

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

**IA(IB) 678/KB/2021
in
CP(IB) No. 1400/KB/2018**

In the matter of

An application under Section 30(6) for approval of Resolution Plan under Section 31(1) of the Insolvency and Bankruptcy Code, 2016.

And

In the matter of

Stressed Assets Stabilization
Fund

...Financial Creditor

versus

Ispat Profiles India Ltd

...Corporate Debtor

And

In the matter of

Rajiv Kumar Agarwal [Resolution Professional of Ispat Profiles India Ltd]

...Applicant

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (via video conference):

1. Ms Mamta Binani, Advocate
2. Ms Anshumala Bansal, Advocate
3. Mr Rohit Kesri, CS
4. Mr Rajiv Kumar Agarwal, Resolution Professional

Order Reserved on 20 April, 2022

Order Pronounced on 29 April, 2022

ORDER

1. This Court convened through video conferencing.
2. **IA (IB) No. 678/KB/2021** is an application under section 30(6) and section 31 of the Code after approval of the resolution plan by the Committee of Creditors [hereafter referred to as “**CoC**”].
3. This Application was moved by Mr. Rajiv Kumar Agarwal, Resolution Professional of Ispat Profiles India Ltd (CIN: L27101WB1985PLC039547), by invoking the provisions of Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code ,2016 [hereinafter referred to as “**the Code**” or “**IBC**”] 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 “**CIRP Regulations**”] for approval of a Resolution Plan in respect of Ispat Profiles India Ltd.
4. The underlying Company Petition in CP (IB) No. 1400/KB/2018 was filed by Stressed Assets Stabilization Fund against Ispat Profiles India Ltd, the Corporate Debtor, under Section 7 of the Insolvency and Bankruptcy Code 2016 which was admitted *vide* order dated 28.11.2019 in CP (IB)No. 1400/KB/2018.
5. Initially, the Applicant herein, Mr. Rajiv Kumar Agarwal (IBBI Reg. No. IBBI/IPA-001/IP-P00552/2017-2018/10982) was appointed as the Interim Resolution Professional. He was later confirmed as the Resolution Professional of the Corporate Debtor at the first meeting of the Committee of Creditors on 30.12.2019.
6. The IRP made public announcement on 03.12.2019 in three newspapers namely, Financial Express (English) – All India Edition, Aajkaal Kolkata (Bengali) - Kolkata Edition and Navshakti (Marathi) - Pune Edition regarding initiation of Corporate Insolvency Resolution Process [hereinafter referred to as “**CIRP**”] and called proof of claims from the financial and operational creditors, workers and employees of the Company in the specified form still 16.12.2019.
7. The Applicant states that a total of sixteen CoC meetings have been held during CIRP period, as follows:

<i>Particulars</i>	<i>Date of CoC Meetings</i>
1 st CoC Meeting	30.12.2019
2 nd CoC Meeting	03.02.2020
3 rd CoC Meeting	26.02.2020
4 th CoC Meeting	02.06.2020
5 th CoC Meeting	12.06.2020
6 th CoC Meeting	13.08.2020
7 th CoC Meeting	08.09.2020
8 th CoC Meeting	01.10.2020
9 th CoC Meeting	13.10.2020
10 th CoC Meeting	28.10.2020
11 th CoC Meeting	06.11.2020
12 th CoC Meeting	20.11.2020
13 th CoC Meeting	04.12.2020& 05.12.2020
14 th CoC Meeting	14.12.2020
15 th CoC Meeting	22.12.2020
16 th CoC Meeting	10.06.2021

8. The Applicant submits that as per the requirements of Section 25(2)(h) of the IBC, 2016 read with regulation 36A(1) of the CIRP Regulations, 2016, invitations in Form 'G' for Expression of Interest (EoIs) from potential resolution applicants were issued on 09.02.2020 in Financial Express (English) – All India Edition, Aajkaal Kolkata (Bengali) - Kolkata Edition and Navshakti (Marathi) - Pune Edition Newspapers. The publication for EoIs have been issued a number of times including extensions on various such dates such as 02.03.2020 and 16.06.2020. The publication for EoIs on 16.06.2020 were issued in also Loksatta (Marathi) – Pune Edition in addition to Financial Express (English) - All India Edition, Aajkaal Kolkata (Bengali) - Kolkata Edition and Navshakti (Marathi) - Mumbai Edition Newspapers. As per the latest Form-G, the last date for receipt of the EOI was 01.07.2020, and last date for submission of resolution plan was 08.08.2020 which was extended upto 31.12.2020.
9. The Applicant/RP submits that up till the last date of submission of EoIs i.e., 01.07.2020, he received EoI from four prospective resolution applicants. Further, one of the prospective resolution applicant namely Uranus Softech Park Private Limited

submitted its EoI belatedly and hence was not allowed to participate. Uranus Softech Park Private Limited filed an application before this Tribunal for being allowed to participate, consequently, this Tribunal vide its order dated 19.11.2020 in IA 1190/KB/2020 in C.P No. 1400/KB/2018 directed the Applicant/RP to allow Uranus Softech Park Private Limited to participate in the CIRP of the Corporate Debtor.

