



**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.47

IA/18(AHM)2022 in CP(IB) 247 of 2020

**Proceedings under Section 30(6) r.w 31(1) r.w reg 39(4) IBBI**

**IN THE MATTER OF:**

Sunil Kumar Kabra RP of Surya Exim Ltd .....Applicant

V/s

J P Saboo Suspended Board of Director of Surya Exim Ltd .....Respondent

**Order delivered on ..01/07/2022**

**Coram:**

Madan B. Gosavi, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in open court vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

-SD-

**MADAN B GOSAVI  
MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
COURT-1**

**IA No. 18 of 2022**  
**in**  
**CP (IB) No. 247 of 2020**

**IA No. 18 of 2022**

[An application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016]

**Mr. Sunil Kumar Kabra**

Resolution Professional of

M/s. Surya Exim Limited (In CIRP)

Having address at:

301, 3<sup>rd</sup> Floor, Reegus Business Centre,

New Citylight Road, Above Mercedes Benz Showroom,

Bharathana-Vesu, Surat-395007.

**....Applicant**

**Versus**

**1. Suspended Board of Directors of Surya Exim Limited**

Through

**(a) Shri JP saboo**

Address: 3/A, Nidhiwan Apartment,

Behind Gokul, Row House, Umra, Surat-395007

**(b) Shri Satish Kumar Saboo**

Address : C-401, reshma Residency, PUna Gam NeherMagob,

Bombay Market, Surat-395010

**(C) Shri Ravindra Pandey**

Address : B-401, Malabar Height,

Gaurav Path Road, Bhata,

Surat-395007



**2. Members of Committee of Creditors of Surya Exim Limited**

**A. State Bank of India**

Having its Stressed Assets Management Branch  
At 2nd Floor "Paramsiddhi Complex",  
Opp. V.S. Hospital, Ellisbridge,  
Ahmedabad-380006

**B. Canara Bank**

Having its circle office at  
Neelkanth Avenue-1, III & IV,  
Ashram Road, Near Gujarat Vidyapeeth  
Income Tax Circle, Ahmedabad-380014.

**C. Bank of Baroda**

Having its Branch at  
Stressed Assets Management Branch,  
1<sup>st</sup> Floor, Kamdhenu Complex, Panjrapole Cross  
Road, Ambawadi, Ahmedabad-380015.

**D. Union Bank of India**

Having its Stressed Assets Management Branch  
At Ring Road Branch, Besides Rushabh Petrol Pump, Tulsi  
Market, Surat-395002.

**E. IDBI Bank Limited**

Having its Branch at  
IDBI Complex, Near Lal Bungalow,  
Off. C.G. Road, Ahmedabad-380006.

**F. HDFC Bank**

Having its Branch at  
Peninsula Business Park, "B" wing, 4<sup>th</sup> Floor,  
Dawn Mills Compound, Ganpat Rao Kadam Marg, Lower Parel,  
Mumbai-400013.

**G. Tata Capital Financial Services Limited**

Having its office at  
11<sup>th</sup> floor, Tower-A, Peninsula Business Park,  
Lower Parel, Mumbai-400013

**H. Nirmal Hospital Private Limited**

Having its office at  
2/1423-B-6, Nr. Kadiwala School,  
2001, Annapurna Textile Market,



Ring Road, Surat

**I. Rishiroop Management Private Limited**

Having its office at  
2001, Annapurna Textile Market,  
Ring Road, Surat

**J. Countwell Management Services Private Limited**

Having its office at  
Office NO. 101, Shree Shyam Chambers,  
Opp. Sub Jail, above ICICI bank, Sagarampura,  
Surat-395002

**K. Kotak Mahindra Prime Limited**

Having its Branch at  
503-205, 5<sup>th</sup> Floor, Sakar-II, Nr. Ellisbridge,  
Opp. Town Hall, Ahmedabad-380006

**L. Kira Fashion LLP**

Having its office at  
Shop no. 46, 451 Textile Market, Ring Road, Surat

**3. Agarwal Coal Corporation Private Limited**

Having its office at  
Agarwal House, 2<sup>nd</sup> Floor 5-Yeshwant Colony,  
Indore-452003 MP IN

**4. Income Tax Office**

Having its address at  
Circle 1, Circle TDS 108,  
Aaykar Bhavan, Majura Gate,  
Surat-395001, Gujarat.

