

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III

I.A. 5643/2023

In

C.P. No. (IB) 851/MB/C-III/2022

Under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Mr. Arun Kishanlal Bagaria)
(Resolution Professional of)
M/s. Cyperus Multitrade Pvt Ltd))
Having office at:)
701, Stanford Bldg, Junction of SV)
Road, Above Mahindra Showroom,)
Andheri (West), Mumbai – 400058)

*... Resolution Professional /
Applicant*

IN THE MATTER OF

Rohit Motilal Agarwal

... Financial Creditor

Vs

Cyperus Multitrade Private Limited

... Corporate Debtor

Order pronounced on: 02.05.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Applicant/RP : Adv. Shadab Jan a/w. Adv. Umang Mehta, Adv.
Aamir Attari, Aalisha Sharma i/b. Dhruve
Liladhar & Co.

Per: Shri. Charanjeet Singh Gulati, Member (Technical)

ORDER

1. The above I.A. is filed by Mr. Arun Kishanlal Bagaria, Resolution Professional of Cyperus Multitrade Pvt Ltd (**Corporate Debtor**) under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Regulation 39(4) of the IBBI (Insolvency Resolution Process of Corporate Debtors) Regulations, 2016 (**Regulations, 2016**) seeking approval of the Resolution Plan submitted by M/s. Rishab Enterprises (**Successful Resolution Applicant**) which was approved by the Committee of Creditors (CoC) by 100% voting at its 4th Meeting held on 25.10.2023.

Facts of the Case, in brief:

2. The Corporate Insolvency Resolution Process (**CIRP**) of Cyperus Multitrade Private Limited (**Corporate Debtor**) was initiated by this Tribunal vide Order dated 16.06.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**the Code**) and Mr. Arun Kishanlal Bagaria (**Applicant**) was appointed as the Interim Resolution Professional (**IRP**).
3. The Committee of Creditors (**CoC**) was constituted with Mr. Rohit Motilal Agarwal (Financial Creditor) being the sole member. The entire claim amount of Rs. 1,53,18,849/- of the sole financial creditor was admitted by the IRP. The 1st CoC Meeting was held on 22.07.2023 and the Applicant was confirmed as the Resolution Professional (**RP**).
4. The RP/Applicant, in accordance with Regulation 35 of the CIRP Regulations, 2016 appointed two Registered Valuers, namely, Mr. Dinesh Kumar Deora and Mr. Piyush Karmakar, for determining the Fair Value and Liquidation Value of the Corporate Debtor. The

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Liquidation and Fair Value of the Corporate Debtor as determined by Registered Valuers are as follows:

Valuer	Fair Value	Liquidation Value	Average Category wise Fair Value	Average Category wise Liquidation Value
Mr. Dinesh Kumar Deora	Rs. 9,39,784	Rs. 9,39,784	Rs. 9,39,784	Rs. 8,30,859
Mr. Piyush Karmakar	Rs. 9,39,784	Rs. 7,21,934		

Issue of Expression of Interest

5. In terms of Section 25(2)(h) of the I&B Code, the RP published the 1st public notice in Form – G on 12.08.2023 inviting Expression of Interest (**EoI**) to submit Resolution Plan for the Corporate Debtor. The first EoI was published in 2 newspapers, namely, ***Nagpur Post – English Edition*** and ***Mahasagar Nagpur – Marathi Edition***.

Request for Resolution Plan (RFRP)

6. In furtherance of the EoI issued by the RP, only 1 Prospective Resolution Applicant (**PRA**) i.e. M/s Rishab Enterprises, had shown interest. Thereafter, on 05.09.2023, the RP shared the RFRP, Information Memorandum and other relevant documents to the sole PRA, in consultation with the CoC.

Approval of Resolution Plan by CoC

7. On 05.10.2023, the PRA submitted its Resolution Plan which was placed before the CoC during the 3rd CoC Meeting held on 14.10.2023. On the 4th CoC Meeting held on 25.10.2023, the said Resolution Plan was discussed and deliberated upon in detail and was placed for voting and was subsequently approved by 100% voting. The Resolution Professional issued the Letter of Intent dated 28.10.2023 to Mr. Rishab Dinesh Halwai, the sole proprietor of M/s Rishab Enterprises (**Successful Resolution Applicant/ SRA**).