10. The Applicant/RP shared the request for resolution plan (RFRP), information memorandum and evaluation matrix with all the prospective resolution applicants. However, out of the five prospective resolution applicants, one applicant namely Ajay Modi with Sangeeta Modi, did not submit its resolution plan. Up till the last date of submission of the resolution plan, i.e., 31.12.2020, the Applicant/RP received resolution plan from only four prospective resolution applicants out of the 5 prospective resolution applicants. Four resolution applicants i.e., 1. Kanti Kumar Agarwal, Rohit Arun Kumar Poddar and Sisir Kumar Appikatla, 2. Prudent ARC Limited, 3. SRC Chemicals Private Limited 4. Uranus Softech Park Private Limited submitted their resolution plans, which were revised from time to time by the respective resolution applicants, in view of the discussions with the CoC.
11. The resolution plans of Prudent ARC Limited and Uranus Softech Park Private Limited were put up for discussion in the CoC meeting held on 10.06.2021 after which the resolution plan submitted by Uranus Softech Park Private Limited was declared H1 and the resolution plans of Uranus Softech Park Private Limited and Prudent ARC Limited were put up for vote from 12.06.2021 to 03.07.2021. The resolution plan submitted by Uranus Softech Park Private Limited along with addendum was voted in favour by 100% vote percentage of the CoC. The resolution plan submitted by Prudent ARC Limited was rejected by 100% vote percentage of the CoC. Copies of minutes of 16th CoC meeting as well as e-voting results are annexed to the application as Annexure –P2 (Colly) at pages 172 to 190.
12. Upon receipt of the approval from the CoC, the Applicant/ RP issued Letter of Intent (LoI) to the successful resolution applicant (SRA) on 03.07.2021. A copy of the said letter of intent has been placed on record as ‘Annexure- P14’ at pages 514 to 515.
13. The SRA has provided performance security of Rs. 4,00,00,000/- (Rupees Four Crores Only) by way of RTGS on 06.07.2021. A copy of the said performance

guarantee security is annexed to the Petition and marked as ‘Annexure- P15’ at pages 516 to 518.

14. The amount proposed in the Resolution Plan are tabulated below:

Sl. No.	Category of Claim and Reference to Clause of the Resolution Plan	Amount Admitted as per Information Memorandum (in Rs.) (Lacs)	Amount Proposed to be Paid as per Plan (in Rs.) (Lacs)
1.	CIRP Costs (at actuals)	----- -	130.00
Financial Creditors			
2.	Secured	4,90,023.90	9,899.00
	Unsecured	-----	1.00
3.	Operational Creditors (Workmen and Employees)	94,46.44	440.03
4.	Government Dues	5,131.41	1.00
	Total	5,04,601.75	10,471.03

15. The Applicant submits details of various compliances as envisaged within the Code and the CIRP Regulations which requires a Resolution Plan to adhere to, which is reproduced hereunder:

I. Submission of Resolution Plan in terms of Section 30(2) of the Code (as amended vide Amendment dated 16 August 2019):

Clause of S.30(2)	Requirement	How dealt with in the Resolution Plan
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the	(i) <i>Clause 5.3 at Page 23 of the Resolution Plan</i>

Clause of S.30(2)	Requirement	How dealt with in the Resolution Plan
	Board.	
(b)	<p>(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to the event of liquidation u/s 53; or</p> <p>(ii) Plan must provide for repayment of debts of OCs in such manner as maybe specified by the Board which shall not be less than 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, which ever is higher and</p> <p>(iii) Provides for 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.</p>	<p>(i) <i>Clause 5.6 at Page 25 of the Resolution Plan</i></p> <p>(ii) <i>Clause 5.6 at Page 25 of the Resolution Plan</i></p> <p>(iii) <i>Clause 5.4 at Page 24 of the Resolution Plan</i></p>

Clause of S.30(2)	Requirement	How dealt with in the Resolution Plan
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	<i>Clause 7 at Page 28 of the Resolution Plan</i>
(d)	Implementation and Supervision of the Resolution Plan.	<i>Clause 8 at Pages 28-29 of the Resolution Plan.</i>
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	<i>Clause 6 at Page 28 of the Resolution Plan</i>
(f)	Confirms to such other requirements as may be specified by the Board.	<i>Clause 6 at Page 28 of the Resolution Plan</i>

II. Measures, as may be necessary, for insolvency resolution, in terms of Regulation 37 of CIRP Regulations:

<i>Particulars</i>	<i>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</i>
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed in the Resolution Plan

<i>Particulars</i>	<i>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</i>
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed in the Resolution Plan
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger	Clause 5.8 on pages 26-27 of the Resolution Plan
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Clause 5.8 on pages 26-27 of the Resolution Plan
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 5.8 on pages 26-27 of the Resolution Plan
(f) satisfaction or modification of any security interest;	Clause 10(g) on page 30 of the Resolution Plan
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Clause 5.4 on Pages 23-24 of Resolution Plan
(h) reduction in the amount payable to the creditors;	Clause 5.5 on Pages 24 - 25 of Resolution Plan and Clause 5.4 to 5.6 on Page 23 to 25 of Resolution Plan
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not proposed in the Resolution Plan
(j) amendment of the constitutional documents of the corporate debtor;	Not proposed in the Resolution Plan, we shall undertake the same separately
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not proposed in the Resolution Plan
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Clause 5.1 on page 20 of the Resolution Plan

<i>Particulars</i>	<i>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</i>
(m) change in technology used by the corporate debtor; and	No reference in Resolution Plan
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Not proposed in the Resolution Plan

III. Mandatory contents of Resolution Plan in terms of Regulation 38 of CIRP

Regulations:

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt within the Plan</i>
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Clause 5.6 at Page 25 of the Resolution Plan.
38(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.	Clause 5 on pages 20 – 28 of the Resolution Plan
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to	Clause 2 on Pages 5-6 of Resolution Plan.

