

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

MA.No.118/2020

**In
CP (IB) No. 2318/MB/C-II/2018**

Under Section 30 and 31 of the
Insolvency and Bankruptcy Code, 2016.

**RQS Engineering Private Limited
... Operational Creditor
V/s**

**Thermo Products Private Limited
... Corporate Debtor**

In the matter of

**Harshad S Deshpande
Resolution Professional
Thermo Products Private Limited
403, Kumar Millenium, Jai Bhavani
Nagar,
Paud Road, Kothrud Pune - 411038
...Applicant**

Order Delivered on : 01.11.2023

Coram:

**Hon'ble Member (Technical)
Mr. Anil Raj Chellan**

**Hon'ble Member (Judicial)
Mr. Kuldip Kumar Kareer**

Appearances:

For the Applicant /Resolution Professional : Adv. Akshay Petkar

For the Resolution Applicant : Adv. Aniket Malu

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ORDER

Per: Anil Raj Chellan, Member Technical

1. The present application is filed by Harshad S Deshpande, the Resolution Professional of Thermo Products Private Limited, (“the Corporate Debtor”) seeking approval of the Resolution Plan under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (‘the Code’) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 (“the CIRP Regulations”) submitted by Mr. Mukesh Agrawal. The Plan was duly approved by 100% of the Committee of Creditors (CoC) in its 8th meeting held on 09.12.2019.
2. The Applicant submits that CIRP process was initiated against the Corporate Debtor under Section 9 of the Code as per order of Adjudicating Authority, Mumbai Bench dated 21.02.2019. Mr. Anil S Vaidya was appointed as ‘Interim Resolution Professional’ (IRP) and the copy of the order was received by the IRP on 11.09.2019. The IRP took control of the Corporate Debtor and constituted CoC with two Financial Creditors on 12.04.2019.

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3. The CoC, at its meeting held on 08.07.2019 passed an unanimous resolution to appoint Mr. Harshad S Deshpande as Resolution Professional (RP), as approved by the Tribunal on 15.10.2019.
4. As authorized by the CoC, RP issued public announcement in Form-G for inviting Expression of Interest (EoI) which was published on 14.10.2019. The Applicant further appointed registered valuers to determine the fair value and liquidation value of the Corporate Debtor, namely Kedar Arvind Chikodi and Sharma Shirishbhai. The above valuers submitted their reports dated 07.12.2019 and 09.12.2019.
5. As resolved by CoC in its meetings held on 24.10.2019, the Adjudicating Authority extended the period of CIRP for a further period of 90 days. In response to the Expression of Interest, the RP received one Resolution Plan from Mr. Mukesh Agarwal, which was considered by the CoC at its meeting held on 09.12.2019 and approved by 100% voting.

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6. **Brief Background of the Corporate Debtor:**

a) The Corporate Debtor a registered MSME is engaged in the business of manufacturing of Thermocol (EPS) parts as per customers specific requirements -EPS foam sheets and rolls and thermosteel panels -thermocol and GI wire mesh brick wall for thermal insulation.

b) The causes of default of the Corporate Debtor as analysed by the Resolution Applicant are non-alignment of debt servicing obligations with the business cash flows, high level of creditors and insufficient working capital funds for regular business operations.

7. **Brief Background of the Resolution Applicant:**

a. The Resolution Applicant is a suspended Director of the Corporate Debtor and is associated with Prakash Group as Promoter and Managing Director of subsidiaries of Prakash Group who are engaged in manufacturing of corrugated Paper boxes, Paper tubes and EPS components/packaging material as per the specifications and requirements of multi-national industries. He is experienced in managing multiple plans and projects simultaneously. The Resolution Applicant has sound

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knowledge and experience in the business of the Corporate Debtor.

- b. The Resolution applicant is confident of reviving the Corporate Debtor by re-alignment of debt servicing obligations with the cash flows, reduction in the level of creditors, especially operational creditors and statutory dues, continuation of existing working capital facility for regular business operations and fresh infusion of equity capital.

