

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
PRAYAGRAJ**

IA (IB) No.360/ALD/2021

in

CP (IB) No.32/ALD/2019

In the matter of:

*Application under sections 30(6) r/w 31(1) of the Insolvency & Bankruptcy Code,
2016 for approval of Resolution Plan*

In the matter of:

Baff Engineers Private Limited

... Operational Creditor

Versus

Farmech Foods Limited

... Corporate Debtor

And

In the matter of:

Hemi Gupta

... Applicant

Order reserved on: 28.02.2022

Order pronounced on: -30.03.2022

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Virendra Kumar Gupta

: Member (Technical)

Appearances (through video conference)

For the Applicant

1. Mr. Sumit Shukla, Advocate
2. Mr. Sanjeev Panda,
Advocate
3. Ms. Hemi Gupta,
Resolution Professional

ORDER

Per: Virendra Kumar Gupta, Member (Technical)

Preliminary

1. This Application – **IA No. 360 /ALD/ 2021** – was moved on behalf of Mrs. Hemi Gupta, Resolution Professional (“RP”) of Farmech Foods Limited (CIN:U01403UP2012PLC051294), by Mr Sumit Shukla, learned counsel appearing for the RP, invoking the provisions of section 30(6) of the Insolvency

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& 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 (“*CIRP Regulations*”) for approval of the Resolution Plan in respect of Farmech Foods Limited (“*the Corporate Debtor*”).

2. The underlying Company Petition in C.P. NO. 32/ALD/2019 was filed by Baff Engineers Private Limited against the Corporate Debtor herein under section 9 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 04.02.2020.
3. The 180-day period of CIRP of the Corporate Debtor had expired on 03.08.2020. After extension of 90 days as well as exclusion of 189 days granted by this Adjudicating Authority *vide* orders dated 28.10.2020, 07.12.2020, 02.02.2021, the last date of 270 days of CIRP of the corporate debtor was 08.05.2021. Further an exclusion of 60 days was granted by this Adjudicating Authority *vide* order dated 26.10.2021. Thereafter, the last date of the CIRP of the corporate debtor post approval of exclusion of 60 days by this Adjudicating Authority *vide* order dated 26.10.2021 was further extended till the disposal of the application of the Resolution Plan.
4. Mrs. Hemi Gupta (IBBI/IPA002/IP-N00147/2017-18/10383) was appointed as the Interim Resolution Professional (“*IRP*”) *vide* order dated 04.02.2020 who was later confirmed as Resolution Professional *vide* order dated 04.02.2020.

IBC Compliances

5. The IRP made public announcement on 07.02.2020 in Hindustan Times (English) and *Hindustan* (Hindi) (Moradabad, Rampur and Rudrapur Editions) newspapers regarding initiation of Corporate Insolvency Resolution Process (“*CIRP*”) and called for proof of claims from the financial and operational creditors, workers and employees of the Company in the specified form still 18.02.2020. In response, claims were received from one financial creditors and one operational creditor.
6. The erstwhile IRP filed the Committee of Creditors (“*CoC*”) constitution report

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on 26.02.2020. Subsequently, the same was revised by the RP and filed with the Adjudicating Authority on 05.03.2020.

7. Details of financials creditors with Voting share-

| Sl. No. | Name of Creditor | Claim submitted | Claim admitted | Voting % |
|---------|--|------------------------|------------------------|-------------|
| 1. | Punjab National Bank (Formerly United Bank of India) | 21,07,70,218.64 | 21,07,70,218.64 | 100% |
| | Total | 21,07,70,218.64 | 21,07,70,218.64 | 100% |

8. The RP submits that a total of Eighteen CoC meetings have been held during CIRP period as follows:

| Particulars | Date of CoC meeting |
|------------------------------|---------------------|
| 1 st CoC Meeting | 27-02-2020 |
| 2 nd CoC Meeting | 30-06-2020 |
| 3 rd CoC Meeting | 19-08-2020 |
| 4 th CoC Meeting | 10-09-2020 |
| 5 th CoC Meeting | 22-09-2020 |
| 6 th CoC Meeting | 16-10-2020 |
| 7 th CoC Meeting | 02-11-2020 |
| 8 th CoC Meeting | 15-12-2020 |
| 9 th CoC Meeting | 28-12-2020 |
| 10 th CoC Meeting | 04-02-2021 |
| 11 th CoC Meeting | 15-02-2021 |
| 12 th CoC Meeting | 17-03-2021 |
| 13 th CoC Meeting | 16-04-2021 |
| 14 th CoC Meeting | 03-05-2021 |
| 15 th CoC Meeting | 23-06-2021 |

