

**NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

**CA No. 522/2019
IN
CP (IB) No.127/Chd/HP/2018**

**Under Section 30(6) and 31 of the
Insolvency and Bankruptcy Code, 2016
read with Regulation 39(4) of the
Insolvency and Bankruptcy Board of
India (Insolvency Resolution Process
for Corporate Persons) Regulations,
2016**

In the matter of:

Magma Autolinks Pvt. Ltd.
Rakkar Road, Una, Una District,
Himachal Pradesh – 174303

...Corporate Debtor-Non/Applicant

And in the matter of CA No. 522/2019:-

Arvind Kumar
IBBI/IPA-001/IP-P00178/2017-18/10357
Resolution Professional
Tanishka Agro Ventures Pvt. Ltd.,
3rd Floor, Plot D 190, Phase 8 B,
Sector 74, Industrial Area,
SAS Nagar Mohali Punjab
irparvindkumar@gmail.com

...Applicant/Resolution Professional

Order delivered on: 07.11.2019

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)**

For the applicant-

Resolution Professional: 1). Mr. Atul V. Sood, Advocate
2). Mr. Sumer Singh Brar, Advocate
3). Ms. Niharika Sohal, Advocate
4). Mr. Arvind Kumar, Resolution Professional in person

For the Resolution Applicant : Mr. Amitabh Tewari, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

CA No.522/2019

The present application is filed by Resolution Professional (**RP**) under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **Code**) 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 the **Regulations**) seeking sanction of resolution plan as approved in the meeting of Committee of Creditors (**CoC**) held on 25.05.2019.

2. It has been submitted that the insolvency petition was filed by the corporate applicant i.e. Magma Autolinks Pvt. Ltd. under Section 10 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Magma Autolinks Pvt. Ltd. (**Corporate Debtor**) and the same was admitted vide order dated 13.09.2018 and the CIRP of the Corporate Debtor was initiated. It is submitted that the applicant was appointed as Interim Resolution Professional (**IRP**) vide order dated 20.09.2018 and within two days of the appointment order, 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. The Tribune, an English newspaper dated 22.09.2018 and Divya Himachal (Hindi) thereby inviting claims from the creditors of the Corporate Debtor as envisaged in the Code.

3. It is submitted that in pursuance of the public announcement, claims were received from the Financial Creditors, Operational Creditors and Workmen/employees, which were verified and after collation, the IRP constituted the CoC as per the provisions of Section 21 of the Code. It is stated that initially the CoC was constituted with six Financial Creditors i.e. State Bank of India having a voting share of 43.50%, Tanishka Automotive Private Limited having a voting share of 43.50%, UCO Bank having a voting share of 12.42%, Punjab National Bank having a voting share of 0.28%, Ushashti Consultants having a voting share of 0.20% and Central Bank of India having a voting share of 0.10%. These creditors filed their claims which were approved by the RP, in view of the unamended Regulation 12 of the Regulations and intimation in this regard was given to this Tribunal.

4. It is submitted that the applicant as IRP has also appointed two valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations and the liquidation value as assessed on the basis of these two reports as per unamended Regulation 35 which are as follows:-

Name of the Valuer	Fair Value (₹)	Liquidation Value (₹)
1. CA Vikas Aggarwal	11,79,38,791.00	7,15,29,579.00
Fixed Assets	10,39,71,941.00	5,86,66,687.00
Current Assets	1,39,66,850.00	1,28,62,892.00
2. Pensar Valuation and Restructuring Advisors	11,52,12,534.00	7,63,72,296.00
Fixed Assets	10,12,37,948.00	6,27,40,980.00
Current Assets	1,39,74,586.00	1,36,31,316.00

The average values are:

Asset Class	Fair Market Value	Liquidation Market Value
Fixed Assets	102604944.00	60703833.00
Current Assets	13970718.00	13247104.00
Total	116575662.00	73950937.00