8. **Salient features of the approved Resolution Plan**

- a) The approved Resolution Plan envisages a total payment of Rs.16,60,63,000/- (Rupees Sixteen Crore Sixty Lakh Sixty-Three Thousand Only). The outlay of the amounts envisaged therein is as under:

Sr. No.	Payment Particulars	Amount (In Rupees)
1.	CIRP Costs	25,00,000
2.	Secured Financial Creditors	13,24,46,000
3.	Operational Creditors	1,19,17,000
4.	PF, ESIC and Gratuity Dues	Nil
5.	Employees Dues	Nil

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6.	Existing Shareholders	Nil
7.	Statutory Liabilities	42,00,000
8.	Contingent liabilities	1,50,00,000
	Total (A)	16,60,63,000
9.	Working Capital Infusion	Nil
	Total (B)	Nil
	Grand Total (A)+(B)	16,60,63,000

b) **CIRP Costs**

The entire outstanding CIRP costs of Rs. 25 Lakh shall be made by upfront cash payment within thirty days from the approval date.

c) **Payment to Financial Creditors**

Bank of Maharashtra and Religare Finvest Limited are the two Financial Creditors who shall be paid full amount of the admitted claim on or before 31.12.2026 as under:

- i) Bank of Maharashtra-upfront amount of Rs. 120 Lakhs (92.50 Lakhs towards repayment of overdue amount on CC and Rs. 27.50 Lakhs towards overdue amount on term loan and balance payment of Rs. 466.58 Lakhs plus

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applicable interest to be paid over a period of seven years ending on 31.12.2026.

- ii) Religare Finvest Limited-upfront amount of Rs.114.75 Lakhs and balance Rs.623.13 Lakh in equal monthly installment of Rs. 12.75 Lakhs till December 2026.

Thus, the total admitted claim of Rs. 1324.46 Lakhs will be paid in full before 31.12.2026.

- d) **Operational Creditors (LG Polymers and RQS Engineering Private Limited)**: The entire admitted claim of Rs.119.17 Lakhs shall be paid in full as under:

- i) Rs.72.45 Lakhs to LG Polymers in seven equal annual instalments of Rs.10.35 Lakhs-Six annual instalments on or before 31st March every year and last instalment on or before 31.12.2026.
- ii) Rs. 46.72 Lakhs to RQS Engineering Private Limited in seven equals annual instalments of Rs. 6.67 lakhs-six annual instalments on or before 31st March every year and last instalment on or before 31.12.2026.

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e) **Employees dues:**

Since there are no dues towards employee dues, provident fund, employee state insurance and gratuity fund, no amount is proposed to be paid under the Resolution Plan. In case any liability arises, the same will be paid from the provision of Rs. 150 lakhs kept for contingencies.

f) **Statutory Liabilities:**

The entire amount of statutory dues of Rs. 42 Lakh or any amount as decided by the Tax authorities under amnesty scheme shall be paid in full.

g) **Contingent Amount:**

An amount of Rs. 150 Lakhs is proposed as contingent amount to meet other liabilities, if any, arising on account of increase in the employee's dues, statutory liabilities etc.

h) **Source of Funds:**

a) The Resolution Applicant shall infuse (within thirty days of the approval of Resolution Plan) an amount of Rs. 451.75 lakhs in the form of equity which shall be utilized as under:

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- i) CIRP cost -Rs.25 Lakh
- ii) Payment to Financial Creditors- Rs. 234.75 Lakhs
- iii) Statutory dues/excise duty- Rs. 42 Lakh
- iv) Contingent liability- Rs. 150 Lakh

b) The Resolution Applicant and two other persons are joint owners of landed property situate at Shirur District Pune and the upfront amount of Rs. 451.75 Lakhs is proposed to be raised from a financier on the security of the said property.

c) The balance amount of Rs. 1208.88 Lakh is proposed to be generated partly through fresh infusion by the Resolution Applicant and partly through internal cash accruals.

i) Management and control of Funds:

At present the Resolution Applicant holds 72.2% of equity capital and Mr. Omprakash Agrawal holds 27.8% equity capital in the Corporate Debtor (only two shareholders). The said shareholders were also directors of the Corporate Debtor (suspended directors). Fresh equity capital shall be issued to the Resolution Applicant on preferential basis to the extent of equity infused by the Resolution Applicant. While there would

be change in the shareholding pattern in the Corporate Debtor,
no change in the management of the Corporate Debtor is
proposed.

