

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**MA 660/2019, MA 977/2019, MA  
854/2019, MA 500/2019, MA 853/2019  
&MA 855/2019 in**

**CP (IB)1329/MB/2017**

Under Section 30(6) of the I&B Code, 2016

**Jitendra Kumar Jain**

...Resolution Professional/Applicant

In the matter of

**State Bank of India**

...Petitioners

v/s.

**Metallica Industries Limited**

...Corporate Debtor/Respondent

**Order Delivered on 16.10.2019**

**Coram:** Hon'ble Member (Judicial) Mr. V.P. Singh

Hon'ble Member (Technical) Mr. Rajesh Sharma

For Resolution Professional: Adv Anuja Bhansali

For Resolution Applicant: Adv. Prateek Seksaria

For Objector: Adv. Rachana Kapasi Shah, Adv. Kingston  
D'souza and Adv. S. Joshi

*Per: V.P. Singh, Member (Judicial)*

*Rajesh Sharma Member (T)*

**ORDER**

1. The Miscellaneous Application (**MA**) No. 660 of 2019 is filed under section 30(6) of Insolvency and Bankruptcy Code, 2016 (**I&B Code**) in the C.P.No. 1329 of 2017 which was admitted u/s 7 of I&B Code vide order of this Tribunal dated 13.04.2018 initiating Corporate Insolvency

Resolution Process (**CIRP**) against Metallica Industries the Corporate Debtor.

2. The MA 660/2019 is filed by the Resolution Professional (**RP**) of the Corporate Debtor. The RP has filed this application under Section 30(6) of the I&B Code, seeking orders for approval of the resolution plan for the Corporate Debtor submitted by the **Kamla Industrial Park Limited(KIPL)** as approved by the members of Committee of Creditors (**CoC**).
3. After the initiation of the CIRP, the Interim Resolution Professional(**IRP**) published Public Announcement on 18.05.2018 calling upon the creditors of the Corporate Debtor for submission of claims by 30.05.2018. The RP under review and verification of the proof of claims filed by creditors of the Corporate Debtor constituted CoC by Section 21 of the Code.
4. The first CoC meeting was held on 14.06.2018 wherein the IRP was appointed as RP. On 21.06.2018 the RP appointed two valuers to determine the fair value and liquidation value of the corporate debtor, namely M/s Kanti Karamsey & Co. and Thite Valuers & Engineers Private Limited. As per Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) the RP arrived at fair value of ₹1,90,20,326/- and liquidation Value of ₹ 1,53,52,196/-.
5. The RP published Expression of Interest (EOI), as approved by CoC, on 14.08.2018 for inviting EOI. Under such publication, 5 EOIs were received.
6. Incidentally, CIRP Regulations were amended adding in the definition of financial creditor, an 'allottee' in 'Real Estate Project' as defined in Clause (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016. Consequently, the RP as per directions IBBI issued addendum to public announcement inviting EOI calling Gala Allottees to file their claim in form CA by 15.10.2018. The CoC was reconstituted on 30.10.2018 admitting Gala Allottees as financial creditors in the CoC of the corporate debtor. After receipt of Form CA

from the class of creditors, the RP filed an application for appointment of Mr Ninad Satish Deshpande to be appointed as authorised Representative of the class of creditors in CoC meeting and the same was allowed by an order of this Tribunal dated 30.10.2018.

7. The RP received two Resolution Plans one from Kamla Industrial Park Gala Owner's Welfare Association (**KIPGOWA**) on 08.12.2018 and another from Kamla Industrial Park Limited (**KIPL**) on 09.12.2018. The RP submitted both the resolution plans to the CoC Members on 5.01.2019. After certain rounds of discussions and presentations, KIPGOWA withdrew its plan on 23.01.2019.
8. The resolution applicant sought exclusion of time, for calculating 270 days of CIRP, spent under litigation, starting from 23.10.2018 till 29.10.2018 as during this time CoC could not proceed with the CIRP of the corporate debtor under orders of this Tribunal.
9. **On 11.02.2019, the CoC in its meeting approved KIPL's resolution plan with 85.89% votes in favour**
10. Since the resolution plan submitted by KIPL was approved by CoC with a vote share of 85.89%, the applicant filed MA 660/2019 under Section 30(6) of IBC, 2016 before this Bench for approval of the resolution plan submitted by KIPL.