5. It is stated that one of the Financial Creditor, State Bank of India, filed an application before this Tribunal challenging the inclusion of Tanishka Automotive Pvt. Ltd. in the CoC. Vide order dated 21.09.2019, Tanishka Automotive Pvt. Ltd. was refrained from exercising its voting right in the CoC absolutely. Further, the CoC is stated to be revised excluding the share of Tanishka Automotive Pvt. Ltd.. The shares of the members of CoC after incorporating all the claims of all creditors is as follows:-

S. No.	Name of the Creditors	Amount of Claim	Amount of claim admitted	Voting %age
1	Tanishka Automotive Private Limited	387987301.00	368992907.45	Nil
2	State Bank of India	368992907.45	368992907.45	72.63%
3	UCO Bank	105372847.00	105372847.00	20.74%
4	Reliance Commercial Finance Ltd.	19616801.70	19616801.70	3.86%
5	Volkswagen Finance Pvt. Ltd.	5573208.41	5573208.41	1.10%
6	HDB Financial Services Ltd.	3552537.04	3552537.04	0.70%
7	Punjab National Bank	2392485.00	2392485.00	0.47%
8	Ushashti Consultants	1723870.00	1723870.00	0.34%
9	Central Bank of India	820915.00	820915.00	0.16%
	Total	896032872.60	877038479.05	100.00

6. It is stated that in the 1st meeting of the CoC held on 17.10.2018, the CoC resolved to continue with the IRP and appointed him as Resolution Professional (RP). It is further submitted that in the 4th meeting of the CoC held

on 15.12.2018, the CoC suggested the eligibility criteria for the selection of the suitable resolution applicants and following requirements were laid down:-

- Resolution Applicant must be lawfully organized and carrying business in India or having permission to carry business in India.
- Resolution Applicant may be a single bidder or may be a consortium (not more than 4 members), having minimum net worth/Assets under management, as per last available audited balance sheet, as follows:
 - Net worth in case of a single bidder: ₹50 Lacs;
 - Net worth in case of consortium: Lead member-₹20 Lacs, consortium - ₹50 Lacs.
- Preference will be given to those Resolution Applicant who are Agriculturist Himachali's.
- Preference will be given to those Resolution Applicant already engaged in the business of Automobiles – sale and repair.
- Resolution Applicant must not be an ineligible person as defined in Section 29A of the Code. The Resolution Applicant must, at the time of making the bid, disclose full identify of the bidder/the actual person behind the bidder and give a confirmation that the Resolution Applicant is not such ineligible person.

- Resolution Applicant obtaining a copy of the Information Memorandum must sign the confidentiality undertaking in the format provided in the form of EOI.

It is also stated that the Expression of Interest (**EOI**) has been called from eligible resolution applicants on 03.12.2018, 21.12.2018 and 04.01.2019 as prescribed in Regulation 36 (A) of the Regulations by publishing Form G in 'The Tribune (English)' and Amar Ujala (Hindi). It is also submitted that a valuation matrix was approved by the CoC in their 4th meeting held on 15.12.2018.

7. It is submitted that after publication of Form G, eight prospective resolution applicants came forward and expressed their interest to submit resolution plan in respect of the corporate debtor but only 3 applicants were found to be eligible to submit the resolution plan. It is stated that only one Resolution Applicant, Mr. Ram Prakash Singh & Ms. Indu Walia, jointly submitted the Resolution Plan within the stipulated time period.

8. It is submitted that CoC in 5th meeting dated 23.01.2019 resolved and directed the applicant-RP to file an application before the Adjudicating Authority seeking an extension of the CIRP by 90 days. This Tribunal vide its order dated 26.02.2019 was pleased to extend the period of CIRP in respect of Corporate Debtor by 90 days. It is stated that the eligible applicant, Shri Ram Prakash Singh and Smt. Indu Walia jointly submitted a resolution plan within the stipulated time.