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt within the Plan</i>
	implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	
38(2)	A resolution plan shall provide: (a) the term of the plan and its implementation schedule;	<i>Clause 5.2 on Pages 22-23 of Resolution Plan</i>
	(b)the management and control of the business of the corporate debtor during its term; and	<i>Clause 8 Pages 28-29 of the Resolution Plan.</i>
	(c) adequate means for supervising its implementation.	<i>Clause 8 on Pages 28-29 of the Resolution Plan.</i>
38(3)	A resolution plan shall demonstrate that— (a)it addresses the cause of default;	<i>Clause 5 at Page 20 of the Resolution Plan.</i>
	(b)it is feasible and viable;	<i>Clause 5 at Page 20 of the Resolution Plan.</i> <i>The steps for evaluation and negotiation of the resolution plans has been discussed in details by the</i>

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Reference to relevant Regulation	Requirement	How dealt within the Plan
		<p><i>COC and the procedure laid down in the 10th (pp 125@pp 128-130) and 11th(pp 134 @ pp 135 and 138) COC meetings dated 28.10.2020 and 6.11.2020 respectively and thereafter, the COC has itself directly negotiated with each of the RA after informing them of the observations in their plan as per the RFRP and IBC in the 13th meeting of the COC held on 4th December, 2020 (pp 151@ pp 153-155).</i></p> <p><i>The compliance is also recorded at in Form H at pp 507.</i></p>
	<p>(c) it has provisions for its effective implementation;</p>	<p><i>Clause 5 at Page 20 of the Resolution Plan</i></p>
	<p>(d) it has provisions for approvals required and the timeline for the same; and</p>	<p><i>Clause 5 at Page 20 of the Resolution Plan</i></p>

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt within the Plan</i>
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 5 at Page 20 of the Resolution Plan.

16. The Applicant submits that the successful Resolution Applicant has submitted a certificate of eligibility under Section 29A of the Code, which has been annexed as **Annexure-P 11 at Pg. 464 to 470** of the Application.
17. The Applicant has filed a Compliance Certificate in prescribed form, *i.e.*, Form ‘H’ in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which has been annexed as **Annexure-P 13 at Pg. 497 to 513** of the Application.

Details of Resolution Plan/Payment Schedule

18. The Applicant submits the relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the resolution applicant, *i.e.* Uranus Softech Park Private Limited under the said Resolution Plan is tabulated as under:

<i>SIN o.</i>	<i>Nature of Debt</i>	<i>Current O/s – Claims Received</i>	<i>Current O/s Claims Admitted</i>	<i>Resolution Applicant Proposal</i>	
				<i>Re-stated Debt %</i>	<i>Revised Debt (amount proposed to be paid)</i>
1	Secured Financial Creditors	4,90,217.05	4,90,023.90	2.02%	9,899.00
2	Operational Creditors (Workmen Gratuity)	266.92	266.92	100%	266.92

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3	Operational Creditors (Workmen – less than two years dues)	392.37	392.37	2.02%	7.92
4	Operational Creditors (Workmen Others)	6,027.42	4,888.26	-	-
5	Operational Creditors (Employees Gratuity)	164.19	164.19	100%	164.19
6	Operational Creditors (Employees others)	4,812.89	3,734.70	0.01%	1.00
7	Operational Creditors (Government Dues)	10,623.17	5,131.41	0.01%	1.00
8	Unsecured Financial Creditors	7,143.85	-	-	1.00
9	Cost of CIRP (Indicative, will be paid by RA on actuals)		Actual	100%	130.00
		5,19,647.86	5,04,601.75		10,471.03

Amount in Lacs

19. Summary of the financial proposal/payment under the Resolution Plan dated 10.12.2020 of Uranus Softech Park Private Limited is tabulated hereunder for sake of clarity:

