISION OF THE RESOLUTION PLAN:**

The Monitoring Committee would include one representative each of the SRA, financial creditors and Resolution Professional for proper implementation of the Resolution Plan. Management and control of the Corporate Debtor from closing date (date of this order) till the completion of the terms of the Resolution Plan would be under the Board of Directors and SRA Nominee with all the powers as vested on them under the Companies Act, 2013.

h. **COMPLIANCE OF MANDATORY CONTENTS OF RESOLUTION PLAN UNDER THE CODE AND CIRP REGULATIONS:**

It is submitted that the Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 and 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the Regulations) and has submitted his Form H under Regulation 39(4) of the Regulations. The Plan is in accordance with the provisions of the Code and the Regulations. The SRA is not ineligible under Section 29A of the Code.

i. **PERFORMANCE SECURITY:**

The fixed deposit of ₹. 11 crores in an escrow account has been opened in Bank of India, Nagpur Branch before submission of Resolution Plan. Copy of the same has been submitted in proof thereof.

- j. In the event any transaction is avoided / set aside by the Adjudicating Authority in terms of Sections 43, 45, 50 and 66 of the Code, the cost of prosecuting the related applications shall be borne by the Financial Creditors.

10. The Applicant submits that the Resolution Plan meets the requirements of Section 30(2) of the Code in the following manner:

- a. Provides for the payment of CIRP costs (Clause 4) in priority over the repayment of other debts of the Corporate Debtor. [Section 30(2)(a)].
- b. Proposes to pay the Operational Creditors of the Corporate Debtor as stated above in Para 9(c). [Section 30(2)(b)].
- c. Management of the affairs of the Corporate Debtor after approval of the Resolution Plan will be with the Board of Directors and the SRA. [Section 30(2)(c)].
- d. The Plan also provides for its implementation and supervision [Section 30(2)(d)].
- e. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force [Section 30(2)(e)].

11. The Resolution Plan is in compliance of Regulation 38 [Section 30(2)(f)] of the Regulations in the following manner:

- a) The payment to operational creditors will be made in priority over financial creditors (Regulation 38(1)(a)).

- b) Payment to dissenting financial creditor will be paid in priority over the other financial creditors (Regulation 38(1)(b)).
  - c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).
  - d) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38(1B) ).
  - e) The Plan also provides for term and implementation schedule, management and control of the Corporate Debtor and adequate means for supervising its implementation as per clause 10, 12 and 13 thereof (Regulation 38(2)).
  - f) The Resolution Plan also addresses the cause of default, feasibility and viability, as per clause 12 and 15 thereof (Regulation 38(3)) .
12. The SRA has sought certain reliefs, concessions, waivers in clause 12 of the Resolution Plan. The SRA sought reliefs and concessions with respect to charge, interest, penalty pertaining to any statutory authorities.
13. The SRA has sought direction to the RoC, Mumbai and Regional Director, Mumbai to activate the DIN of the exiting Directors to enable them to file the Form DIR-12 for removal of existing Directors and appointment of new Director (Clause 10.2.3 of the Resolution Plan).
14. We have heard the Counsels appearing for the parties at length and have perused the Resolution Plan and relevant documents placed on record. It is beneficial to refer to the observation of the Hon'ble Supreme Court in

*Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC OnLine SC 1478* as under:

“67. ....

*A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.”*

15. In view of the above ruling of the Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. As already indicated the Resolution Plan has been approved by the CoC in its meeting held on 23.10.2018 with 99.82% votes.
  
16. In *K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150* the Hon’ble Apex Court held that if the CoC had approved the Resolution Plan with requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2) of the Code. The Hon’ble Court observed that the role of the NCLT is ‘no more and no less’. The Hon’ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan “as approved”

by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) of the Code when the Resolution Plan does not conform to the stated requirements.

17. In **CoC of Essar Steel** (*supra*) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

*“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).”*

18. In view of the discussions and the law thus settled, we are satisfied that the Resolution Plan as approved by the CoC under Section 30(4) of the Code meets the requirements of Section 30(2) of the Code and Regulations 37 and 38 of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved as provided under Section 31 of the Code. Hence ordered.

#### ORDER

The Application be and the same is allowed. The Resolution Plan submitted by CIAN Agro annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

- i. It shall be binding on the Corporate Debtor, 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 is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii. The Memorandum of Association (MoA) and Articles of Association (AoA) of the Corporate Debtor shall accordingly be amended and filed with the Registrar of Companies (RoC) concerned for information and record.
- iii. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- iv. As far as the permits held by the Corporate Debtor and the rights and benefits accrued therein, the Corporate Debtor (under the new Management) needs to approach the authorities concerned for renewal and that the same may have to be considered by them favourably, subject to relevant Law and Rules, so that the implementation of Plan becomes smooth.
- v. As far as the relief regarding the direction to the RoC, Mumbai and Regional Director, Mumbai to activate the DIN of the exiting Directors we are not inclined to grant such relief. The SRA needs to approach authorities concerned in accordance with law.
- vi. Henceforth, no erstwhile creditors of the Corporate Debtor can claim anything other than the liabilities referred to in Paras supra.
- vii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- viii. The Monitoring Committee and the Applicant shall supervise the implementation of the Resolution Plan and the Applicant shall file

periodical Status Reports of implementation before this Authority, preferably every quarter.

- ix. The Financial Creditors shall bear the cost of the Applications where the Adjudicating Authority sets aside any transaction in terms of sections 43, 45, 50 and 66 of the Code.
- x. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- xi. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant for necessary compliance. The certified copy so granted shall include the Resolution Plan approved herein.

Sd/-

V. Nallasenapathy  
Member (Technical)

Sd/-

Janab Mohammed Ajmal  
Member (Judicial)