9. It is further stated in the seventh meeting of the CoC held on 01.02.2019, the CoC decided the terms and conditions of the performance security to be provided by the resolution applicants after the approval of the plan

by CoC. It is also submitted that the requirement of performance security was communicated to the prospective resolution applicants.

10. It is stated that the resolution plan was opened in front of CoC in the 10th meeting dated 22.03.2019 and was further analysed in 11th, 12th and 13th meeting of the CoC held on 08.04.2019, 15.04.2019 and 14.05.2019 respectively.

11. It is submitted in the 14th meeting of CoC held on 25.05.2019, the resolution plan after incorporating the suggestions of the Members of CoC, was presented and got approved by 73.60% voting in favour of it and 1.80% voted against and 24.60% abstained from voting. Copy of the complete resolution plan is at Annexure A-14 of the application.

12. It is also submitted that CoC while accepting the bid had taken care of all the provisions and Regulations. It is prayed that the application may be allowed and resolution as approved by the CoC in the CIRP of the Corporate Debtor be approved. It is submitted that the creditors who did not file their claims with proof, within the time stipulated in the public announcement, submitted their claims within 90 days of the insolvency commencement date. Volkswagen Financial Services Pvt. Ltd., a financial creditor and Income Tax Department, an operational creditor filed their claims after 90 days of the commencement of the insolvency. The claims received from various categories of the creditors are as below:-

Sr. No.	Category of Creditor	Claim amount	Claim accepted
1	Workmen/Employees (FORM D)	7035552.00	7035552.00
2	Secured Creditors (FORM C)	506321693.00	506321693.00
3	Unsecured Financial Creditors (FORM C)	1723870.00	1723870.00

4	Operational Creditors (FORM B)	33833289.71	33833289.71
5	Govt. Agencies (FORM B)	415881521.00	415881521.00
6	Other Creditors (FORM F)	648169.00	648169.00

13. It is also stated that the claim of M/s Ushashti Consultants, an unsecured financial creditor was later re-classified as a secured creditor. The learned counsel for the RP submitted that as per the Amended Form H dated 20.08.2019, all the provisions of the Code and Regulations were complied with and that the approval of the resolution plan was made by 73.60% voting share of the financial creditors in the meeting of the CoC held on 25.05.2019 and therefore, resolution plan submitted by Mr. Ram Prakash Singh and Smt. Indu Walia may be approved.

14. We have carefully considered the submissions of the learned counsel for the RP and the learned Counsel for the resolution applicant and have also perused the record.

15. The corporate debtor was incorporated on 06.11.2013 for the purpose of buying, selling, reselling, importing, exporting, transporting, storing, developing, promoting, marketing or supplying in all types of motor cars & vehicles etc. and as discussed above, the CIRP proceedings were initiated by order delivered on 13.09.2018. The present application is filed for approval of the resolution plan submitted jointly by Shri Ram Prakash Singh & Smt. Indu Walia (Resolution Applicant). The approval has been sought under the provisions of Section 31 (1) of the Code.

16. 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 creditor, the distribution of voting share among them and the position of voting for the resolution plan is as under (para No.5 of Amended Form H dated 20.08.2019):-

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	State Bank of India	72.63	Voted for
2.	UCO Bank	20.74	Abstained
3.	Reliance Commercial Finance Ltd	3.86	Abstained
4.	Volkswagen Finance Pvt Ltd	1.10	Dissented
5.	HDB Financial Services Ltd	0.70	Dissented
6.	Punjab National Bank	0.47	Voted for
7.	Ushashti Consultants	0.34	Voted for
8.	Central Bank of India	0.16	Voted for
9.	Tanishka Automotive Pvt Ltd (Corporate Guarantor)	No Voting Right (As per final order dated 21.09.2019 in CA No.41/2019)	
	Total	100%	