Particulars	Amount
Admissible Debt to be paid up front to the CIRP	The Creditors of the Corporate Debtor have been proposed to be paid an amount of Rs. 54,71.03 Lacs against their admitted debts of Rs. 5,04,601.86Lacs, which shall be payable upfront within 3 working days, from issuance of physical certified order of the approved resolution plan or online order of the approved resolution plan, whichever is earlier, as provided in this Resolution Plan under Chapter 5 of the Resolution plan excluding an amount of Rs. 130.00 Lacs payable towards CIRP expenses as per actuals. The CIRP Expenses of Rs. 130.00 Lacs or at actuals shall be paid upfront within 3 working days, from issuance of physical certified order of the approved resolution plan or online order of the approved resolution plan, whichever is earlier.
Admissible Debt to be paid upfront to the Operational Creditors	Rs. 441.03Lacs upfront cash payment to Operational Creditors including but not limiting to Statutory Dues/ Dues to Government Authorities within 3 working days, from issuance of physical certified order of the approved resolution plan or online order of the approved resolution plan, whichever is earlier. The amount payable to Operational Creditors shall be paid in priority over the Financial Creditors.
Admissible Debt to be paid to Financial Creditors	The financial creditors shall be paid Rs. 4,900.00Lacs within 3 working days, from issuance of physical certified order of the approved resolution plan or online order of the approved resolution plan, whichever is earlier and balance amount of Rs. 5,000.00 lacs shall be paid within 60 days from the date of NCLT order approving the Resolution Plan.

20. Resolution Plan defines “Approval Date” or “Date of Approval” as the date on which the Adjudicating Authority approves this Resolution Plan under the provisions of the Code and CIRP Regulations.

Details on Management/Implementation and Reliefs as per the Resolution Plan – Salient Features

I. The Resolution Plan also provides for –

1. Management of Company after resolution in Clause 8;
2. Term of the resolution plan in Clause 6; and
3. Implementation and Supervision of the resolution plan in Clause 8.

II. Reliefs and Concessions, as prayed in clause 10 of the Resolution Plan:

Sl.No.	Relief and/or Concessions Sought	Orders Thereon
1.	The Resolution Professional/ Secured Financial Creditors/ Committee of Creditors shall ensure that the peaceful and physical possession of all the Key Assets of IPIL specified in this Resolution plan is handed over to the Resolution Applicant, simultaneous to the payment of final tranche of payment by Resolution Applicant	The same may be granted to the Resolution Applicant
2.	100% shareholding and shares held by all existing shareholders including public shareholders to be cancelled for no consideration	The same may be granted to the Resolution Applicant
3.	The offer of the Resolution Applicant is to buy the entire stake and all securities of the Company including all assets (movable or immovable) including but not limited all easement rights on as is where is basis and all the liabilities as	The same may be granted to the Resolution Applicant

Sl.No.	Relief and/or Concessions Sought	Orders Thereon
	mentioned in the paragraphs above.	
4.	From the Effective Date, all inquiries, investigations and legal and quasi-legal proceedings / prosecution, whether civil or criminal, suits, claims, disputes, proceedings in connection with IPIL or affairs of IPIL (including those initiated by Governmental Authorities), pending or threatened, present or future in relation to any period prior to the Effective Date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed and all liabilities and obligations therefore, whether or not set out in the balance sheets of IPIL or the profit and loss account statements of IPIL will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to IPIL or the Resolution Applicant. Upon approval of this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitrations or other	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ¹ wherein the Hon'ble Supreme Court has held in para 95(i) that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand

¹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

Sl.No.	Relief and/or Concessions Sought	Orders Thereon
	<p>judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against IPIL and/ or its new management in relation to any period prior to the effective date</p>	<p>extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.</p>
5.	<p>Upon approval of the Resolution Plan by the NCLT, all non-compliances, dues, breaches and defaults of IPIL for the period prior to the Effective Date (including but not limited to those relating to tax and material litigations, ongoing investigations and/or statutory obligations as mentioned in IM and reproduced in para 4.9. of this</p>	<p>The same may be granted to the Resolution Applicant</p>

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	resolution plan), shall be deemed to be waived by the concerned Central Govt / all State Governments / Semi-Govt. Authorities, including but not limited to ROC, Pollution board, Income Tax, TDS, GST, VAT, Sales Tax, Environment Clearance, Electricity Board/ Authority, Sub Registrar, gram panchayat, etc.	
6.	The Corporate Debtor/ Resolution Applicant shall be entitled to avail the beneficial provisions of all enactments including but not limited to Income Tax Act, Companies Act, 2013 in so far as they are applicable to companies in respect of which a resolution plan has been sanctioned under Section 31 of IBC, 2016	The same may be granted to the Resolution Applicant for the period prior to the Effective Date.
7.	Peaceful and vacant possession of Immovable property situated at “Pune Unit” is given to the resolution applicant and the mutation entries in the land revenue records along with all other government records shall be amended to clear the charges and/or encumbrances of whatsoever nature created on the immovable and movable properties by the Lenders/ Government	The same may be granted to the Resolution Applicant

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Sl.No.	Relief and/or Concessions Sought	Orders Thereon
	Authorities, including but not limited to charge created by Sales tax Authorities etc. The peaceful and vacant possession of the assets / premises / etc. of the Pune Unit shall be handed over to the Resolution Applicant under the supervision and support of Armed Guards and/or Police Protection	
8.	Immunity shall be deemed to have been granted to IPIL /Resolution Applicant and its directors and employees from all proceedings / prosecutions and penalties under all Applicable Laws for any non-compliance for the period prior to the Effective Date and no interest/penal implications and / or prosecution shall arise due to such non-compliance /default /breach prior to the Effective Date. This includes, without limitation, waiver/extinguishment of penalties / interests on account of staggered payment of statutory liabilities of the workmen/employees of IPIL in accordance with the terms of this Resolution Plan	The same may be granted to the Resolution Applicant
9.	Waiver/extinguishment of any tax,	The same may be granted to