9. **Monitoring Committee for supervision and Implementation of the Resolution Plan:**

An implementation and Monitoring Committee comprising of four persons of which one person will be the Resolution Professional, one will be nominated by Resolution Applicant and one representative each from Bank of Maharashtra and Raligare Finvest Limited. The implementation and Monitoring Committee shall supervise the implementation of the Resolution Plan till the payments of all liabilities mentioned in the Resolution Plan is made.

10. **Third party Securities/Guarantees:**

The obligations and liabilities of third parties (including promoters) in relation to personal or corporate guarantees provided by such third parties in connection with the financial debt

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or obligation of the Corporate Debtor shall continue till all payments are made as per the terms of the Resolution Plan.

11. **Eligibility of Applicant under Section 29A of the Code:**

The Corporate Debtor is an MSME and hence the promoters/erstwhile directors are eligible to submit Resolution Plan unless disqualified under Section 29A of the Code. The Successful Resolution Applicant has provided an affidavit dated 22.10.2019 stating that he is not ineligible or disqualified in terms of the provisions of Section 29A of the Code. The Resolution Plan also provides that the Resolution Applicant may add new Resolution Applicants as and when required subject to eligibility criteria as laid down under Section 29A of the Code and approval of the Adjudicating Authority.

12. The amount of Resolution Plan is above the liquidation value and fair value of the assets of the Corporate Debtor.

13. **Observations of the Adjudicating Authority:**

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1. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with application.
2. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30 (2) of the Code are fulfilled and no provision of the law appears to have been contravened. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority if it is satisfied that the Resolution Plan as approved by the CoC under Section 30(4) meets the requirements provided under 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.
3. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
 - a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.

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- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For Management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified u/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
4. The Resolution Plan has been approved by the CoC in the meeting held on 09.12.2019 with 100% votes in terms of Section 30(4) of the Code.
5. In *K Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No.10673/2018 decided on 05.02.2019)* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by 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). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex 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

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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) when the Resolution Plan does not conform to the stated requirements.

6. In view of the discussion and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the CIRP 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. We are thus inclined to allow the application in the following terms.

ORDER

- I. **The Application No. 118 of 2020 in CP(IB)No.2318 of 2018 is allowed.** The Resolution Plan submitted by Mr. Mukesh Agrawal is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors including the Central Government, any State Government or any local authority to

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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. No person will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which is not a part of the Resolution Plan.
- III. The Monitoring Committee as proposed in para 9 of the Resolution Plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- IV. As per the Resolution Plan, increase of authorized capital and allotment of further shares to the Resolution Applicant on preferential basis do not require the consent of shareholders as required under the Companies Act, 2013 or any other authority for implementation of the Resolution Plan.
- V. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate

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Debtor unless specifically waived and shall be dealt with by the appropriate authorities in accordance with law.

- VI. Further, in terms of the Judgment of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, (*Civil Appeal No. 8129 of 2019 decided on 13.04.2021*)** the Hon'ble Apex Court on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which are not a part of the Resolution Plan.
- VII. It is hereby clarified that exemptions, if any, sought in violation of any law in force or relating to the period after the CIRP shall be construed as not granted unless specifically granted.
- VIII. The moratorium under Section 14 of the Code shall cease to have effect from this date.

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- IX. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with the copy of this order for information.
- X. The Applicant shall forthwith send a certified copy of this order to the CoC and the Resolution Applicant respectively for necessary compliance.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)