17. The details of stakeholders under the resolution plan given in Para 7 of Amended Form H dated 20.08.2019:-

Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Dissenting Secured Financial Creditors	9125745	9125745	3003283	32.91%
2	Other Secured Financial Creditors	497195956	497195956	163627190	32.91%
3	Dissenting Unsecured Financial Creditors				
4	Other Unsecured Financial Creditors				
5	Operational Creditors				
	Government	415881521	415881521	8317631	2%
	Workmen	7035552	7035552	2319053	32.91%
	Employees				
	Goods & Services	34481458	34481458	689630	2%
6	Other Secured Financial				
	Total: A	963720232	963720232	177956787	
7	Other Financial Creditors (secured): B	1723870	1723870	567325	32.91%

Total C: (A+B)	965444102	965444102	178524112	
8 CIRP Cost: D	7528738	7528738	7528738	
Total Plan Outlay :E (C+D)	972972840	972972840	186052850	

At the 14th COC meeting held on 25th May 2019, the RP disclosed that Ushasti Consultants visited his office after submission of the resolution plan and claimed to be secured financial creditor and the COC concluded that Ushasti Consultants may be treated as secured financial creditor and given the same treatment of payment of 32.91% in the same ratio as is being paid to other secured financial creditors. Accordingly, as against the plan value given of ₹18,55,20,000/- the plan value comes out to be ₹18,60,52,848/-

A claim of Corporate Guarantor of ₹36,89,92,907/- was admitted. However no payment has been proposed for corporate guarantor.

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

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Annexures and Relevant Page of the Paper book	Compliance (Yes / No)
25(2)(h)	<p>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?</p> <p>The criterion for the resolution applicant was that the applicant should have net worth of 50.00 Lakh. The resolution applicant meets the criteria and submitted certificate of net worth along with request for EOI.</p>	Clause 4 Page no 8-11	808 to 811	Yes
Section 29A	<p>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?</p> <p>The resolution applicant is eligible to</p>	Appendix-3 page no A1-A3&Clause-4 Page no 8-11	875 to 877 & 808-811	Yes

	submit resolution plan as per the criteria fixed by the COC. The Adjudicating Authority has not passed any order regarding eligibility of the applicant.			
Section 30(1)	<p>Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?</p> <p>The resolution applicants have submitted an affidavit on 02.03.2019 stating that they are eligible to submit resolution plan.</p>	Clause-4.2 Page No. 9	809 & 888 to 891	Yes
Section 30(2)	<p>Whether the Resolution Plan:</p> <p>(a) provides for the payment of insolvency resolution process costs? The resolution plan provides for payment of full CIRP cost in priority to all other debts with in 1month of the approval of the plan</p> <p>(b) provides for the payment of the debts of operational creditors? ** The resolution plan provides for payment of the debt due to operational creditors in priority to all other debts within 1month of the approval of the plan</p> <p>(c) provides for the management of the affairs of the Corporate debtor? The resolution plan provides complete plan for the management of the affairs of the corporate debtor by reconstituting the board and appointing KMP's and endeavours will be made to retain the existing workmen and employees of the Corporate Debtor.</p> <p>(d) provides for the implementation and supervision of the resolution plan? The resolution plan provides for constitution of monitoring committee which shall be responsible for implementation and supervision of the</p>	<p>Clause-6.1 Page no-14 Appendix-6, Page A10</p> <p>Clause-6.3 Page no-15,Appendix 6, Page A10</p> <p>Clause-15 Page no. 38, Schedule-7 Page no 60-61</p> <p>Clause-14 Page no 36-37</p>	<p>814 & 884</p> <p>815 to 816 & 884</p> <p>838 & 860 to861</p> <p>836 to 837</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>resolution plan. The COC has constituted the monitoring committee and nominated the persons who shall be part of the committee.</p> <p>(e) Contravenes any of the provisions of the law for the time being in force? The resolution plan does not contravene any provision of the code. Details of the compliance of plan with Code are provided by the resolution applicant.</p>	Compliances of Code given on Page No. 72	872	No
Section 30(4)	<p>Whether the Resolution Plan (a) is feasible and viable, according to the CoC? The resolution plan was circulated to COC and the members deliberated on the plan and its feasibility and viability for over 2 months. Many discussions were held with the resolution applicants. The COC member SBI has its own in house standard operating procedure to evaluate the resolution plan. The members of COC have specifically evaluated the economic viability and operational feasibility of the resolution plan. The members of COC have recorded their reasoning to approve the plan in the 14th meeting of the COC, as stated herein below:</p> <p><i>“The members took note of the fact that the resolution applicant has proposed professional management to run the business of the corporate debtor. Further the proposed agency of Renault India, for which the resolution applicants have already received permission (LOI), which has portfolio of vehicles which suits the requirements of the hilly terrain of the state, will take care of the competition and slowdown in the demand. The business leverage will be kept at lower levels and as mentioned in the plan the proposed operation would be</i></p>	Yes	892-898 (Annexure A-15)	Yes

