

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI**

**IA(IBC)/152(KOB)/2022
IN
IBA/41/KOB/2020**

*(Under Regulation 39(4) of IBBI (Resolution Process for Corporate Persons Regulations,
2016 and Section 31 of IBC, 2016)*

In the matter of:

Dhanalaxmi Bank Limited vs. Orma Marble Palace Private Limited

MEMO OF PARTIES:

CA Jasin Jose, IBBI/IPA-001/IP-P00695/2017-2018/11225, Resolution Professional.

...Applicant

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Applicant: : Mr. Joseph Kodianthara,
Senior Advocate
Mr.Jasin Jose, (RP)

**Order reserved on: 01.12.2022
Order pronounced on: 23.12.2022**

ORDER

1. This application has been filed by the Resolution Professional under Section 31 of the Insolvency and Bankruptcy Code, 2016("Code") for approval of the Resolution Plan submitted by the successful Resolution Applicant i.e., Dr. K.V. Tolins.

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2. The underlying Company Petition in IBA/41/KOB/2020 was filed by Dhanlaxmi Bank Limited against Orma Marble Palace Pvt. Ltd, the Corporate Debtor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) which was admitted vide Order dated 09.04.2021. Accordingly, Mr. Jasin Jose i.e., the Applicant herein was appointed as the Interim Resolution Professional (“**IRP**”) of the Corporate Debtor. Subsequently, in the 3rd Committee of Creditors (“**CoC**”) meeting dated 19.11.2021, the IRP was confirmed as the Resolution Professional (“**RP**”) of the Corporate Debtor.
3. The Applicant submits that in terms of the provisions of Section 25(2)(h) of the Code read with Regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”), invitations in Form ‘G’ for Expression of Interest (“**EOI**”) from potential resolution applicants were issued on 05.12.2021 in two newspapers i.e., Business Line (English) and Deshabhimani (Malayalam). Applicant also made Pan India Advertisement of EOI in Business Standard (English) on 16.12.2021. The last date of submission of EOI was 21.12.2021. Applicant has received EOI from three Prospective Resolution Applicants (“**PRAs**”). The final list of PRAs, in accordance with Regulation 36A (12) of CIRP Regulation was issued on 15.01.2022. The last date of submission of the Resolution Plan was on 05.02.2022.
4. The Applicant submits that pursuant to publication Form G, Dr. K.V.Tolins, Managing Director of Tolins Groups of Companies in his individual capacity, has submitted the Resolution Plan before the last date of submission of the plan, whereby the CoC members, after having detailed discussion in the 6th COC meeting of dated 11.03.2022, had requested the Resolution Applicant to submit revised plan complying the mandatory requirements.

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5. The Resolution Applicant submitted the revised Resolution Plan on 12.04.2022. The Resolution Plan was discussed by the COC subsequently in the 7th COC meeting dated 13.04.2022 and 8th COC meeting dated 27.04.2022 and requested the Resolution Applicant to further modify the Resolution Plan with definite payment schedule, improve the upfront payment, reduce the repayment period in the Resolution Plan and to improve the settlement to the operational creditors. Subsequently, the Resolution Applicant submitted the revised Resolution Plan on 23.04.2022 and the same was placed on 8th CoC meeting held on 27.04.2022 for COC approval. CoC further suggested to clarify certain queries raised by the members. Accordingly, the Resolution Applicant submitted revised Resolution Plan on 06.05.2022.
6. Accordingly, in the 9th CoC meeting dated 31.05.2022, the revised Resolution Plan was discussed and the Resolution plan along with the Minutes of the 9th COC meeting was put up for voting, pursuant to which, the minutes and the Resolution Plan submitted by Dr. K.V Tolins was approved with 100% votes.
7. In consequence thereof, the Applicant issued the Compliance Certificate in Form 'H' in compliance with Regulation 39(4) of the CIRP Regulations was submitted on 16.06.2022 which is annexed as Annexure A/2 at Page No. 64 to 72 of the Application. The Resolution Applicant has confirmed in its Declaration/Affidavit dated 21.12.2021 and Undertaking dated 20.12.2021 (Annexure A/5, A/6 and A/7 at Page Nos. 82-91 of the Application) that he is eligible under Section 29A of the Code to submit Resolution Plan.
8. The Applicant submits that on 07.06.2022, the Applicant issued Letter of Intent to the Resolution Applicant. On 14.06.2022, the Successful Resolution Applicant remitted 1.50 Crore to the Current Account of the State Bank of India in lieu of the Performance Guarantee.