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| | |
|------------------------------|------------|
| 16 th CoC Meeting | 11-08-2021 |
| 17 th CoC Meeting | 05-10-2021 |
| 18 th CoC Meeting | 27-10-2021 |

Evaluation and voting

9. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with Regulation 36A(1) of the CIRP Regulations, invitations in Form 'G' for Expressions of Interest ("EoI") were published on 19-07-2020 in Hindustan Times, English and in Hindustan in Hindi Moradabad, Rampur, and Rudrapur editions which could not be published within 75 days of commencement of CIRP as per CIRP Regulations due to prevailing COVID - 19 situation for which the exclusion was sought and was granted. The last date for submission of EoI was 03.08.2020.
10. The Applicant submits that in response to the invitation for EoI, upto the last date, i.e., 03.08.2020, two EOIs were received. The Applicant issued the final list of prospective resolution applicants on 03.09.2020 wherein two prospective resolution applicants, i.e., M/s. Chemsynth Labs jointly with Mr. Pankaj Kapoor and M/s. Vishveshwari Dairy LLP were eligible to submit Resolution Plan. The last date for submission of Resolution Plan as per EOI was 17.09.2020, which was later extended till 10.10.2020 on the request of one of the Prospective Resolution Applicants and as approved by the members of the Committee of Creditors at their 5th CoC Meeting held on 22-09-2020.
11. The CoC in its 9th CoC meeting held on 28th December, 2020 examined the resolution plans submitted by the Resolution Applicants (RAs) namely; M/s. Chemsynth Labs with Mr. Pankaj Kapoor and M/s. Vishveshwari Dairy LLP (VDL) but the plans submitted were not found to be viable and further the RAs have not cured the defects in their respective plans, the CoC rejected the said plans. The CoC in its 9th CoC Meeting decided that in order to provide an opportunity to the corporate debtor for its revival, rejected to liquidate the CD

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and proposed for publication of another Form G and accordingly COC asked the RP to explore all the possibility for a successful resolution so as to keep the CD as a going concern which is in the interest of all the stakeholders and accordingly, the COC resolved to republish the FORM G (Invitation for Expression of Interest). The FORM –G was accordingly republished on 01.01.2021 in Hindustan Times, English and in Hindustan in Hindi Moradabad, Rampur, and Rudrapur editions and the last date for receiving EoI was 16th January 2021 & the last date for submission of resolution plan was 02.03.2021.

12. That pursuant to the EOI published, the applicant/RP received two EOI's till the last date of submission of EOI i.e. M/s. Chemsynth Labs with Mr. Pankaj Kapoor (PRA) and ASC Consulting Private Limited.
13. Thereafter vide Email dated 19-02-2021 ASC Consulting Private Limited withdrawn its interest in submitting the Resolution Plan and requesting for refund of EMD, the EMD of Rs. 5,00,000/- was returned to M/s. ASC Consulting Private Limited. And The COC in its 14th and 15th COC meeting held on 03.05.2021 and 23.06.2021 respectively considered the Resolution Plan submitted by M/s Chemsynth Labs with Mr. Pankaj Kapoor and rejected the same and approved for the liquidation of the corporate debtor as per the provisions of the Section 33 of the Insolvency and Bankruptcy Code, 2016 and authorised the RP to file the appropriate application for the liquidation of the corporate debtor.
14. Thereafter the Resolution Professional convened the 16thCoC meeting on 11.08.2021 informed to the COC regarding the status of the present CIRP as well as the situations emerged post completion of the voting process on 6th July 2021 by the sole COC member wherein the Plan submitted by the RA M/s Chemsynth Labs with Mr. Pankaj Kapoor was rejected by the COC member basis which the RP had prepared the application u/s 33 on 16th July 2021 however the same was not filed on account of new developments that the fresh resolution plan was received from PRA M/s Chemsynth Labs with Mr. Pankaj Kapoor on 21st July, 2021 and the RP prepared the report as per the provisions u/s 30(2) of the Code. The COC in its 16th COC meeting in order to keep the

