

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
Court 2**

**IA 591 of 2020 in CP(IB) 536/NCLT/AHM/2019**

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 09.12.2020**

Name of the Company: Premraj Ramratan Laddha RP For Twenty  
First Century Casting Pvt Ltd

Section 30(6) of IBC r.w 31 of IBC,2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER**

Advocate, Mr. Vishal Raval appeared on behalf of the Applicant.

The order is pronounced in the open court vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**



**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 9th day of December, 2020

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

**I.A. No. 591 of 2020  
in  
CP(IB) No. 536 of 2019**

**In the matter of:**

Premraj Ramratan Laddha  
Resolution Professional of  
Twenty First Century Castings Private Limited ... Applicant

**In the matter of:**

M/s Harsh Foundry Fluxes & Alloys ... Operational Creditor

**Versus**

Twenty First Century Castings Private Limited ... Corporate Debtor

**Order delivered on 9<sup>th</sup> December, 2020**

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)  
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

**Appearance:** Advocate Mr. Vishal Raval for the Applicant and Mr. Nitin Chauhan for the sole CoC member i.e. SBI.

**ORDER**

**[Per se: Ms. Manorama Kumari, Member (J)]**

1. The instant application is filed by the Applicant, the Resolution Professional of Twenty First Century Castings Private Limited (hereinafter referred to as "Corporate Debtor") under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IB Code") for seeking approval of Resolution Plan.





2. The facts of the case are herein under:

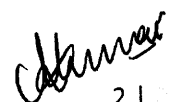
2.1 CP(IB) No.536 of 2020 was filed by Operational Creditor viz. M/s Harsh Foundry Fluxes & Alloys, under section 9 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor which was admitted on 16.01.2020 by this Adjudicating Authority. Mr. Saurabh Zaveri was appointed as Interim Resolution Professional (hereinafter referred as "IRP").

2.2 That the Committee of Creditors (hereinafter referred as "CoC") was formed and in its Second Meeting held on 25.02.2019, decided for replacement of the IRP. An application for replacement of the IRP was filed before this Adjudicating Authority and the order was passed on 16.03.2020 replacing the IRP and appointing Shri Premraj Ramratan Laddha as Resolution Professional (hereinafter referred as "RP").

2.3 The RP called for Expression of Interest (hereinafter referred as "EoI"), in compliance of the resolution passed in Third CoC meeting, vide publication dated 24.03.2020. It is stated by the Applicant that inquiries were made regarding the EoI. However, due to Covid-19 situation and various notifications of IBBI and guidelines issued by the Government, CoC advised to extend the timeline to comply the eligibility criteria by 07.07.2020.

2.4 Pursuant to the calling of EoI, only one Resolution Plan was received from the Resolution Applicant i.e. M/s Suryadeep Alloys Steel Castings Pvt Ltd.





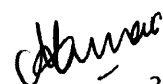
2.5 The above stated plan was discussed in the Fifth CoC meeting held on 13.07.2020 amongst the CoC, wherein CoC felt that Resolution Plan needs improvement on a commercial level and requested RP to convey to the Resolution Applicant to submit a revised Plan within one week i.e. on or before 20.07.2020.

2.6 The Resolution Applicant submitted the revised Resolution Plan in the Sixth CoC meeting held on 24.07.2020, which was found satisfactory by the CoC. However, the approval of the Resolution Plan was deferred till the next CoC meeting as legal vetting of the Plan was pending. Thereafter, in the Seventh CoC meeting held on 28.08.2020, the Resolution Plan was approved with 100% voting in favour of the Resolution Plan.

2.7 The Applicant further stated that the Resolution Applicant is eligible under Section 29A of IB Code. The Applicant filed Compliance Certificate in 'Form H' as **Annexure M** of the application. Pursuant to the approval of the Resolution Plan by the CoC under Section 30(4) of the IB Code (as amended upto date) as the successful Resolution Plan, RP filed the instant application under Section 31 of the Code.