	<p><i>economically viable. A strict financial discipline will be enforced, and no wastages would be permitted.</i></p> <p><i>The members of the committee of creditors were of the opinion that the plan is viable and feasible, and the resolution applicant has capability to implement the same within the given resources.”</i></p> <p>(b) has been approved by the CoC with 66% voting share? Plan has been approved by COC with 73.60% of majority.</p>	Yes with 73.60% voting share	894-898 (Annexure A-15)	Yes
Section 31(1)	<p>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</p> <p>The resolution plan provides for the following measures for effective implementation of the resolution plan;</p> <p><i>-The Resolution Applicant has proposed formation of monitoring agency for effective supervision and implementation of the plan and the same has been duly approved by COC in 14th meeting by passing the following Resolution:</i></p> <p><i>“The Resolution Applicant proposes the following measures between the Effective Date and the Completion Date (“Interim Period”) for effective supervision and implementation of the Resolution Plan:</i></p> <p>(a) <i>A committee consisting of the Resolution Professional (Subject to consent by RP) or any other experienced professional, nominee of financial creditors, resolution applicant or nominees of the Resolution Applicant (“Monitoring Agency”) shall be constituted who will manage the Corporate Debtor during the Interim Period.</i></p> <p>(b) <i>The Monitoring Agency shall oversee the effective implementation of the</i></p>	Clause-14 Page 36-37	836 to 837	Yes

	<p><i>Resolution Plan under its supervision, until the completion date.</i></p> <p>(c) <i>Upon appointment of the Monitoring Agency and on full hand-over of assets of the Corporate Debtor including business records and all statutory records, tax filings, account books and account records taken into custody under Sections 17 and 18 of the Code read with Sections 23 and 25 of the Code by the Resolution Professional, the Resolution Professional shall be released of his statutory duties and responsibilities and liabilities except as required by law.</i></p> <p>(d) <i>The Monitoring Agency shall manage the affairs of the Corporate Debtor and shall exercise the powers of the Board of Directors of the Corporate Debtor till reconstitution of the board of director by the resolution applicant.</i></p> <p>(e) <i>From effective date to till handover by the RP of the control of corporate debtor to resolution applicant, all decisions in relation to the corporate debtor shall be taken by the Monitoring Agency.</i></p> <p>(f) <i>The monitoring agency shall meet regularly on an interval not more than 30 days during the first year from effective date and not more than 90 days thereafter till completion of the implementation of resolution plan.</i></p> <p>(g) <i>The monitoring agency shall be responsible for all reporting requirements in relation to the implementation of resolution plan including reporting of any breach of any term, failure on part of resolution applicant to implement the plan, contravention of terms of plan</i></p>			
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	<p><i>by any stakeholder etc.</i></p> <p>(h) <i>The monitoring agency shall extend all cooperation to the Resolution Professional including making payment of the fee and charges in excess of the earlier provisions, if required, in pursuing the applications filed before the Adjudicating Authority in relation to preferential/ fraudulent transactions.</i></p> <p>The COC has constituted the monitoring committee in 14th meeting by passing the following resolution.</p> <p>Resolved <i>that the following persons shall be the members of the monitoring committee as proposed in para 14 of the resolution plan;</i></p> <ol style="list-style-type: none"> 1. <i>SurjeetKaushal (AGM, SBI)</i> 2. <i>Ravinder Kumar Goel (Insolvency Professional)</i> 3. <i>Ram Prakash Singh (Resolution Applicant)”</i> <p>The monitoring committee shall assume charge on the approval of the resolution plan.</p>			
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>The resolution professional based on the examination of the books of accounts has made a determination of the transactions within 115 days of the insolvency commencement date and intimated the board about these transactions. The resolution professional has filed an application under section 66 of the code before the adjudicating authority seeking</p>	Application filed with NCLT u/s 66 of IBC 2016. CA265/2019.	414-418 (Annexure A-8)	Yes