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	duty, cess or surcharge or any levy, by whatever name called, and legal liability pertaining for the period prior to the Effective Date under any state laws or central laws such as any kind of existing and/or future litigation/ assessment/ scrutiny/ contingency.	the Resolution Applicant
10.	Waiver of any income-tax and Minimum Alternate Tax (MAT) liability or consequences (including interest, fine, penalty, etc), if any on IPIL, Resolution Applicant and its shareholders, upto approval of Resolution Plan, including but not limited to liabilities if any under Section 41 (1), Section 56, Section 43, Section 43 B, Section 28, Section 115JB and Section 79 of the Income-tax Act, 1961, without any impact on brought forward tax and book loss / depreciation, pursuant to this Resolution Plan	The same may be granted to the Resolution Applicant
11.	Since the Corporate Debtor is a company in which public are substantially interested, provisions of section 79 of the Income-tax Act, 1961 has no implications. However, any requirements to obtain waivers	The same may be granted to the Resolution Applicant.

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Sl.No.	Relief and/or Concessions Sought	Orders Thereon
	from any Tax Authorities as abundant precaution, in terms of section 79 of the IT Act shall be granted upon approval of this Resolution Plan on the Effective Date.	
12.	The Resolution Applicant shall be permitted to file ITR of the Corporate Debtor within 2 years of approval of Resolution Plan. The Corporate Debtor shall be allowed to carry forward the losses and unabsorbed depreciation on filing of the ITR. The Corporate Debtor shall be permitted to carry forward its unabsorbed business losses/capital losses beyond the statutory time limit of 8 (eight) assessment years under Section 72 of Income Tax Act, 1961 and set off in subsequent years. In calculation of the period of limitation of 8 years under section 72(3) of Income Tax Act for carry forward of losses, the years during which the net worth of the Corporate Debtor remained negative, be excluded. The Corporate Debtor shall be entitled to carry forward and set off losses arising on accounting of admitted claims on books of Corporate Debtor	The same may be granted to the Resolution Applicant.

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	beyond the statutory time limit of 8 (eight) assessment years under Section 72 of-Income Tax Act, 1961 and set off in subsequent years.	
13.	The Corporate Debtor shall be allowed to carry forward unabsorbed depreciation in accordance with the provisions Sec 32 of the Income-tax Act, 1961, whether or not Return of Income has been filed within the due dates as prescribed under the Income-tax Act, 1961	The same may be granted to the Resolution Applicant
14.	Any approvals that may be required from Central Government/ any State Government/ semi government / local Authorities (including tax authorities) in connection with the implementation of the Resolution Plan including on account of change in ownership / control of IPIL shall be deemed to have been granted on the Effective Date	The same may be granted to the Resolution Applicant
15.	The Governmental Authorities, Electricity Board of Maharashtra Government, Electricity department of Maharashtra Government will provide the electricity connection/reconnection after the acquisition of IPIL by the Resolution	The same may be granted to the Resolution Applicant

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Sl.No.	Relief and/or Concessions Sought	Orders Thereon
	Applicant without payment of any dues related to the period up to the Cut Off date to them by IPIL	
16.	In relation to any alleged transfer of any economic interest or other beneficial interest by the IPIL to any party in the past pertaining to the land parcels where the title and ownership is still lying with the IPIL, the Resolution Applicant shall have a right to terminate/ cancel such arrangement without any liability (monetary or otherwise) on the IPIL / Resolution Applicant. Also, any agreement, transfer of rights or contract that hampers the assets/rights of IPIL shall be considered void if the same has not been registered/ presented before the concerned authority up to the Effective Date	The same may be granted to the Resolution Applicant
17.	Any authority, power of attorney, rights given by IPIL to any person/representative up to the Effective Date shall become infructuous and void.	The same may be granted to the Resolution Applicant
18.	Directions to be given that liberty be reserved to the Corporate Debtor, Resolution Applicant and to all other	The same may be granted to the Resolution Applicant

Sl.No.	Relief and/or Concessions Sought	Orders Thereon
	persons interested in the Resolution Plan to apply to the NCLT for any direction(s) that may be necessary for the purpose of carrying out the Resolution Plan.	

21. On hearing the submissions made by the Learned Counsel for the Resolution Professional, and perusing the records, we find that the Resolution Plan (along with addendum), submitted by Uranus Softech Park Private Limited, has been approved with 100% majority by the CoC, as against the minimum threshold of approval by 66% majority of the CoC. As per the CoC, the Resolution Plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench. There is no opposition from any quarter as regards the Resolution Plan.
22. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No circumstances exist that militate against grant of approval of the resolution plan.
23. 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.
24. 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.