3. Heard the Applicant, CoC and Resolution Applicant, the present application has been filed for approval of the Resolution Plan under Section 31 of the IB Code (as amended upto date) submitted by RP in respect of the Corporate Debtor. The Applicant/ Resolution





Professional, deliberating the sequence of events right from calling of EoI up to approval of the Resolution Plan by the CoC in its Seventh meeting held on 28.08.2020 submitted the Resolution Plan duly approved by the CoC by 100% voting in favour of the Resolution Plan so submitted by Resolution Applicant, as the Resolution Plan complies with the requirements as envisaged under Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as well as Section 30 of the Code, therefore sought for approval of the Resolution Plan by this Adjudicating Authority.

4. On perusal of the records, it is found that the Resolution Applicant has taken account the interest of all stakeholders of the Corporate Debtor to the extent possible, as envisaged in this Resolution Plan for insolvency resolution of "Twenty First Century Castings Private Limited".
5. The Applicant stated the Financial Proposal with bid value and also, proposes to infuse further amount of approx Rs. One Crore towards the expenses for revival of the unit to keep it as going concern which shall be paid by the Resolution Applicant in the manner as mentioned below:

<b>Particulars</b>	<b>Upfront payment (within 90 days from date of NCLT Approval)</b>	<b>Payment (within one year from NCLT Approval)</b>
Payment of Bid Value	100%	-
Revival Expenses	-	100%

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6. The Applicant also submitted that the bid value shall be appropriated among the creditors of the Corporate Debtor and revival of the Corporate Debtor strictly in the manner as mentioned below:

(Amount in Rs.)

S. No.	Particulars	Total Admitted Amount	Amount proposed for payment	Terms of payment from date of approval of resolution plan by NCLT
1.	<b>CIRP Cost* (Note 1)</b>	10,00,000	10,00,000	Up front within 90 days
2.	<b>Workmen and employees</b>	-	-	-
3.	<b>Secured Financial Creditors</b>	26,13,27,227	3,90,05,000	Up front within 90 days
4.	<b>Operational Creditors</b>	11,89,723	-	-
5.	<b>Operational Creditor- Govt Dues</b>	117047801	-	-
6.	<b>Creditors other than above</b>	-	-	-

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*Abhinav*

	<b>Total</b>	<b>379564751</b>	<b>4,00,05,000</b>	-
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**Note-1:** \* Rs. 10 Lacs is estimated CIRP cost upto date of approval of resolution plan by NCLT and any excess or shortfall in CIRP cost upto date of NCLT order approving Resolution Plan as approved by CoC shall be adjusted with the fund proposed to distribute to secured financial creditor.

7. With regards to **Source of Fund**, Clause 1.10 at Page 61 of the application, it is stated that *“the Resolution Applicant together with its promoters have sufficient financial resources to cater to the requirement of the resolution plan. The payments which are proposed in the resolution plan are not contingent upon the performance of the Corporate Debtor. This aspect mitigates the risk in the successful implementation of the resolution plan. The RA applicant has good credit in the market to raise the fund. Further, collective Net worth of the Resolution Applicant and its promoter is around Rs. 18 Cr. As on 31.03.2020 (as per certificate of chartered accountant) which can be utilized as source of funds to RA. Accordingly, if required, RA would be able to raise funds from the market to ensure timely payment as proposed in the Resolution Plan. Moreover, the IDFC First Bank has sanctioned the financial assistance of Rs. 3.50 crores to resolution applicant along with its promoters as co-applicants.”*
8. In view of the above, Section 30(2) and 30(4) is applicable in the instant case. For sake of the convenience the amended provision is reproduced herein below-





**“30. Submission of Resolution Plan**

(1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(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.