#### **Salient features of the Resolution Plan**

11. It is stated in the Resolution Plan that the Corporate Debtor was incorporated on 18.3.1995 for carrying out the business of infrastructure development. The major property of the Corporate Debtor is a Project Land admeasuring 6645.10 sq.mtrs., at Kandivali West, Mumbai. The Corporate Debtor had started real estate project on the said project land in the year 2010 and had sold majority of the units/galas.
12. The Resolution Applicant is a company promoted by the affected gala allottees. As on 10.9.2019, as many as 325 gala allottees have given their consent to the Resolution Plan.

13. The Resolution Applicant has proposed to acquire 100% equity ownership of the Corporate Debtor and to extinguish all shareholding interest of the existing shareholders of the Corporate Debtor. The Resolution Plan proposes to cancel the shareholding of the existing shareholders and issue fresh share capital of ₹1,05,000/- through fresh issue of 10,500 Eq. shares of ₹10/- each to the Resolution Applicant. The Plan further proposes to include all the gala owners as Equity Shareholders of Corporate Debtor within six months from the approval of the Resolution Plan by Adjudicating Authority. The number of shareholders in the Corporate Debtor would, therefore, be more than 50. Since there is no general public issue or open offer, therefore, the Resolution Plan seeks exemption from SEBI Regulations, upon approval of the Resolution Plan by the Adjudicating Authority. **We are not inclined to allow such relief under SEBI Act. The Resolution Applicant is at liberty to file Application for the same before the appropriate Authority under relevant law.**
14. The Resolution Plan proposes the payment of to various stakeholders as per the following tabulation:

<b>Category of Creditor</b>	<b>Amount admitted</b>	<b>Allocation as per Approved Resolution Plan</b>
CIRP cost	As approved by CoC	The entire CIRP cost of ₹29,90,325/- shall be paid in priority to payments to the Financial Creditors. This will be funded from a contribution by the gala allottees in proportion of carpet area of their allotted gala.
Secured Financial Creditor – State Bank of India	63,62,42,189	INR 9,00,00,000 (Indian Rupees Nine Crores only) plus the investment of INR 3,21,35,000 in the name of Metallica Industries Limited as appearing in the Balance Sheet of Corporate Debtor shall also be taken

		<p>over by State Bank of India. In case any avoidance or recovery transaction is filed by the Resolution Professional in respect of investment above of INR 3,21,35,000, the amount realised from such proceedings shall be paid to State Bank of India. In case Metallica Industries Limited receives any amount under criminal or other actions against the erstwhile director/promoters of Metallica Industries Limited, such amount shall be paid in full (after deduction of legal cost incurred by Metallica Industries Limited at actuals against documentary evidence) to State Bank of India.</p> <p><b>The right of the secured financial creditor, i.e. State Bank of India against the guarantors/corporate guarantors/collateral of third parties given to State Bank of India under the relevant existing agreements with State Bank of India are protected and will remain unaffected.</b></p>
Unsecured Financial Creditors – Galas Allottees	52,86,62,932	<p>Gala allottees as per list are given in Annexure 7 to the Approved Resolution Plan shall get completed gala upon payment of additional consideration as per the terms and conditions of the Approved Resolution.</p> <p>Eleven gala allottees, whose galas</p>

		cannot be legalised, will get 5% (five per cent) of amount of claim admitted by the Resolution Professional as full and final settlement of their dues.
Operational Creditors (excluding workers & employees)	1,75,252	Nil as liquidation value allocable to them is zero.
Operational Creditors — workmen & employees	Nil	Nil as no claim received.
Any other creditors (financial, operational or other)	Nil	Nil as no claim received.

15. The Resolution Plan proposes to pay ₹25,90,300/- as full and final settlement towards gala owners whose gala does not exists in MCGM approved building plan being 5% of the amount received from them as sales consideration in the period of 10 to 12 months from the order of approval of the resolution plan.
16. As per the Resolution Plan, no claim was received concerning employee/ workmen dues either from employees/workers or any statutory authority. Further, no money is payable to operational creditors, or another creditor as the liquidation value allocable to them is zero.**It is directed that the Resolution Applicant shall ensure the payment of operational dues of the Corporate Debtor is in compliance of the amended section 30(2) of the I&B Code as**

**the amendment expressly provides that it would apply to all applications pending for approval of the resolution plan.**