9. The Applicant submits details of various compliance as envisaged within the Code and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) which requires a Resolution Plan to adhere to, which is reproduced hereunder:

A) SUBMISSION OF RESOLUTION PLAN IN TERMS OF SUB-SECTION (2) OF THE CODE

Section/Regulation	Requirement	Clause of the Resolution Plan/Additional Documents
Section 30(2)(a) of the Code	The Resolution Plan 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.	Clause No 4.2.1, Page No.18 of Resolution Plan (Page No. 126 of the Application)
Section 30(2)(b) of the Code	The Resolution Plan provides for the debts of the 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 Liquidation of the Corporate Debtor under Section 53 or less than the amount payable to the Operational Creditors if the Resolution proceeds were to be distributed in accordance with the priority under Section 53, whichever is higher.	Clause No 4.2.2, Page No.19 of Resolution Plan (Page No. 127 of the Application)

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Section 30(2)(b) of the Code	The Resolution Plan provides for the payment of liquidation value to the dissenting Financial Creditors	Clause No 4.2.4.3, Page No.21 of Resolution Plan (Page No. 127 of the Application)
Section 30(2)(c) of the Code	The Resolution Plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Clause No 5.3 Page No.27-28 of Resolution Plan (Page No. 135-136 of the Application)
Section 30(2)(d) of the Code	The Resolution Plan provides for the implementation and supervision of the Resolution Plan	Clause No 5.3-2 Page No.27-28 of Resolution Plan (Page No. 135-136 of the Application)
Section 30(2)(e) of the Code	The Resolution Plan does not contravene any of the provisions of the law for the time being in force.	As per information's available on record, the Resolution Plan does not contravene any of the provisions of the law for time being in force.

B) MEASURES REQUIRED FOR IMPLEMENTATION OF THE RESOLUTION PLAN IN TERMS OF REGULATION 37 OF CIRP REGULATIONS

but not limited to the following		
Regulation	Requirement	Provision in Resolution Plan

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Reg 37(a)	Transfer of all or part of the assets of the Company to one or more persons;	Not proposed
Reg 37(b)	Sale of all or part of the assets whether subject to any security interest or not;	Not proposed
Reg 37(ba)	Restructuring of the corporate debtor, by way of merger, amalgamation and demerger	Not proposed
Reg 37(c)	Substantial acquisition of shares of the Company, or the merger or consolidation of the Company with one or more persons;	Clause No 4-2-6 Page No.22 of Resolution Plan (Page No. 130 of the Application)
Reg 37(ca)	Cancellation or delisting of any shares of the Company, if applicable.	Not proposed
Reg 37(d)	Satisfaction or modification of any security interest	Not proposed
Reg 37(e)	Curing or waiving of any breach of the terms of any debt due from the Company	Not Applicable
Reg 37(f)	Reduction in the amount payable to the creditors	Page 20 of the Application and 4.2.7 of Resolution Plan
Reg 37(g)	Extension of a maturity date or a change in interest rate or other terms of debt due from the Company;	Not Applicable
Reg 37(h)	Amendment of the constitutional documents of the Company	Clause 5.2 Resolution Plan

C) MANDATORY CONTENTS OF RESOLUTION PLAN IN TERMS OF REGULATION 38 OF CIRP REGULATIONS

In addition to the above, the Resolution Plan also complied with the following Regulations –