*Shankar Singh*

*Chhanna*

*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-*

*(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;]*

*(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) conforms 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.]”*

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*Chhanna*

**FINDINGS:**

9. Looking to the entire facts of the case, it is found that the COC has approved the plan with 100% voting in favour of the approval of the plan. More so, the Resolution Applicant fulfils the mandatory contents of the Resolution Plan as provided under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. Regulation 38 is reproduced herein under-

***“38. Mandatory contents of the resolution plan.***

*(1) A resolution plan shall identify specific sources of funds that will be used to pay the –*

- (a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;*
- (b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and*
- (c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.*

*[“(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.”]*

*(2) A resolution plan shall provide:*

- (a) the term of the plan and its implementation schedule;*
- (b) the management and control of the business of the corporate debtor during its term; and*
- (c) adequate means for supervising its implementation.”*

*Shankar*

*Abhinav*

10. Further, from the object of the IBC, it is amply clear that the **“Resolution is Rule and the Liquidation is an Exception”**. Liquidation brings the life of a corporate to an end. It destroys organizational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only, if there is any surplus after satisfying the claims of a prior set of stakeholders fully. The IB Code’, therefore, does not allow liquidation of a corporate debtor’ directly. It allows liquidation only on failure of corporate insolvency resolution process’. It rather facilitates and encourages resolution in several ways.

The said objective of the Resolution Plan is affirmed in the decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors.** The Supreme Court has observed that National Company Law Tribunal has no jurisdiction and authority to analyze or evaluate the commercial decision of the Committee of Creditors (CoC) to enquire into the justness of the rejection of the Resolution Plan by the dissenting Financial Creditors.

Keeping in view such object behind the enactment of the Code, intention of the Legislature, that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of the Code and liquidation of a company can be only as a last resort, wherein, all efforts for brining Resolution Plan were failed or it

*Shankar Singh*

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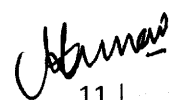
cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is ruled as per the apex court's decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors** as discussed above.

The Hon'ble Supreme Court in its recent judgment in Civil Appeal No. 10673 of 2018 in **K. Sashidhar Vs. Indian Overseas Bank & Ors.** comprising of Hon'ble Justice A.M. Khanwilkar and Hon'ble Justice Ajay Rastogi observed that Adjudicating Authority has no jurisdiction to interfere with the commercial wisdom of the CoC. On the backdrop of the decision taken by Hon'ble Supreme Court, it is pertinent to note that commercial wisdom of the CoC cannot be interfered into by the Adjudicating Authority.

11. With regard to **Clause 5.4 i.e. Extinguishment of Claims** (page no. 68 of the application), this Adjudicating Authority is of the opinion that the claim which are not dealt by RP or COC during the CIRP period or filed within the statutory period before the RP, cannot be re-agitated before the Resolution Applicant after the approval of the Plan. With regard to concession from any competent authority of Government/ Semi Government/ Central or Local Authority, Resolution Applicant may have the liberty to approach them.

12. However, with regards to **Clause 5.5 i.e. Relief and Concessions** (page no. 69 of the application), the Adjudicating Authority is of the opinion that not allowing the Clause 5.5 of the Resolution Plan, is





not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant(s) has/have liberty to approach Competent Authorities for any concession, relief or dispensation as the case may be, as and when required for proper and effective implementation of the Plan.

13. It is needless to mention herein that approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/Corporate Debtor, as those are the subject matter of the concerned Competent Authorities having their proper/own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicant(s) on approval of the Plan may approach those Competent Authorities/Courts/Legal Forums/Offices- Govt, or Semi Govt. / State or Central Govt, for appropriate relief(s) sought for in "Clause 5.4 and 5.5" of the Resolution Plan.

14. Apart from the above observations and directions, it is further directed/ observed that:

- i. The approved Resolution Plan shall come into force with immediate effect.
- ii. The Resolution Plan shall be subject to the various existing laws in force and shall also conform to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.






- iii. The Resolution Applicant(s) shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.
- iv. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.

15. Under such facts and circumstances, we, the Adjudicating Authority, is of the considered opinion and also being satisfied that the Resolution Plan as approved by the Committee of Creditors (CoC) meets the requirements as referred to under section 30(2) of the Code.

16. Accordingly, IA 591 of 2020 is allowed with the above said observations and directions and stands disposed of in view of the above order.



**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member(Technical)**



**Manorama Kumari**  
**Adjudicating Authority**  
**Member(Judicial)**