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Corporate debtor as going concern in view of the fresh resolution plan approved has recalled the decision of liquidation taken by the COC in its 15th COC meeting. The COC in its 16th COC meeting approved the resolution plan dated 20th July, 2021 including revisions/amendments thereof as made by resolution applicants taking into consideration that there is no requirement of the evaluation matrix as only one resolution plan was received by the RP against the FORM G published on 1st January, 2021.

15. The Committee deliberated on the resolution plan in terms of section 30(4) of the Code and after discussion agreed to put the said resolution plan for voting. The e-voting system was open during the period 16.08.2021 to 20.08.2021. The Resolution Plan of M/s Chemsynth Labs with Mr. Pankaj Kapoor was approved with 100% voting share vide email dated 20-09-2021.
16. The application for approval of the resolution plan by this Adjudicating Authority was filed on 23.11.2021.

CIRP and compliances

17. 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:

Submission of Resolution Plan in terms of sub-section (2) of Section 30 of the code (as amended vide Amendment dated 16 August 2019):

| Clause of s.30(2) | Requirement | Compliances and relevant Page number(s) of the IA No 360/Ald/2021 for the approval of the resolution plan |
|--------------------------|--|--|
| (a) | Plan must provide for payment of CIRP cost in priority to repayment of other debts of the CD in the manner specified by the Board. | schedule 4 clause 1, 1.2 Page No. 131 and 148, 149 of the application |
| (b) | 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 | |
| | (i) the amount payable to them in the event of liquidation u/s 53; or | Schedule 4 clause 1.5 Page No. 133 read with Page No. 148, 149 of the application |

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| <i>Clause of s.30(2)</i> | <i>Requirement</i> | Compliances and relevant Page number(s) of the IA No 360/Ald/2021 for the approval of the resolution plan |
|--------------------------|---|---|
| | (ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be not 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, whichever is higher and | Schedule 4 clause 1.5 Page No. 133 read with Page No. 148, 149 of the application. |
| | (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. | Schedule 4 clause 1.4.1(b) Page No. 132 of the application. |
| (c) | Management of the affairs of the Corporate Debtor after approval of the Resolution Plan. | Schedule 3 Page No. 122 of the application |
| (d) | Implementation and Supervision. | Schedule 3 clause I sub clauses 8, 9 and 10 (3) Page No. 122-126, 148 of the application. |
| (e) | Plan does not contravene any of the provisions of the law for the time being in force. | Schedule 3 clause f Page No. 122 of the application |

Mandatory contents of Resolution Plan in terms of regulation 37 of CIRP

Regulations:

| | |
|---|--|
| A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization 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 by the Resolution Applicant |
| (b) sale of all or part of the assets whether subject to any security interest or not; | Not proposed by the Resolution Applicant |
| [(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;] | Not proposed by the Resolution Applicant |
| (c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons; [(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;] | Not proposed by the Resolution Applicant |

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| (d) satisfaction or modification of any security interest; | Not proposed by the Resolution Applicant |
| (e) curing or waiving of any breach of the terms of any debt due from the corporate debtor; | Not proposed by the Resolution Applicant |
| (f) reduction in the amount payable to the creditors; | Not proposed by the Resolution Applicant |
| (g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor; | Not proposed by the Resolution Applicant |
| (h) amendment of the constitutional documents of the corporate debtor; | Clause No. 6 (4) at Pg. No. 124 of the application. |
| (i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; | Not proposed by the Resolution Applicant |
| (j) change in portfolio of goods or services produced or rendered by the corporate debtor; | Not proposed by the Resolution Applicant |
| (k) change in technology used by the corporate debtor; and | Not proposed by the Resolution Applicant |
| (l) obtaining necessary approvals from the Central and State Governments and other authorities.] | Schedule 3, Para 10.5 Pg 128 of the application |