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Regulation	Requirement	Provision in Resolution Plan
Regulation 38(1)	The amount due to the Operational Creditors under a Resolution Plan shall be given priority in payment over Financial Creditors	Clause 4.2.2 Page 19 of the Resolution Plan Page 127 of the Application
Regulation 38(1A)	The Resolution Plan shall include a statement as to how it has dealt with the interests of all the stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor.	Clause 4.2 , 4.2.1 to 4.2.7 Page 18-23 of Resolution Plan Page 126 to 131 of the Application
Regulation 38(1B)	The Resolution Plan shall include a statement giving details if the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the AA at any time in the past	Clause 2.2 Successfully taken over Kaula Agro Foods Pvt Ltd in the capacity of MD of Tolins Pure Foods Pvt Ltd.
Regulation 38(2)(a)	The Resolution Plan shall provide the term of the Plan and its implementation schedule	Clause 5.1 to 5.5 Page 26-30 Page No.134 to 138 of the Application
Regulation 38(2)(b)	The Resolution Plan should state the management and control of the business of the Corporate Debtor during its term.	Clause 5.3 Page 27-28 Page No.135 to 136 of the Application

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Regulation 38(2)(c)	The Resolution Plan should have adequate means for supervising its implementation	Clause 4.4 & 5.3.2 of the Resolution Plan
Regulation 38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:	Applicant has convened a meeting of COC pursuant to the direction of this Hon'ble Tribunal dated 10.11.2022. COC in its meeting dated 29.11.2022 resolved that Resolution Applicant will pursue avoidance applications being IA(IBC) 172/KOB/2022 and IA(IBC)/173 /KOB/2022 pending before this Hon'ble Tribunal after the approval of the Resolution Plan. COC has left the discretion to this Hon'ble Tribunal to decide the proceeds of the said avoidance application, if any, in the event of this Hon'ble Tribunal allow such applications.
Regulation 38(3)	The Resolution Plan shall demonstrate that it addresses the cause of default, it is feasible and viable, it has provisions for its effective implementation, it has provisions for approvals	Clause 3.1 to 3.4 of the Resolution Plan

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	required and the timeline for the same and the RA has the capability to implement the Resolution Plan	
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10. The Applicant submits that pursuant to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022, and subsequent addition of Regulation 38(2)(d) with respect to avoidance transactions, Applicant has convened a meeting of COC pursuant to the direction of this Tribunal dated 10.11.2022. COC in its meeting dated 29.11.2022 resolved that Resolution Applicant will pursue avoidance applications being IA(IBC) 172/KOB/2022 and IA(IBC)/173 /KOB/2022 pending before this Tribunal after the approval of the Resolution Plan. COC has left the discretion to this Tribunal to decide the proceeds of the said avoidance application, if any, in the event of this Tribunal allow such applications (A copy of the minutes is filed in this Application and being made as part of this Application).

11. Successful Resolution Applicant has submitted an Undertaking/Declaration/Affidavit under Section 29A which is annexed to the Application as Annexure M at Page Nos. 82 to 85. The Successful Resolution Applicant has also given an Undertaking as provided under Regulation 39(1)(c) that the information and particulars furnished by the Applicant are true and correct, if they are discovered as false at any time when it will render it ineligible to continue in Resolution Process, amount, if any, deposited by it will be forfeited and Successful Resolution Applicant is also liable for penal action.

12. The Applicant submits the relevant information with regard to the total financial proposal under the said Resolution Plan is tabulated as under:

Particulars	Amount
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Payment towards CIRP	Estimated Cost Rs.18,83,993 (Clause 4.2.1 Page 18-19 of the Resolution Plan Page No. 126-127 of the Application)
Payment to Operational Creditors, excluding employees and workmen along with Statutory Dues	Rs.41,16,000/ (Clause 4.2.2 of Resolution Plan at Page 127-128 of the Application & Addendum to the Original Resolution Plan submitted on 04.06.2022 at Page 19-23 of the Application)
Payment to Employees and Workmen	No Claim Received.
Payment to Secured Financial Creditors in multiple instalments	Rs.5,00,00,000/- (Clause 4.2.3) Page No. 20 of Resolution Plan Page 128 of the Application
Payment to Unsecured Financial Creditors	Rs.60,00,000/- (Clause 4.2.4) Page No. 20 of Resolution Plan Page 128 of the Application
Payment to Related Party dues	NIL
Payment to Equity shareholders	NIL
Payment towards Working Capital	Rs.1,00,00,000 (Clause 4.4 at Page 25 of the Resolution Plan Page No. 133 of the Application)
Payment towards Capital Expenditure	Rs.1,10,00,000 (Clause 4.4 at Page 25 of the Resolution Plan Page No. 133 of the Application)
Total	Rs.8.30,00,000