8. **Brief background of the Successful Resolution Applicant:**

- 8.1 The Successful Resolution Applicant, M/s Rishab Enterprises, is engaged in the business of wholesale & trading of electronic items and has more than 12 years experience in the concerned field.
- 8.2 It is submitted that the SRA is looking for expansion of business horizon utilizing the available resources of the Corporate Debtor to further increase the overall customer base with ready setup and available networks.
- 8.3 It is submitted that the Successful Resolution Applicant is not barred by Section 29A of the Code and an affidavit in this regard was also submitted by the Successful Resolution Applicant along with the Resolution Plan.

9. **Salient Features of Resolution Plan:**

- 9.1 As per Regulation 36B(4A) of the CIRP Regulations, the SRA has paid performance bank guarantee of Rs. 5,00,000/-. The Resolution Plan value is **Rs. 20,00,000/-**.
- 9.2 It is submitted that the SRA shall carry on the business of the Corporate Debtor on a going concern basis.
- 9.3 It is noted that the Resolution Applicant proposes to fund the Resolution Plan by infusing capital of Rs. 20,00,000 in the Corporate Debtor within 3 months from the Effective Date.
- 9.4 The Resolution Plan proposes that the equity shares held by the promoters and the shareholders other than the promoters of the Corporate Debtor shall stand cancelled for nil consideration. The suspended Board members will stand resigned on approval of the Plan by this Tribunal and the SRA shall nominate new directors on the Board

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of Directors of the Corporate Debtor. The SRA, on approval of the Plan, would be allotted 10,000 fresh equity shares of Rs. 10/- each.

9.5 In accordance with Regulation 38(1-A) of the IBBI Rules, 2016, the statement showing the treatment given to the stakeholders is given below:

Sr. No.	Particulars	Amount Admitted (in Rs.)	Settlement Value Offered (in Rs.)	Terms of Payment	Settlement %
1	CIRP Costs	6,06,564	6,06,564	To be paid in full within 3 months from the Effective date	100%
2	Secured Financial Creditors	--	--	--	--
3	Unsecured Financial Creditors	1,53,18,849	13,89,254	To be paid within 3 months from the Effective date	9.07%
4	Operational Creditors				
a	Employees and Workmen	--	--	--	--
b	Government Authority Dues	--	--	--	--
c	Other Operational Creditors	--	--	--	--
5	IBBI		4182	To be paid within 3 months from the	

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				Effective date	
	Grand Total	1,59,25,413	20,00,000		

9.6 The Resolution Plan states that the estimated CIRP cost is Rs. 10.07 lakhs approx. However, the CIRP cost provided by RP is Rs. 6,06,564. The SRA undertakes that in the event if the CIRP costs exceeds Rs. 6,06,564 then the same shall be paid by reducing the payment to Financial Creditor to that extent. Further, if CIRP reduces below the amount allocated, then the balance shall be paid to the Financial Creditor.

9.7 It is further stated in the Resolution Plan that the cash balance of Rs. 68,384/- in the books of the Corporate Debtor shall be considered as upfront cash recovery for resolution plan. The said cash balance may be offered additionally to the creditors.

9.8 Under the Resolution Plan, Rs. 4182/- has been proposed to be paid to the Insolvency & Bankruptcy Board of India (IBBI) as regulatory fee in accordance with Regulation 31A (1) of the IBBI (CIRP) Regulations, 2016 which states as follows:

“31A. Regulatory Fee.

(1) A regulatory fee calculated at the rate of 0.25 per cent of the realizable value to creditors under the resolution plan approved under Section 31, shall be payable to the Board, where such realizable value is more than the Liquidation Value:

Provided that this sub-regulation shall be applicable where resolution plan is approved under section 31, on or after 1st October 2022.”

Compliance Certificate in Form – H

10. Pursuant to Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional has prepared a

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Compliance Certificate dated 01.11.2023 in **Form H** which is annexed to the Application.