25. Therefore, subject to the observations made in this Order, we hereby accord our approval to the Resolution Plan submitted by Uranus Softech Park Private Limited.
The Resolution Plan shall form part of this Order.
26. 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.
27. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
28. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant.
29. 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.
30. 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 finalise the further line of action required for starting the business operations of the Corporate Debtor.
31. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
32. The Resolution Applicant shall file a copy of this Order with the Registrar of Companies, West Bengal *inter alia* for updating the status of the Corporate Debtor.
33. The application bearing **IA (IB) No. 678/KB/2021** along with the Company Petition **CP (IB) No. 1400/KB/2018** are disposed of accordingly.
34. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, West Bengal.
35. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
36. File be consigned to the records.

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

Stressed Assets Stabilization Fund v. Ispat Profiles India Ltd

IA(IB)678 /KB/2021 in CP(IB)No.1400/KB/2018

Harish Chander Suri

Member(Technical)

Rohit Kapoor

Member(Judicial)

29th day of April, 2022

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KOLKATA BENCH
KOLKATA**

**IA (IB) No. 1277/KB/2020
In
C.P. (IB) No. 1400/KB/2018**

In the matter of:

Application under section 25 (2)(j) read with sections 66 and 67 of the Insolvency and Bankruptcy Code, 2016.

And

In the matter of:

Stressed Assets Stabilization Fund

...Financial Creditor

Versus

Ispat Profiles India Limited

...Corporate Debtor

And

In the matter of:

Rajiv Kumar Agarwal [Resolution Professional of Ispat Profiles India Limited]

... Applicant

Versus

1. Namdeo Shankar Zagade, suspended board of director of Ispat Profiles India Limited
 2. Basant Singh Himalian, suspended board of director of Ispat Profiles India Limited
 3. Nitin Chakradhar Borkute, suspended board of director of Ispat Profiles India Limited
 4. Surendra Garg, suspended board of director of Ispat Profiles India Limited
- ...Respondents

Order reserved on: 20.04.2022

Order pronounced on: 29.04.2022

Coram:

Shri Rohit Kapoor : Member (Judicial)

Shri Harish Chander Suri : Member (Technical)

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In
C.P. (IB) No. 1400/KB/2018**

Appearances (via video conference):

For the Applicant/RP:

Appearances (via video conference):

1. Ms Mamta Binani, Advocate
2. Ms Anshumala Bansal, Advocate
3. Mr Rohit Kesri, CS
4. Mr Rajiv Kumar Agarwal, Resolution Professional

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. This Court convened through video conferencing.
2. This is an Application under section 66 of the Code, *inter alia*, praying for the following reliefs;
 - a. A direction on the respondent no. 1 to deposit the amount of Rs.11,79,651/- receivable from him;
 - b. A direction on the respondents to jointly and/ or severally deposit the amount of Rs. 44,72,929/- advanced to various companies;
 - c. A direction on the respondent nos. 1 to 4, jointly and/ or severally to deposit the amount of trade receivable as for Rs.6,59,26,391/-
 - d. A direction on the respondents to jointly and/ or severally deposit the amount of Rs 33,63,716/- recoverable from the creditor but written off by the respondents;
 - e. A direction on the respondent nos. 1 to 4, both jointly and severally to deposit the amount of advances for Rs98,86.79.496/-;
 - f. A direction on the respondent nos. 1 to 4, both jointly and severally to deposit the amount of inventories for Rs.17,23,57,138/-;
 - g. A direction on the respondent nos. 1 to 4, both jointly and severally to deposit the amount of advance payment to vendors for Rs 2.01.02.640/-;

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- h. A direction on the respondent nos. 1 to 4, both jointly and severally to deposit the amount of trade payables for Rs.96,08,59,854/-;
 - i. A direction on the respondent no.1 to deposit Rs. 102,000 which was paid to him in preference to the secured lenders. during 2 years preceding the insolvency commencement date A direction on the respondents to jointly and/ or severally deposit the amount of Rs 61,65,000/- paid preferentially as payment of unsecured loan:
3. By an order dated 28 November, 2019, this Adjudicating Authority admitted Ispat Profiles India Limited (*'Corporate Debtor'*) into Corporate Insolvency Resolution Plan (*'CIRP'*). Mr. Rajiv Kumar Agarwal (*'Applicant'*) was appointed as the Interim Resolution Professional (*'IRP'*). Subsequently, the Applicant was appointed as the Resolution Professional (*'RP'*). Thereafter, the Applicant undertook all the steps in compliance with the provision of the Insolvency and Bankruptcy Code (*'IBC'*).
4. The Committee of Creditors (*'CoC'*) was constituted on 23 December, 2019 with SASF and State Bank of India (*'State bank of India'*) being the two Financial Creditors and the members of the CoC. Advertisement for expression of interest (*'EOI'*) was published on 16 June, 2020. In pursuance of such advertisement, the Applicant received Three Resolution Plans.

Submissions by the Applicant

5. The last audited account of the Corporate Debtor was for the year ended on 31 March, 2011. Thereafter, the accounts have not been maintained properly nor audited. In the 3rd CoC meeting, held on 26 February, 2020, the Applicant appointed Prakash Shah & Lodha (*'forensic auditor'*) to conduct a forensic audit of the accounts of the Corporate Debtor. The forensic auditor submitted his transaction audit report to the Applicant on 04 November, 2020.