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13. The Applicant submits that the Resolution Applicant vide addendum to the Resolution Plan submitted on 04.06.2022, had given an undertaking to settle 100% claim of the operational creditors. In case of Kerala State Goods Service and Tax Department, the total claim is Rs.54,26,547/- i.e., Rs.35,21,429/- tax liability and Rs.19,05,118/- towards interest. The Resolution Applicant propose to apply for amnesty scheme proposed by the State Government, which is 60% of the tax liability. In case the amnesty scheme is not available for the Corporate Debtor, the Resolution Applicant undertake to settle 100% claim of the Kerala State Goods Service and Tax Department. The undertaking given through email as the above is recorded in 9th CoC meeting and the same is mentioned in page no 25 & 53 of the Application.
14. The Applicant submits that the related parties have withdrawn their claim in order to bring resolution to the Corporate Debtor thereby to settle their liabilities as well as related parties also stated vide letter dated 04.06.2022 that they are also in the process of settling the claim of SBI with respect to their personal guarantees given to the Corporate Debtor. The ex-management through their counsel also submitted before this Adjudicating Authority on 16.08.2022 that they have no objection to the approval of the Resolution Plan.
15. The counsel for Financial Creditor, State Bank of India (SBI), holding 88% votes in the COC, submits that during the course of CIRP, SBI also initiated resolution process under Section 95(1) of IBC against the personal guarantors being Application CP(IB)/7/KOB/2022 to CP(IB)/14/KOB/2022. In the said proceedings, a settlement was arrived and application were withdrawn. By virtue of the said settlement, the personal guarantors jointly agreed to make a payment of Rs.5.50 Cores and deposited 3.50 Crores to SBI as initial payment. The Total admitted due of SBI is Rs.12.79 Cores and out of that Principle due is Rs.10.40 Crore.

Considering the said settlement and recovery under the Resolution Plan, the overall recovery would be more than 82% of the admitted amount, which satisfy 100% of the principle due. Hence, they have given approval of the Resolution Plan. The representative of Asset Care and Reconstruction Enterprise Limited submits that they have also approved the plan since they have sufficient personal securities to cover the balance admitted dues.

16. The timeline for implementation of the Resolution Plan as provided by the Successful Resolution Applicant at Clause 5.4 Page 29 of the Resolution Plan (Page No.137 of the Application) is as under:

Sl. No.	Actions	Time Line
1.	Effective Date	Approval of this Resolution Plan by the Hon'ble Tribunal
2.	Completion Date	150 days from the Approval of the Resolution Plan

D) DETAILS ON MANAGEMENT/ IMPLEMENTATION AND RELIEFS AS PER RESOLUTION PLAN-

17. Salient Features

The Resolution Plan also provides for:

- a. Implementation Plan-Clause 5.3.1 to Clause 5.3.3 Page 27 -28 of the Resolution Plan, Page 135-136 of the Application.
- b. Mechanism for management and control- Clause 5.3.1 to Clause 5.3.3 Page 27 -28 of the Resolution Plan, Page 135-136 of the Application.
- c. Monitoring Committee- Clause 5.3.1 to Clause 5.3.3 Page 27 -28 of the Resolution Plan, Page 135-136 of the Application

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18. The Prayers, Reliefs and Concession sought by the Resolution Applicant from the Adjudicating Authority as per Clause 5.2 Page No.26 of the Resolution Plan (Page Nos. 134-135 of the Application) are set out below for the successful implementation of the Resolution Plan. The orders thereon are indicated against each.