**....Respondents**

**CP (IB) No. 247 of 2020**

[An application under section 7 of the Insolvency and Bankruptcy Code, 2016]

**In the matter of:**

**State Bank of India,**

(Mr. Nitin K. Chauhan)

Having corporate office at:

State Bank Bhavan,

Madame Cama Road, Nariman Point,

Mumbai -400021



Also at

**State Bank of India,**  
Stressed Assets Management Branch,  
2<sup>nd</sup> floor, Paramsiddhi Complex,  
Opposite V.S. Hospital, Ellisbridge,  
Ashram Road, Ahmedabad- 380006

**...Applicant / Financial Creditor**

**Versus**

**M/s Surya Exim Ltd,**  
(CIN: U51100GJ1989PLC012428)  
Registered office at:  
172/B, Moje Aarak,  
Taluka Jalalpore, Navsari

**... Respondent/Corporate Debtor**

**Order reserved on 09.05.2022**  
**Order pronounced on 1.07.2022**

**Coram: MADAN B. GOSAVI, MEMBER (J)**  
**KAUSHALENDRA KUMAR SINGH, MEMBER (T)**

**Appearance:**

For the Applicant: Learned Senior Counsel Mr. Navin Pahwa

For Income Tax Department: Learned Counsel Ms. Maithili Mehta

**ORDER**

1. This application under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) is filed by Mr. Sunil Kumar Kabra - Resolution Professional (hereinafter referred to as “**RP**”) of the Corporate Debtor - M/s.



Surya Exim Limited for approval of the Resolution Plan submitted by M/s Agarwal Coal Corporation Private Limited.

2. On 03.02.2021, the Corporate Debtor was admitted in the Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”). Mr. Sunil Kumar Kabra was appointed as the Interim Resolution Professional (hereinafter referred to as “**IRP**”). On 05.02.2021 the IRP made a public announcement of the CIRP of the Corporate Debtor and called upon its creditors to submit claims with requisite proofs in “Business Standard” English edition and “Sandesh” Gujarati edition. He collated the claims. On 26.02.2021 the IRP formed the Committee of Creditors (hereinafter referred to as “**CoC**”) consisting of the following Financial Creditors having voting percentage right stated below:

- i. State Bank of India having 37.38% voting share
- ii. Canara Bank having 18.47% voting share
- iii. Bank of Baroda (includes Dena Bank) having 18.34% voting share
- iv. Union Bank of India (includes Andhra Bank) having 10.13% voting share
- v. IDBI Bank Limited having 7.29% voting share
- vi. HDFC Bank Limited having 6.29% voting share
- vii. Tata Capital Financial Services Limited having 1.62% voting share
- viii. Nirmal Hospital Private Limited having 0.22% voting share
- ix. Rishiroop Management Private Limited having 0.22% voting share
- x. Countwell Management Services Private Limited having 0.05% voting share



3. On 21.04.2021, the RP published Form-G in widely circulated English as well as in Vernacular newspaper calling upon the prospective Resolution Applicants to submit Expression of Interests/Resolution Plans on the basis of the information memorandum of the assets and liabilities of the Corporate Debtor. On 16.08.2021, the CIRP period of 90 days was extended by this Adjudicating Authority as per the request of the CoC (in IA 539 of 2021).
4. In the fifth CoC meeting held on 27.08.2021, 3 (three) plans were submitted by prospective Resolution Applicants namely (i) M/s Shivam Blackrock (ii) M/s Agarwal Coal Corporation Private Limited (iii) Mr. J.P. Saboo and Mrs. Archana Saboo. Further, 3 (three) prospective Resolution Applicants namely (i) Gensol Engineering Limited (ii) Krishkan Investment Private Limited (iii) Zaveri & Co. Private Limited requested to extend the time for submission of Resolution Plan and the same was extended till 11.09.2021 by members of CoC.
5. In the sixth CoC meeting held on 13.09.2021, the members of CoC received Resolution Plans from 4 (four) prospective Resolution Applicants namely (i) M/s Agarwal Coal Corporation Private Limited (ii) Krishkan Investment Private Limited (iii) M/s Shivam Blackrock (iv) Mr. J.P. Saboo and Mrs. Archana Saboo.
6. In the eighth CoC meeting held on 23.09.202, members of CoC decided that the Resolution Plan submitted by Mr. J.P. Saboo and Mrs. Archana Saboo was non-compliant and non-responsive as the conditions in request for Resolution Plan were not complied. In this meeting, other three prospective Resolution Applicants were requested to improve their offer.