Mandatory contents of Resolution Plan in terms of regulation 38 of CIRP Regulations:

| | |
|---|--|
| Requirements under Regulation 38 & 39 of the CIRP Regulations | Compliances and relevant Page number(s) of the IA No 360/Ald/2021 for the approval of the Resolution Plan. |
| (1) The amount payable under a resolution plan- (a) to the operational creditors shall be paid in priority over financial creditors. | Schedule 4 Clause 1.5 Page No. 133of the Resolution Plan. |
| (b) to the financial creditors, who have a right to vote under sub sec (2) of Section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan. [(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]. | Page 132 of the application. Schedule 4 clause 1.9 Page No. 131-137 of the application. |

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| [(1B)] A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.] | Page 117 of the application |
| (2) A resolution plan shall provide: | |
| (a) The term of the plan and its implementation schedule; | Schedule 3 clause I (9), Page No. 126, 148 of the application. |
| (b) The management and control of the business of the corporate debtor during its term; and | Schedule 3 Page No. 127 of the application. |
| (c) adequate means for supervising its implementation. | Schedule 3 clause I (8) Page No. 125-126 of the application. |
| (3) A resolution plan shall demonstrate that— | |
| (a) <i>it addresses the cause of default;</i> | Schedule 5 Page No. 138-139 of the application. |
| (b) <i>it is feasible and viable;</i> | schedule 5, Page no. 146 of the application. |
| (c) <i>it has provisions for its effective implementation;</i> | Schedule 3 Page no. Page No. 126, 148 respectively of the application. |
| (c) <i>it has provisions for approvals required and the timeline for them same; and</i> | Schedule 3 at Page No. 123-125 of the application. |
| (d) <i>The Resolution Applicant has the capability to implement the resolution plan.</i> | Schedule 2 and 5 at Page No. 120-121, 138-139 of the application. |

Regulation 39

(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with

| | |
|---|---|
| (a) an affidavit stating that it is eligible under section 29A to submit resolution plans; | Yes, Page No. 156-159 of the application. |
| (c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code. | Yes, Page No. 117 of the application. |
| (1A) The resolution professional may, if envisaged in the | Only one plan was negotiated and |

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| request for resolution plan- (a) allow modification of the resolution plan received under sub-regulation (1), but not more than once; or (b) use a challenge mechanism to enable resolution applicants to improve their plans. (1B) The committee shall not consider any resolution plan- (a) received after the time as specified by the committee under regulation 36B; or (b) received from a person who does not appear in the final list of prospective resolution applicants; or (c) does not comply with the provisions of sub-section (2) of section 30 and sub regulation (1).]. | the Resolution Plan was considered and approved by the COC. The Regulation 39(1A) and (1B) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was notified effective from 30 th September, 2021 after the plan was considered and voted in favor by the COC. |
| (2) [The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him: - | Complied with and application vide IA No 61/2021 for such transaction is pending for adjudicating |
| Affidavit u/s 29 A IBC | Page No.156-158. of the application. On page 159 Acknowledgement dated 10/1/2013 issued by the DIC, Rampur categorizing as Medium Enterprise |
| Confidentiality undertaking | Page 57 to 60 of the application. |

18. 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 10** at **pages 210 to220** of the Application.
19. The Applicant has filed a Compliance Certificate in prescribed form, *i.e.*, Form 'H' incompliance 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 12** at **pages 230 to246** of the Application.
20. The RP issued the Letter of Intent to the successful Resolution Applicant on 21.09.2021 and as required under Regulation 39(4), payment through RTGS of INR 95,00,000 (Rupees Ninety Five Lacs Only) was made to the RP together with the EMD of Rs. 5,00,000 (Rupees Five Lacs) shall be extended as the Performance Guarantee in compliance to the RFRP issued and as decided by CoC members in this

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matter, which has been annexed as **Annexure 8** at pages 195 to 196 of the Application.