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- a) The Transaction Audit Report (TAR) has summarised that the following amounts are receivable from various related parties since a very long period, which was unrecovered during the entire audit period.
- i. A sum of Rs.11,79,651/- was receivable from Namdeo Shankar Zagade,
 - ii. A sum of Rs.20,63,077/- was receivable from Ispat Industries Ltd.
 - iii. A sum of Rs.17,97,505/- was receivable from Ispat Alloys Ltd
 - iv. A sum of Rs.3,82,305/- was receivable from Ispat Alloys Limited
 - v. A sum of Rs.17,97,505/- was receivable from Ispat Alloys Ltd.
 - vi. A sum of Rs.3,82,305/- was receivable from Ispat Metallics India Limited
 - vii. A sum of Rs.2,30,042/- was receivable from Navoday Techno Consultants Ltd

No records were provided to the Auditor regarding the purpose of the loan, mode of payment, repayment terms, end-use, etc, against the loan given to the related party. No interest was charged on the loan amount outstanding to the party. It was observed from the above that the said fund was siphoned off in favour of the party, by defrauding the secured lenders. Therefore, the TAR concludes that the same would qualify as an avoidable transaction and is therefore part of their report under Section 66 of IBC 2016, as fraudulent and wrongful trading. It has now transpired that the companies to whom the loans were given are either amalgamated or defunct

- b) The TAR further states that trade receivables for Rs.6.59.26,391/- were unrecovered since a very long period and have been fully provided for the doubtful receivables b. The TAR further states that trade receivables for Rs.6,59,26,391/- were unrecovered since a very long period and have been fully provided for the doubtful receivables. There are no records

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available to support that these receivables have been accrued due to the genuine trade transactions. Further no proofs made available to the auditor regarding the follow-ups and recovery actions by the management to recover the dues. Hence there are reasonable doubts over the adequate procedure taken by the company to book sales to these parties and to recover the receivables of the corporate debtor from those underlying parties. The TAR therefore opines that this would be qualify as diverting the assets of the corporate debtor and is therefore part of the report under section 66 of the IBC, 2016 as fraudulent and wrongful trading

- c) A sum of Rs.33,63,716/- was recoverable from Pradeep Metals Limited as on March 2009. But instead of following for the recovery, the corporate debtor wrote off the balance on 31.03.2009 and hence abandoned the receivable assets. Hence there are reasonable doubts over the adequate procedure taken by the corporate debtor to recover its dues from the party. The write off of the balance is a prima facie instance of abandoning the assets of the company, against which no records have been provided to the auditor regarding the recovery action taken by the company, settlement document with the party, reason for non-payment of the residual amount by the party, etc. The transaction is thus reported under section 66 of the IBC. 2016.
- d) The corporate debtor has accepted advances from clients for a huge amount of Rs.98,86,79,496/-, without any movements for a very long period. There are no records available to support that these advances have been accrued due to the genuine trade transactions. Therefore the TAR concludes that this would be qualify as avoidable transactions and is therefore part of the report under Section 66 of IBC 2016, as fraudulent and wrongful trading.

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- e) The books of accounts represents the inventories of Rs 17,23,57,138/-, wherein the corporate debtor has made a provision for provision for Rs 8,56,42,767/-. Considering the various discrepancies stock quantity disclosures in the Income Tax Returns, absence of inventory records, proof of regular physical verification by the management and existence of physical availability of the underlying stock items, it appears that there is gross mismanagement in the inventory maintenance by the corporate debtor. Showing Nil inventory in the Returns implies that the entire inventories of Rs.17,23,57,138/- has been diverted. Therefore as per the TAR this would be qualify as diverting the assets of the company and is therefore part of the report under Section 66 of IBC 2016, as fraudulent and wrongful trading.
- f) Advance payments have been made to the vendors for supply of goods / services for an amount of Rs.2.01.02.640/- Out of these, the corporate debtor has already made provision for doubtful advances of Rs 1,51.53.651/- in the earlier years. There are no records available to support that these advances have been paid due to the genuine trade transactions. Further no proofs made available to the auditor regarding the follow-ups and recovery actions by the management to recover the dues. Hence there are reasonable doubts over the adequate procedure taken by the corporate debtor in payment of advances and subsequent recovery of the advances/ underlying goods/ services from those underlying parties. Therefore as per the TAR, this would be qualify as diverting the assets of the company and is therefore part of the report under Section 66 of IBC 2016, as fraudulent and wrongful trading.
- g) Trade payables for Rs 96,08,59,854/- were unpaid as on 27.11.2019 without any movements for a very long period There are no records available to support that these payables have been accrued due to the

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genuine trade transactions. Therefore as per TAR, this would qualify as avoidable transactions and is therefore part of the report under Section 66 of IBC 2016, as fraudulent and wrongful trading.