	appropriate direction to the respondents to make contribution to the assets of the corporate debtor.			
Regulation 38 (1)	<p>Whether the Resolution Plan identifies specific sources of funds that will be used to pay the -</p> <p>(a) Insolvency resolution process costs?</p> <p>(b) Liquidation value due to operational creditors?</p> <p>(c) liquidation value due to dissenting financial creditors?</p>	Appendix-6 Page A8 to A12 & Schedule-8 Page no 62-67	882 to 886 & 863-867	Yes
Regulation 38(1A)	<p>Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?</p> <p>The resolution plan includes statement as to how it has dealt with the interest of all the stakeholders. The plan provides details of the settlement proposed with all the stake holders.</p>	Clause-7 Page no 31	831	Yes
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) The term of the plan and its implementation schedule?</p> <p>The plan proposes an implementation schedule of 27 months including moratorium of 3 months which includes:</p> <ol style="list-style-type: none"> 1. Upfront payment of CIRP cost , workmen and unsecured creditors, within 1 month from the date of approval 2. Upfront payment to Secured Creditors within 3 months and deferred payment of remaining amount in 8 equal quarterly instalments. <p>(b) For the management and control of the business of the corporate debtor during its term?</p> <p>The plan provides that the board of directors of the corporate debtor shall be reconstituted and manned with professionals. The plan provides for appointment professional KMP's. Monitoring agency will supervise the implementation of the plan and ensure compliance with the terms of the plan.</p>	<p>Clause 16, Page no. 38-39 Appendix A6 , Page A8-A12</p> <p>Clause-15 Page 38 & Schedule-7 Page 60-61</p>	<p>838 to 839 & 882 to 886</p> <p>838 & 860 to 861</p>	<p>Yes</p> <p>Yes</p>