17. The Resolution Plan further proposes to pay all outstanding dues of BMC towards Property Tax including dues of ₹1,21,13,467/- as on CIRP commencement date.
18. The term of the resolution plan is proposed as ten months from the date of order of approval of the resolution plan by the Adjudicating Authority.
19. The Resolution Plan proposes to appoint a monitoring agency as per the provisions of the I&B Code that will be approved by the CoC. It is submitted by the Ld. Counsel for the Resolution Applicant that Monitoring Agency shall comprise of CA Hemant J. Mehta (IP Registration No. IBBI/IPA-001/IP-P00027/2016-17/10060) recommended by KIPL and approved by CoC in Eleventh COC Meeting on the following terms and conditions:
  - (i) Fortnight report for first three months after the order of the NCLT at a monthly remuneration of INR 35,000 (Indian Rupees Thirty-Five Thousand only). Such report shall be discussed at a physical meeting.
  - (ii) After that, monthly reporting till implementation of the Approved Resolution Plan to State Bank of India and Applicant (Resolution Professional) at a monthly remuneration of INR 30,000 ((Indian Rupees Thirty Thousand only). Such Report shall be discussed at a physical meeting.
  - (iii) Physical visits to the project site (at least once in a month) to monitor and supervise the project and reporting to Financial Creditors in the monthly meeting.
20. **The monitoring agency shall include RP, representative of SBI and C.A. Hemant J. Mehta (IP Registration No. IBBI/IPA-001/IP-P00027/2016-17/10060) as recommended by KIPL and approved by CoC.** The monitoring agency shall monitor the day to day operations of the company and provide regular updates to the Resolution Applicant and members of CoC/RP till all the approvals

necessary for the implementation of the resolution plan are in place, and a professionally managed Board is appointed by the Resolution Applicant.

21. The Resolution Plan proposals to appoint a Board to manage the company that would be formed within 30 days of approval of Resolution Plan by the Adjudicating Authority. The Board shall be accountable for the day to day operations of the company.
22. The Resolution Plan provides for amendment in the Memorandum of Association & Articles of Association of the company within 90 days of the approval of the Resolution Plan.
23. The Resolution Plan has dealt with the interests of all stakeholders of the Corporate Debtor and the statement showing how interest of all stakeholders is dealt and set out in the resolution plan.
24. The Resolution Plan is to be financed by the Gala owners. The schedule of induction of funds by the Resolution Applicant and source of funds is set out in the following table:

<b>Sr. No</b>	<b>Nature</b>	<b>0.2.5 months</b>	<b>2.5-6 Months</b>	<b>7-9 Months</b>	<b>10-12 months</b>	<b>On Possession</b>	<b>Total</b>
1.	Balance Contribution by existing Gala owners	9,34,38,826	9,34,38,826				18,68,77,652
2	Amounts to be contributed towards electricity, society charges, legal charges, etc.					39,264,000	3,92,64,000
3	Sale consideration from		2,68,92,000	6,72,30,000	2,01,69,000	2,01,69,000	13,44,60,000

*THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH*  
*MA 660/2019, MA 977/2019, MA 854/2019, MA 500/2019, MA 853/2019 & MA855/2019 in*  
*CP (IB)1329/MB/2017*

	unsold galas - 21 units						
4	Additional contribution from Gala owners for CIRP cost, repayment of SBI, payment to Gala owners whose gala is not in MCGM approved plan as full and final settlement, and BMC Assessment Tax.	1,91,00,000	30,00,000	30,13,467	25,90,300	-	2,77,03,767
5.	Additional Contribution from Gala owners for construction and regularization after receipt of above amounts	-	37,92,03,803	31,49,78,745	14,23,31,000	25,19,68,413	1,08,84,81,961
<b>Total</b>		<b>11,25,38,826</b>	<b>50,25,34,629</b>	<b>38,52,22,212</b>	<b>16,50,90,300</b>	<b>31,14,01,413</b>	<b>1,47,67,87,380</b>

25. The Resolution Applicant undertakes that as on the date of submission of this Resolution Plan, the Resolution Applicant and the person acting in concert with the Resolution Applicant or who is promoter or person in management or control of the Resolution Applicant and their Connected Person are eligible to submit this Resolution Plan in

accordance with section 29A of the Code and other provision of applicable laws.