11. Compliance of mandatory requirements under the Insolvency & Bankruptcy Code, 2016:

Sr. No.	Particulars	Compliance
1	Section 25: Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the Corporate Debtor?	Yes.
2	Section 29A: Whether Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Yes.
3	Section 30:	
	(1) Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes. The Resolution Applicant has submitted an affidavit under section 29A of IBC, 2016 confirming his eligibility for submission of Resolution Plan.
	(2)(a) Whether the Resolution Plan provides for payment of insolvency resolution process costs?	Yes. Section VI (I) (vii)
	(2)(b) Whether the Resolution Plan provides for the payment of the debts of operational creditors?	Not Applicable. Section VI (I) (xi)
	(2)(b) Whether the Resolution Plan provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Not Applicable.
	2(c) Whether the Resolution Plan provides for the management of the affairs of the Corporate Debtor?	Yes. Section VIII (xv)

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	2(d) Whether the Resolution Plan Provides for implementation and supervision of the resolution plan?	Yes. Section VIII (xvii)
	(2)(e) Whether the resolution plan contravenes any of the provisions of the law for the time being in force?	No.
	(4)(a) Whether the Resolution Plan is feasible and viable, according to the CoC?	Yes.
	(4)(b) Whether the Resolution Plan has been approved by the CoC with 66% voting share?	Yes. The Resolution Plan has been approved with 100% voting.
4	Section 31(1): Whether the Resolution Plan has provisions for its effective implementation Plan, according to CoC	Yes.
5	Section 35A: Whether the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50, or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	Not Applicable.

12. Compliance under mandatory requirements under IBBI (Insolvency Resolution Process of Corporate Debtors) Regulations, 2016

Regulation 38		
1	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Not Applicable.
1A	Whether the resolution plan includes a statement as to how it has dealt with the interest of all stakeholders?	Yes. Section X (xxi)(2)
1B	i) Whether the Resolution Applicant or any of its related	No. Section X (xxi)(3)

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	<p>parties has filed to implement or contribute to the failure of implementation of any resolution plan approved under the Code?</p> <p>ii) If so, whether Resolution Applicant has submitted the statement giving details of such non-implementation?</p>	
2(a)	Whether the Resolution Plan provides the term of the plan and its implementation schedule?	Yes. Section VIII
2(b)	Whether the Resolution Plan provides for the management and control of the business of the corporate debtor during its term?	Yes.
2(c)	Whether the Resolution Plan provides adequate means for supervising its implementation?	Yes.
3	Whether the Resolution Plan demonstrates that -	
(a)	It addresses the cause of default?	Yes.
(b)	It is feasible and viable?	Yes.
(c)	It has provisions for its effective implementation?	Yes. The Resolution Plan covers all the provisions as required for the effective implementation of the Plan.
(d)	It has provisions for approvals required and the time for the same?	Yes.
(e)	The Resolution Applicant has the capacity to implement the Resolution Plan?	Yes.
Regulation 39		
2	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No.
4	Provide details of performance security received as referred to in sub-regulation (4A) of Regulation 36.	Rs. 5,00,000 paid as performance guarantee

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13. The CIRP has been conducted as per the timeline indicated as under:

Section/ Regulation No.	Description of Activity	Latest Timeline under Regulation 40A	Date as per timeline	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	16.06.2023	16.06.2023 (order received on 22.06.2023)
Regulation 6(1)	Publication of Public Announcement	T+3	19.06.2023	24.06.2023
Section 15(1)(c)/ Regulation 12(1)	Submission of Claims	T+14	30.06.2023	05.07.2023
Regulation 13(1)	Verification of Claims	T+21	07.07.2023	11.07.2023
Section 26(6A)/ Regulation 15A	Application for Appointment of Authorized Representative, if necessary	T+23	09.07.2023	-
Regulation 17(1)	Filing of Report certifying Constitution of CoC	T+23	09.07.2023	14.07.2023
Section 22(1) and Regulation 17(2)	First Meeting of CoC	T+30	16.07.2023	22.07.2023
Regulation 35A	Determination of fraudulent and other transactions	T+115	09.10.2023	--
Regulation 27	Appointment of two registered Valuers	T+47	02.08.2023	28.07.2023
Regulation 36(1)	Submission of Information Memorandum to CoC	T+54	09.08.2023	10.08.2023