	<p>(c) Adequate means for supervising its implementation?</p> <p><i>“The Resolution Applicant proposes the following measures between the Effective Date and the Completion Date (“Interim Period”) for effective supervision and implementation of the Resolution Plan:</i></p> <p><i>(a) A committee consisting of the Resolution Professional (Subject to consent by RP) or any other experienced professional, nominee of financial creditors, resolution applicant or nominees of the Resolution Applicant (“Monitoring Agency”) shall be constituted who will manage the Corporate Debtor during the Interim Period.</i></p> <p><i>(b) The Monitoring Agency shall oversee the effective implementation of the Resolution Plan under its supervision, until the completion date.</i></p> <p><i>(c) Upon appointment of the Monitoring Agency and on full hand-over of assets of the Corporate Debtor including business records and all statutory records, tax filings, account books and account records taken into custody under Sections 17 and 18 of the Code read with Sections 23 and 25 of the Code by the Resolution Professional, the resolution professional shall be released of his statutory duties and responsibilities and liabilities except as required by law.</i></p> <p><i>(d) The Monitoring Agency shall manage the affairs of the Corporate Debtor and shall exercise the powers of the Board of Directors of the Corporate Debtor till reconstitution of the board of director by the resolution applicant.</i></p> <p><i>(e) From effective date to till handover by the RP of the control of corporate debtor to resolution applicant, all decisions in relation to the corporate debtor shall be taken by the Monitoring Agency.</i></p> <p><i>(f) The monitoring agency shall meet regularly on an interval not more than 30 days during the first year from effective date and not more than 90 days thereafter till</i></p>	<p>Clause-14 Page 36-37</p>	<p>836 to 837</p>	<p>Yes</p>
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	<p><i>completion of the implementation of resolution plan.</i></p> <p><i>(g) The monitoring agency shall be responsible for all reporting requirements in relation to the implementation of resolution plan including reporting of any breach of any term, failure on part of resolution applicant to implement the plan, contravention of terms of plan by any stakeholder etc.</i></p> <p><i>(h) The monitoring agency shall extend all cooperation to the resolution professional including making payment of the fee and charges in excess of the earlier provisions, if required, in pursuing the applications filed before the Adjudicating Authority in relation to preferential/ fraudulent transactions.”</i></p>			
38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default?</p> <p>The plan has identified diversion of the funds and lack of focus on the business as main cause of the failure of the corporate debtor. The resolution applicant has proposed a strict financial discipline scenario and undivided focus on the business activity.</p> <p>(b) it is feasible and viable?</p> <p>As per the assessment of the COC and having regards to the net worth and projected working plan of the applicants, the plan is feasible and viable.</p> <p>(c) it has provisions for its effective implementation?</p> <p>The plan provides for appointment of Monitoring agency which will supervise the implementation of the plan and ensure compliance with the terms of the plan. The composition of the monitoring agency has been finalised by the COC in its 14th meeting. The monitoring agency shall be responsible for reporting the progress and breaches if any in the implementation schedule of the resolution plan. The COC has also provided for fixed meeting schedule of the monitoring agency. The resolution applicant has also furnished performance security in</p>	<p>Clause-2.2 Page 4-5</p> <p>Schedule-8 Page 62-67</p> <p>Clause-14 Page 36-37</p>	<p>804 to 805</p> <p>862 to 867</p> <p>836 to 837</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>form of fixed deposit equal to 2.5% of the plan value and immovable property equal to 30% of the plan value.</p> <p>(d) it has provisions for approvals required and the timeline for the same? The plan does not envisage any special approval from any agency except for the permissions already available and required in normal course of business.</p> <p>(e) the resolution applicant has the capability to implement the resolution plan?</p>	<p>Clause-5.2 Page-12 & Schedule -9 Page no 68 &Schedule-10 Page 69-70</p> <p>Schedule-6 Page No. 59</p>	<p>812 & 868-870</p> <p>859</p>	<p>Yes</p> <p>Yes</p>
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Application filed with NCLT u/s 66 of IBC 2016. CA 265/2019		Yes

******It was observed that when the matter was under consideration before this Tribunal an amendment was introduced under Section 30(2)(b) and the following provision was inserted by Act No. 26 of 2019 w.e.f. 06.08.2019:-

“(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 the 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 purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

It is observed that the amount payable towards the operational creditors is ₹1,13,26,314/- as provided in the resolution plan. Further, the amount to be distributed between operational creditors in the event of liquidation, if distributed in order of priority in Section 53(1) of the Code would be NIL as it is stated in Para 6.3(a)(i) of the Resolution Plan, they may not be any liquidation value available for the operational creditors since, as per regulation, operational creditors comes at No.5 in order of priority of distribution of assets under Section 53 of the Code. As discussed above, there are two dissenting financial creditors i.e. Volkswagen Finance Pvt. Ltd. and HDB Financial Services Ltd., which have been given the same treatment of payment of 32.91% in the same ratio as is being paid to the other secured financial creditors. Hence, Section 30(2)(b) (Act No. 26 of 2019) w.e.f. 06.08.2019 stands complied with.