Sl. No.	Reliefs/ Concessions	Remarks
1.	Exemption from compliance of extinguishment of the shares of the current shareholders of M/s Orma Marble Palace Private Limited.	Granted subject to applicable provisions of Law
2.	Fresh allotment of shares in the name of Resolution Applicant and persons nominated by him	As per the applicable provisions of Law
3.	All debts and dues, liability or obligations which are included in the Resolution plan shall be deemed to have been irrevocably waived, and permanently extinguished and written off in full, with effect from the effective date.	Granted
4.	To seek the benefit of all Income Tax Exemptions from the appropriate authorities as available to IBC Companies.	This is for the relevant Tax Authorities to consider
5.	To settle all legal proceedings pending against the Corporate Debtor in any court or tribunal or tax authorities and other contingent liabilities irrevocably and unconditionally as on the Effective Date.	As per the relevant provisions of the applicable laws
6.	To absolve the Resolution Applicant from any liability arising due to the outcome of any legal proceeding on any legal cases pending against the Corporate Debtor as on the Effective Date.	Granted. Relevant provisions of law to be followed.

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7.	Extinguish all liabilities in relation of corporate guarantees, indemnities etc. provided by the Corporate Debtor as on the Effective Date.	Granted
8.	All claims and rights of the erstwhile shareholders against the Corporate Debtor shall stand irrevocably and unconditionally extinguished.	As per the applicable provisions of law.
9.	To release all encumbrances, charges, security interest etc. created on the assets of the Corporate Debtor on the Effective Date.	Granted in terms of judgement of the Hon'ble Supreme Court in <i>Ghanshyam Mishra and Sons V. Edelweiss Asset Reconstruction Company Limited</i> , in which it is held in para 95 (1) that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
10.	Revocation of all power of attorneys provided by the Corporate Debtor to any person as on the effective date.	Granted

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11.	Terminate without liability all outstanding negotiable instruments issued by the Corporate Debtor or any other person on behalf of the Corporate Debtor.	Granted
12.	All actions with regard to the assets/claims/rights etc. as mentioned in the Balance Sheet of the Corporate Debtor, as well as off balance sheet items, as on the Effective Date shall be the assets/claims/rights of the Resolution Applicant and shall be dealt with at its sole discretion.	As per the relevant provisions of the Applicable laws.
13.	To permit amendment of the Constitutional documents of the Corporate Debtor.	To comply with the relevant provisions of law in this regard.

19. The Applicant submits that the Tribunal may grant the aforesaid reliefs/concessions/waivers enumerated in the Resolution Plan as per its own discretion. This Tribunal notes that the Resolution Plan submitted by Dr. K.V. Tolinsis in accordance with Sections 30 and 31 of the Code and also complies with Regulations 38 and 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No circumstances exist that militate against grant of approval for the Resolution Plan.

20. As far as the question of granting time to comply with the statutory obligations or seeking sanctions from Governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

21. Any relief sought in the Resolution Plan, where any contract, agreement, understanding, proceeding, action, notice etc. not specifically identified, or is for a future contingency, is, at this point of time, rejected.

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22. Therefore, subject to the observations made in this Order, we hereby accord our approval to the Resolution Plan. The Resolution Plan shall form part of this Order.
23. The Resolution Plan as approved is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor can come into force with immediate effect.
24. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
25. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the Performance Guarantee amount already paid by the Resolution Applicant.
26. The RP shall stand discharged from his duties with effect from the date of this Order. He shall, however, perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.
27. The Resolution Applicant shall have access to all the Corporate Debtor's records, documents, assets and premises with effect from the date of this Order, to finalize the further line of action required for starting the business operations of the Corporate Debtor.
28. Liberty is hereby granted for moving applications, if required, in connection with implementation of this Resolution Plan.
29. The Resolution Applicant shall file a copy of this Order with the Registrar of Companies, Kochi, inter alia for updating the status of the Corporate Debtor.
30. The Application being IA (IBC)/152/KOB/2022 filed in Company Petition IBA/41/KOB/2020 is disposed of accordingly.

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31. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps.
32. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, Ernakulam, Kerala.
33. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2022.12.23 14:17:03 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2022.12.23 15:22:27 +05'30'
RAJ

P. Mohan Raj
Member (Judicial)

Signed on this 23rd day of December, 2022

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