- h) A sum of Rs 102,000/- was paid to Mr. Namdeo Shankar Zagade (the Director), in preference to the secured lenders, during 2 years preceding the insolvency commencement date. Therefore as per TAR, this would qualify as an avoidable transaction and is therefore part of the report under Section 43 and 66 of IBC- 2016, as Preferential and Wrongful Transaction.
 - i) A sum of Rs 61,65,000/- was outstanding unsecured loan as on March 2009 from M/s Goldline Trac Private Limited, herein which was fully repaid during June 2009 by the corporate debtor, inspite of knowing that the secured lenders and other parties having preference over the unsecured lender were still unpaid at the time of making such repayment of unsecured loan to the party. Hence there are reasonable doubts over the intention of the corporate debtor in making such payments. Therefore as per the TAR, this would be qualify as diverting the assets of the corporate debtor and is therefore part of the report under Section 66 of the Code.
6. The Applicant further submits that, from the bare reading of the transaction audit report and the summary of findings, it appears on the face of it that the transaction are fraudulent and no satisfactory responses have been provided by the suspended board of directors with respect to such transactions. The Applicant has also lodged a complaint with Sikrapur Police Station on 15 September, 2020 complaining about siphoning of the stocks and machinery by the Suspended board of Directors.

Submissions by the Respondents

- 7. Nothing in this instant Application shows or proves that the business of the Corporate Debtor was carried on with an intent to defraud the creditors of the

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Corporate Debtor or for any fraudulent purpose. Moreover, the allegations contained in the application pertain to transactions which are of a period of time when the concerned respondents could not have known of the commencement of the CIRP, in respect of the Corporate Debtor.

8. The Application does not reflect that the respondents or any of them did not exercise due diligence. Further, the allegations made against the Corporate Debtor in the order dated 28 November, 2019 are denied. It is denied that the Applicant has taken steps in compliance of the provisions of the Code or the Applicant did not receive any cooperation from the suspended board of directors.
9. The Corporate Debtor has been filing its Income Tax Returns regularly and has been filed upto March, 2019. The forensic auditor has not conducted the forensic audit properly. The report is also one sided and does not take into consideration the actual state of affairs.
10. Further, the Respondent No.1 has received a payment of Rs.11,60,540/- until November 2010 for services rendered. The Income Tax Returns of the Respondent No.1 would show receipt of the aforesaid sum as salary. In the books of Corporate Debtor this amount has been shown in 'General Expenses'. On and from November, 2000 to November 2010, every month, the Respondent No.1 has received payment for services rendered.
11. There were transactions between the Corporate Debtor on one hand and Ispat Industries Limited, Ispat Alloys Limited, Ispat Metalliks Limited and Navoday Techno Consultants Limited on the other upto October, 2000. No step for recovery of the amounts mentioned in paragraph 9 (a) of the application was filed by the Corporate Debtor, in as much as the Corporate Debtor owed enormous sums of money to such entities. Further, the amount mentioned in paragraph 9 (a) are shown in the records of the Corporate Debtor as 'Trade Payable'. It is denied that these sums were loans, which were given but these are

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rather unrecovered trade receivables which are not traceable. These amounts were recoverable by the corporate Debtor between the period 1995 to October 2000, records for such period cannot be expected to be traceable. With reference to the receivable from Pradip Metals Limited, a total sum of Rs.165.64 Lacs as on 01.04.2001 was receivable, out of which a sum of Rs.132 Lacs was recovered and the remaining sum of Rs.33,63,716/- was written off.¹ Writing off the balances is not the instance of abandoning the asset of the Company. In any event, the Corporate Debtor, its directors and employees cannot be faulted, in as much as the concerned transactions and events are of the period prior to October, 2000.

12. With reference to para IV (9)(d) to (i) of the Application, the advanced received from the clients, cannot be brought within the fray of section 66 of the Code. The Applicant ought not to have made the incorrect allegation that there is any discrepancy in the stock quantity because these are matters, over twenty years old, neither can any stock nor any record pertaining thereto can be expected to be available.
13. Advance payments were made to vendor in the usual course of business, immediately prior to the lockout, i.e., November, 2020. In view of the lockout, the Corporate Debtor did not receive the goods. Hence, as per the transaction audit report, these transactions cannot be qualified as diversion of assets of the Company or can be made a part of the report under section 66 of the Code.
14. Payment of Rs.61,65,000/- was made to Goldline Trac Private Limited, in view of the fact that such entity was threatening criminal action against the director of the Company. Further, there was a sum of Rs.49,00,00,000/- outstanding to Goldline Trac Private Limited and in order to buy peace. It is denied that such payments can be treated as preferential transactions.

¹ Annecure – D of the Reply

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Observations and Orders

15. We have heard the Ld. Counsel appearing on behalf of the Applicant and the Respondents and also perused the record.
16. Upon perusal it is apparent that the Corporate Debtor was admitted into CIRP on 28 November, 2019 and the Transaction Audit Report (TAR) primarily deals with the transactions held in the year 2009, which is way prior to the CIRP date.
17. Further, the Resolution Professional has not formed any independent opinion or has come to a determination of his own. He has heavily relied only on the Transaction Audit Report (TAR) sent by the forensic auditor appointed by the Resolution Professional. Hence, in light of the above, ***IA (IB) No. 1277/KB/2020*** in ***C.P. (IB) No. 1400/KB/2018*** is ***dismissed***.
18. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
19. File be consigned to the record.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

The Order is pronounced on April 29, 2022

S.LRA