19. The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading as follows:-

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.

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

- (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.

21. It is submitted by the RP that the resolution plan has been approved by a vote of 73.60% of voting share of the financial creditors and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

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

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 repayment of other debts of the corporate debtor;*
- (b) *provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;*

(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.

23. 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 814 of the application) states that payment of insolvency resolution process cost estimated to be ₹75,28,738/- shall be paid in priority with payments to the other creditors of the corporate debtor;

(b) **Section 30(2)(b):** The resolution plan (Page 815 of the application) states that according to the Information Memorandum issued by the RP to the resolution applicant, there is a sum of ₹3,44,81,458.71 payable to the operational creditors of the corporate debtor other than employees, workmen and Government agencies and the resolution plan proposes amount of ₹6,89,630/- as against it. There is also sum payable of ₹41,58,81,521/- as Government dues and the Resolution Plan has proposed an amount of ₹83,17,631/- against it, and there is also a liability of ₹70,35,552/- under the head Workmen dues and there is a provision of ₹23,19,053/- against it in the resolution plan.

(c) **Section 30(2)(c):** At page 38 of the resolution plan (page 838 of the application), it is stated that The Corporate Debtor shall be professionally managed by the officials nominated by the resolution applicant at its sole discretion.

Further, as per Form H Monitoring Agency will supervise the implementation of the plan and ensure compliance with the terms of the plan.

(d) **Section 30(2)(d)**: At Page 36 of the resolution plan (Page 836 of the application), it is stated that a Committee consisting of resolution professional and any other experienced professional, nominee of financial creditors, resolution applicant or nominees of the resolution applicant ("Monitoring Agency") shall be constituted who will manage the corporate debtor during the interim period. It is further stated that the Monitoring Agency shall be responsible for reporting all the requirements in relation to the implementation of the resolution plan.

(e) **Section 30(2) (e)**: In Form H (para No.4), the RP has certified that the resolution plan complies with the provisions of the Code and Regulations and does not contravene any of the provisions of law for the time being in force.

24. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan states that the resolution applicant undertakes that on approval of the resolution plan by the Adjudicating Authority, the resolution applicant also proposes to appoint a Monitoring Agency as would be decided by the Secured Financial Creditors. The Plan proposes an implementation Schedule of 27 months including moratorium of 3 months. The implementation of the plan will be made by making payments towards the CIRP cost, workmen and unsecured creditors from the date of approval within one month and payment to secured creditors within 3 months and deferred payment of remaining amount in 8 equal quarterly instalments.

25. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No. 4 of Form H the RP has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that the joint resolution applicant Shri Ram Prakash and Smt. Indu Walia has submitted affidavit dated 02.03.2019 pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The RP has submitted that the resolution plan has been approved by the CoC with 73.60% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.

26. We shall now discuss the requirements of Regulation 39(4) of the Regulations. It is observed that in the 7th meeting of CoC held on 01.02.2019, approval was given for obtaining performance security from the resolution applicant. As per the requirement of performance security, Fixed Deposit Certificates for a sum of ₹46,40,000/- in the nature of Kuber Yojna Deposit Scheme with UCO Bank in (Annexure A-16) and a copy of jamabandi in respect of the mortgaged land as performance security is found attached with the application as Annexure A-16. The RP should ensure that the performance security is received as per the decision of the CoC.

27. It is also stated that application dated 26.03.2019 has been filed with this Tribunal regarding fraudulent transactions under Section 66 of the Code. The relevant CA No.265/2019 is presently under hearing by the Tribunal.

28. In view of the above discussion, the resolution plan submitted by Shri Ram Prakash and Smt. Indu Walia as approved by the CoC under Section 30 (4) of the Code is hereby approved subject to comments in para No.26 regarding performance security. 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.

29. 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 13.09.2018 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.

CA No.522/2019 is disposed of.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

Nov., 07, 2019
Anchal