Details of Resolution Plan/Payment Schedule

21. 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.* M/s. Chemsynth Labs jointly with Mr. Pankaj Kapoor, under the said Resolution Plan is tabulated as under:

(Amount in Lakhs)

| Sl. No | Particulars | Amount Claimed | Amount Admitted | Amount provided under the Plan | Amount provided to the amount claimed (%) |
|--------|--|----------------|-----------------|--------------------------------|---|
| 1 | CIRP Cost | NIL | NIL | Actual | |
| 2. | Secured Financial Creditors | 2107.70 | 2107.70 | 425.00 | 20.16% |
| 3. | Unsecured Financial Creditors | 87.55 | 87.55 | 11.00 | 12.56% |
| 4. | Govt Dues | 9.58 | 9.58 | 0.00 | |
| | Total | 2480.17 | 2480.17 | 472.00 | |
| 5. | a)Operational Creditors (other than Workmen and Employees) | 275.34 | 275.34 | 36.00 | 12.63% |

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| Sl. No | Particulars | Amount Claimed | Amount Admitted | Amount provided under the Plan | Amount provided to the amount claimed (%) |
|--------|--|----------------|-----------------|--------------------------------|---|
| | b)Operational Creditors (Workmen and Employees) | - | - | - | |
| | c) Other Operational Creditor | - | - | - | |
| | Total (Operational Creditors) | 275.34 | 275.34 | 36.00 | 12.63% |
| 6 | Working Capital and Capex | | - | 450.00 | |
| | Total Resolution Fund | | | 922.00 | |

22. The Resolution Plan defines “**Approval Date**” as the date of approval of this Resolution Plan by the NCLT, or any other applicable Adjudicating Authority.

Implementation schedule

| Action | Timeline |
|---|---|
| Approval of the Resolution Plan by the NCLT | X |
| Resignation of existing directors, appointment of new directors in the board of corporate debtor | X+10 days |
| Issuance of performance Security of Rs 1.00 Cr after adjusting EMD Bid Amount of Rs 5.00 Lac | On approval of the plan and issuance of LOI |
| Payment of Rs.1.00Crores within30 days of NCLT approval include:- <ul style="list-style-type: none"> • Payment of unpaid CIRP Fee if any • Payment of Rs 0.90 Crore to Secured Financial Creditor after adjusting CIRP cost | |

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| <ul style="list-style-type: none">• <i>Payment of Rs 0.08 Crores (INR) to Operational Creditor(in proportion of their claims as admitted by Resolution Professional)</i>• <i>Payment to other Financial Creditors Rs 0.02 Crores(in proportion of their claims)</i>• <i>Payment of Rs. Nil Crores to Statutory Dues</i> |
| <p><i>Payment of Rs.1.36Crores within90 days of NCLT approval include:-</i></p> <ul style="list-style-type: none">• <i>Payment of Rs1.225 Crores to Secured Financial Creditor after adjusting CIRP cost</i>• <i>Payment of Rs 0.10Crores (INR) to Operational Creditor(in proportion of their claims as admitted by Resolution Professional)</i>• <i>Payment to other Financial Creditors Rs 0.035Crores(in proportion of their claims)</i>• <i>Payment of Rs. Nil Crores to Statutory Dues</i> |
| <p><i>Payment of Rs.2.36 Crores within 180 days include:-</i></p> <ul style="list-style-type: none">• <i>Payment of Rs2.125Croreto Secured Financial Creditor after adjusting CIRP cost and Performance Security</i>• <i>Payment of Rs 0.18 Crores to Operational Creditor(in proportion of their claims as admitted by Resolution Professional)</i>• <i>Payment to other Financial Creditors Rs 0.055 Crores(in proportion of their claims)</i> |

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

23. The Resolution Plan also provides for –
- a. Management of Company after resolution in at pages146-147oftheResolution Plan;
 - b. Term of the resolution plan in Schedule 3 at pages126, 148 of the Resolution Plan; and
 - c. Implementation and Supervision of the resolution plan in Schedule 3 at pages 122-126 & 148 of the Resolution Plan.