26. The RP has certified, as per Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, that the contents of the resolution plan, as approved by the Committee of Creditors with more than 66% majority in favour, meets all the requirements of the I&B Code and the regulations as applicable on the date thereof.
27. The Resolution Applicant has declared that neither the Resolution Applicant nor any of its related parties have failed to implement or contribute to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
28. Any relief sought for in the Resolution Plan, where the contract/agreement/understanding/proceedings/actions/notice etc. is not specifically identified or is for future and contingent liability, is at this moment rejected.
29. The Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance under all applicable law for the time being in force.
30. We shall clarify here that any resolution applicant shall takeover the Corporate Debtor with all its assets and liabilities as per terms of the approved Resolution Plan. If any relief concerning any identified liability of the Corporate Debtor is required, then that needs to be specifically mentioned and sought for in the Resolution Plan. This bench cannot allow any general power to any resolution applicant absolving him of liability of the corporate debtor company without knowing about the liability against which such exemption is sought. In other words, reliefs/exemptions from only existing liabilities which are specifically identified can be sought and allowed in the Resolution Plan.
31. The resolution applicant shall obtain the necessary approval required under any law for the time being in force.

32. On perusal of the Resolution Plan, we find that the resolution plan has necessary provisions for its effective implementation. The CoC has approved this Resolution Plan with 85.89% votes in favor of the Resolution Plan.
33. Given the above observations, we approve the resolution plan with modifications, as mentioned above, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the resolution plan.
34. The resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.
35. **The Resolution Plan is at this moment approved under section 31(1) of I&BCode with observations above. The MA 660/2019 is accordingly allowed and disposed of.**
36. Mr Kaushal R. Mehta and Mr Pratik R. Mehta (**Claimants**) have filed separate applications being **MA 500/2019, MA 855/2019 and MA 853/2019** challenging the rejection of their claim as a secured financial creditor by the Resolution Professional and opposing the approval, by Adjudicating Authority, of the Resolution Plan approved by the COC. Admittedly, both the claimants are brothers and have granted loan to a sister concern of the Corporate Debtor, who in turn offered repayment in terms of allotment of Gala in the project of the Corporate Debtor. The grievance of claimants have arisen from similar circumstances and was rejected by the Resolution Professional on similar grounds, therefore their applications are dealt together.
37. Admittedly the Claimants gave loan to a sister concern of the Corporate Debtor which was assigned to the Corporate Debtor. An agreement of sale is said to be executed between the Corporate Debtor and the Claimants. Claimants have sought to rely upon, inter-alia, ledger account showing receipts of the balance consideration, receipt of payment of money, a TDS certificate in favour of the Corporate Debtor.

38. The RP has filed its affidavit in reply stating that the reliance placed upon the loan assignment agreement dated 31.01.2014 is misplaced as it is improperly stamped. It is further stated that the Claimants were involved in money lending business. This is vehemently denied by the Claimants stating that the transaction with the Corporate Debtor was that of purchase of industrial units and not like loan transaction. However, this stand of the Claimants is untenable in light of the history of the transaction with sister concern of the Corporate Debtor, that led to alleged allotment of Galas. As per the submissions of the Claimants, clearly their transaction with sister concern of Corporate Debtor was like a loan transaction, and the Corporate Debtor was assigned the liability of this loan transaction. Therefore, it is beyond doubt that the transaction between the Corporate Debtor and the Claimants was like Loan transaction.
39. The RP rejected the claim as a secured financial creditor of the Claimants as the Corporate Debtor was merely assigned the loan liability of its sister concern by a mere book entry without any corresponding asset transfer and absence of valid proof of payment to the Corporate Debtor. Based on documents submitted for establishing the liability of the Corporate Debtor towards both the claimants, we do not find any privity of contract between the Corporate Debtor and the claimants. The loan agreement between the sister concern of the Corporate Debtor and the Claimants is between them, and the Corporate Debtor does not seem to have any privity of contract in the said agreement. The RP has stated that TDS was paid by Claimants after a delay of two years from the due date to pay TDS and hence it was not possible for the Corporate Debtor to claim the said TDS in its return. Further, the Corporate Debtor has not filed its Income Tax Returns for the F.Y. 2013-14, and the said fact of TDS submission by the Claimants cannot be, thus, verified. There are other irregularities in the agreement of sale such as the date of possession in agreement is blank, the receipt attached to the agreement is dated 29.11.2011 whereas the loan was assigned in the year 2014.