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Regulation 36A	Invitation of EoI	T+75	30.08.2023	12.08.2023
	Publication of Form G	T+75	30.08.2023	12.08.2023
	Provisional list of Resolution Applicants	T+100	24.09.2023	30.08.2023
	Final list of Resolution Applicants	T+115	09.10.2023	05.09.2023
Regulation 36B	Issue of RFRP including Evaluation Matrix, etc	T+105	29.09.2023	05.09.2023
Section 30(6)/ Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	28.11.2023	20.10.2023
Section 31(1)	Approval of Resolution Plan	T=180	13.12.2023	

14. Clause xvi of Section VIII of the Resolution Plan provides for Monitoring Committee for the implementation of the Resolution Plan. Clause xvi is reproduced below:

“xvi. RESOLUTION PLAN MONITORING SYSTEM

For proper and adequate monitoring of the implementation of the approved Resolution Plan, the new board of directors of the Corporate Debtor shall take over immediate charge of the affairs of the Corporate Debtor from the resolution professional and form a Management/Supervision Committee (MC/SC), which shall immediately undertake the monitoring of implementation of the resolution plan in its entirety, in compliance with the provisions of Regulation 38(2)(c) of CIRP Regulations, 2016.

The Management/Supervision Committee would comprise of the Resolution Professional or his representative, Representatives of the CoC and representative of the Resolution Applicant.

The RP, who shall function as the member of the MC, shall be remunerated in the manner as that will be agreed between the RP and RA at a later stage.

It is hereby clarified that Management/Supervision Committee shall dissolve once the implementation period expires or RA makes complete payment to the Creditors as per the Resolution Plan, whichever is earlier.”

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15. On perusal of Form-H, it is seen that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code. The Resolution Plan also meets the requirements of Regulations 37, 38, 38(1A) and 39 (4) of the IBBI Regulations, 2016. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. It is also observed that the Plan amount is more than the Liquidation amount as well as the Fair Value.

16. In **K Sashidhar v. Indian Overseas Bank & Others (2019) 12 SCC 150**, the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

17. In **Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta & Ors (2020) 8 SCC 531**, the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom has approved.

18. In view of the law laid down by Hon'ble Supreme Court, the commercial wisdom of the COC is to be given paramount importance for approval / rejection of the resolution plan. As the Resolution Plan meets the requirements of the I & B Code and the IBBI Regulations, the same needs to be approved. Accordingly, the **Resolution Plan is approved** with the following directions:

- i) The Resolution Plan submitted by M/s Rishab Enterprises is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii) No person will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which is not a part of the Resolution Plan.
- iii) The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall review operational performance of the Corporate Debtor.
- iv) The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to

finalise further line of action required for starting of the operations.

- v) As per the Resolution Plan, extinguishment of existing shares of the Corporate Debtor, allotment of shares to the Resolution Applicant and to New Investor and reduction of share capital do not require the consent of shareholders as required under the Companies Act or any other authority for implementation of the Resolution Plan.
- vi) **Reliefs and Concessions:**
- a) Approval of the Resolution Plan shall not be a ground for termination of any existing consents, approvals, licenses, concessions, authorizations, permits or the like that has been granted to the Corporate debtor or for which the Corporate Debtor has made an application for renewal, grant permissions, sanctions, consents, approvals, allowances, exemptions etc.
 - b) Any Exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted but the Resolution Applicant is at liberty to approach Competent Authorities for the exemptions if permitted under the law.
 - c) For past non-compliances of the Corporate debtor under applicable laws the Resolution Applicant shall not be liable for any liabilities and offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016.
 - d) It is hereby clarified that in terms of the Judgement of Hon'ble Supreme Court in the matter of **Ghanshyam**

Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim which is not a part of the Resolution Plan.

- e) With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.

- vii) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

- viii) The moratorium under Section 14 of the Code shall cease to have effect from this date.

- ix) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.

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- x) The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

19. Accordingly, the Resolution Plan in IA/5643/2023 is hereby **allowed** and **approved**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Uma, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)