Waivers, Reliefs and Exemptions

24. The Resolution Applicant claimed various reliefs, waivers and concessions has been claimed in the resolution plan. However, in our view, we cannot grant all such reliefs and concessions for the effective implementation of the Resolution Plan and as per the scheme of IBC read with Regulations made there under and as per the judicially settled position, we grant the reliefs, waiver and claims

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made by the Resolution Applicant in the following manner and only to this extent: -

- i. After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders shall stand permanently extinguished after the approval of the resolution plan. We further hold that other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished.
- ii. In view of the judgment of *Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd*,¹ where the Hon'ble Supreme Court held in para 95(i) that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. Therefore, all claims except provided in the plan shall stand permanently extinguished.
- iii. On the effective date and with effect from the appointed date, all encumbrances on the assets of the Corporate Debtor prior to the plan stand permanently extinguished on completion of procedural formalities as provided in Companies Act, 2013;
- iv. For reliefs and concessions sought from the Government/Statutory Authorities, we direct the Resolution Applicant to approach the concerned Authorities who shall decide the issues.
- v. As regard to the relief prayed under various provisions of Income Tax Act, 1961, the corporate debtor/resolution applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the Resolution Applicant in accordance with the provisions of Income Tax Act, 1961.
- vi. We further grant exemption from the provision as regard to Section 281 of the Income Tax Act, 1961, so that the transfer of assets, if any, which is to be done, in terms of provisions of the Resolution plan may be effective.
- vii. The Resolution Applicant shall entitled to review, revise or terminate any appointments/agreements entered into by or on behalf of the Corporate Debtor in accordance with the terms and conditions of such agreements/MoUs/ contracts;
- viii. The RP shall complete the accounting entries to give effect to the resolution plan in the Books of Account as per the applicable Accounting Standards and provisions of the Companies Act, 2013.
- ix. The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the Resolution Applicant for proper running operations of the business of the corporate debtor.
- x. The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliance shall be done to give effect to such reconstitution;

¹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

- x. The Resolution Applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;
- xii. All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the resolution plan as regard to the restructuring of capital shall be binding on them. This order shall be treated as evidence of compliances of all formalities as may be required in this regard under the provisions of the Companies Act, 2013.
- xiii. For changing of name and address of the Corporate Debtor the consent of the member/shareholders is deemed to have been obtained and the resolution applicant shall approach the concerned authorities under provisions of the Companies Act, 2013 for complying with the procedural aspects.
- xiv. On the effective date and with effect from the appointed date, the entire existing share capital of the Corporate Debtor shall stand extinguished without any payment (including any cancelled value of the said equity shares or preference shares) to shareholders of the Corporate Debtor holding such existing share capital. The Resolution Applicant would be entitled to issue new equity share capital in accordance with the provisions of Companies Act, 2013 read with the rules and regulations made thereunder.

Findings:

25. On hearing the submissions made by the Ld. Senior Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved with 100% voting share. As per the CoC, the Plan meets the requirement of being viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.
26. On perusal of the documents on record, we are 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.
27. As far as the question of granting time to comply with the statutory obligations/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.

—Sd—

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.

Orders

29. Subject to the observations made in this Order, the Resolution Plan in question is hereby **approved. The Resolution Plan shall form part of this Order.**
30. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect. The Electricity Service Provider is hereby directed to restore the electricity connection to the premises of the Corporate Debtor immediately upon receipt of the amount earmarked to it under the Resolution Plan, so that the operations of the Corporate Debtor can be restarted without any delay. The Corporate Debtor under the new management shall pay the applicable security deposit as for a new connection
31. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
32. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
33. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
34. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.
35. A copy of this Order shall be filed with the Registrar of Companies, Kanpur.
36. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approves Resolution Plan.
37. The Resolution Professional is further directed to hand overall records, premises/ factories documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalise the further line of action required for starting of operations of the Corporate Debtor.

—Sd—

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

In re Resolution Plan of Farmec Foods Limited
I.A. No. 360/2021 in C.P. (IB) No.32/ALD/2019

38. IA No. 360/ALD/2021 and the main Company Petition, *i.e.*, CP (IB) No.32/ALD/2019 shall stand disposed of accordingly.
39. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
40. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
41. File be consigned to the record.

—Sd—

Virendra Kumar Gupta
Member(Technical)

Rajasekhar
VK

Digitally signed by
Rajasekhar V K
Date: 2022.03.30
16:54:07 +05'30'

Rajasekhar V.K.
Member(Judicial)