40. In light of the above facts and circumstances, we find that the documents submitted by the Claimants, do not prove the existence of debt or allotment of Gala to the Claimants. Further, there is no privity of the Corporate Debtor to the loan agreement between the Claimant and the sister concern of the Corporate Debtor. Therefore, the Claim of the Claimants is not maintainable and at this moment Rejected. In light of the rejection of claim of the Claimants, they do not have any locus to challenge the Resolution Plan, and therefore, the objections to the resolution filed by the claimants are also not maintainable and at this moment Rejected. **The MA 500/2019, MA 853/2019 and MA 855/2019 are dismissed.**
41. Mr Saurav Vashisth suspended Director and Guarantor for the Corporate Debtor has filed its objection to the approval of the Resolution Plan. His grievance is about the resolution of the CoC to approve the Resolution Plan without prejudice to the rights of the secured financial creditor against the guarantors and the proposal in the Resolution Plan that SBI shall, after payment as per the resolution plan, be free to proceed against the guarantors of the Corporate Debtor. It is further contended that being the suspended director and guarantor of the Corporate Debtor, he was not given notice and minutes of meetings of CoC.
42. The RP has submitted that, it has intimated the guarantors of the Corporate Debtor about initiation of CIRP, however, none of the guarantors had filed a claim with him against the guarantees given by them for the Corporate Debtor. It is submitted that the guarantors are now, after expiry of time to file claim, estopped from claiming relief under the Contract Act.
43. The Guarantor and suspended Director of the Corporate Debtor has a copy of the resolution plan. Further, the objection of the Guarantor to the impugned clauses about financial creditor's right to recover dues from the Guarantor of a Corporate Debtor is settled by the judgment of the Hon'ble NCLAT in *Lalit Mishra & Ors. Vs. Sharon Bio-Medicine Ltd and Ors, Company Appeal (AT) (Insolvency) No. 164 of 2018 dated 19.12.2018*. It is held that the intention of the legislature cannot be to

benefit guarantors of the Corporate Debtor by excluding legal remedies available in law to the creditors. An appeal against the said judgment was dismissed by the Hon'ble Supreme Court. The relevant portion of the decision of Hon'ble NCLAT is reproduced below:

*"9. It was not the intention of the legislature to benefit the 'Personal Guarantors' by excluding exercise of legal remedies available in law by the creditors, to recover legitimate dues by enforcing the personal guarantees, which are independent contracts. It is a settled position of law that the liabilities of guarantors is co-extensive with the borrower. This Appellate Tribunal held that the resolution under the 'I&B Code' is not a recovery suit. The object of the 'I&B Code' is, among other things, maximization of the value of the assets of the 'Corporate Debtor', then to balance all the creditors and make availability of credit and for promotion of entrepreneurship of the 'Corporate Debtor'. While considering the 'Resolution Plan', the creditors focus on resolution of the borrower 'Corporate Debtor', in line with the spirit of the 'I&B Code'."*

44. In light of the Judgment above of Hon'ble NCLAT and the facts of circumstances, we do not find any force in the objection of the Guarantor and at this moment reject the same.
45. The erstwhile Promotor has filed objections to the approval of the resolution plan on the grounds of alleged suppression of facts by the RP, careful non consideration of various facts available on record with the State Bank of India and non-compliance of the requisitions of section 30 and section 31 of the I&B Code. We have gone through the objection of the erstwhile promoter of the Corporate Debtor. The compliance of various sections of the I&B Code is discussed in this order and is certified by the RP. Further, the resolution plan is approved by the CoC in its commercial wisdom. Therefore, we do not find any merit in objections raised by the erstwhile promoter of the Corporate Debtor and the same are rejected.

46. **MA 854/2019** is filed by Mrs. Saroj Gupta objecting the approval of the Resolution Plan. However, the said MA is sought to be disposed of as the parties to the application have agreed upon and entered into consent terms. **Therefore, MA 854/2019 is disposed of in terms of the Consent terms.**
47. The **MA 977/2019** is filed by various Gala/Unit purchasers seeking permission to intervene in the Application and supporting approval of the resolution plan. **The said application is disposed of in terms of the order in MA 660/2019.**

**Sd/-**

**Rajesh Sharma**  
Member (Technical)

**Sd/-**

**V.P. SINGH**  
Member (Judicial)

16<sup>th</sup> October, 2019