7. In the tenth CoC meeting held on 18.10.2021, members of CoC resolved to file an application before this Adjudicating Authority for exclusion of 90 days period due to pandemic of Covid-19. On 20.10.2021, the exclusion of only 60 days was granted by this Adjudicating Authority in (IA 699 of 2021).
8. In the fourteenth CoC meeting, completed on 14.12.2021, members of CoC approved the Resolution Plan of M/s Agarwal Coal Corporation Private Limited with 93.27% voting rights. Accordingly, the RP had filed an application, bearing no. IA No. 18 of 2022 for approval of that Resolution Plan.
9. The Resolution Applicant- M/s Agarwal Coal Corporation Private Limited has proposed to pay a sum of Rs. 43,32,90,000/- against the total admitted claim of Rs. 378,17,27,890/-. The total haircut under the proposed plan is 88.66%. The details are as follows:

Sl.	Description	Amount (in Lakhs)
1	CIRP Cost	47.25
2	Proposal for Secured Financial Creditors	4255.00
3	Proposal for Unsecured Financial Creditors	5.00
4	Proposal for Operational Creditors	0.00
5	Proposal for Employees and Workmen	25.65
6	Statutory/Government Dues	0.00
7	Contingent Liabilities	0.00
8	Payment to Promoters	0.00
	<b>Total discharge</b>	<b>4332.90</b>

10. The liquidation value and the fair value of the Corporate Debtor are reported at Rs. 33,21,17,358/- and Rs. 47,32,97,681/- respectively. The Resolution Applicant of M/s



Agarwal Coal Corporation Private Limited has proposed to pay a sum of Rs. 43,32,90,000/- within 90 days from the effective date against full and final payment for all the liabilities of a Corporate Debtor.

11. We now take up the Resolution Plan of M/s Agarwal Coal Corporation Private Limited for examining the same in view of provisions of section 30(2) of the IBC, 2016.
12. Section 30(2)(a) requires that the Resolution Plan shall provide for the payment of the CIRP costs in priority to the payment of other debts of the Corporate Debtor. Upon going through the plan, we noted that a sum of Rs. 47,25,000/- is provided to meet out the expenses towards the CIRP costs. We hold that provisions of section 30(2)(a) are complied with.
13. The perusal of the Resolution Plan shows that the Secured Financial Creditor will get a sum of Rs. 42,55,00,000/- against their total claimed amount of Rs. 248,54,43,747/-. The Unsecured Financial Creditors will get a sum of Rs. 5,00,000/- against their total claimed amount of Rs. 5,71,40,888/-. The Unsecured Operational Creditors will get NIL against their total claimed amount of Rs. 123,22,03,603/-. Although no provision appears to be made for payment of claims of Operational Creditor, we have noted the fact that in case the Corporate Debtor is liquidated, still the Operational Creditor will not get any amount as per Waterfall Mechanism provided under section 53 of IBC, 2016. Hence, though in the Resolution Plan no provision is made for payment of claims of Operational Creditor, the Resolution Plan does not suffer any illegality under section 30(2)(b) of IBC, 2016. Learned Senior Counsel for the Resolution Applicant made a statement that the Resolution Applicant will pay some amount to Operational Creditors also against their



claim of Rs. 123,22,03,603/-. We noted the fact. The Workmen and Employees will get a sum of Rs. 25,64,704/- against their total claimed amount of Rs. 69,39,652/-. The CIRP cost has been kept by the Resolution Applicant of Rs. 47,25,000/-. The amount of Rs. 10,47,25,000/- will be paid within 30 days from the receipt of the order. The remaining amount of Rs. 32,85,65,000/- will be paid within 90 days from the receipt of the order. The RP will return Performance Bank Guarantee of Rs. 10,00,00,000/- within 30 days of full implementation of Resolution Plan. In view thereof we hold that this complies with provisions of section 30(2)(b) of the IBC, 2016.

14. In the Resolution Plan (at page-47) proposal for management and control of the business of the Corporate Debtor is given. The business of the Corporate Debtor shall be managed by a Management Committee with the assistance and support of the employees of the Corporate Debtor under the supervision and control of the managerial personnel of the Resolution Applicant, duly appointed in consultation with the Management Committee, with reporting responsibility to the Managing Committee on regular basis. The operation of the day-to-day affairs of the Corporate Debtor shall be planned and executed in collaboration with all concerned departments of the Corporate Debtor, under the supervision and control of the managerial personnel of the Resolution Applicant, reporting directly to the Management Committee. With this, we hold that the provisions of section 30(2)(c) and section 32(2)(d) of the IBC, 2016 are complied with.

15. The RP has certified that the Resolution Plan does not contravene any provisions of law for the time being in force. On examination of the Resolution Plan, we also find that the



Resolution Plan does not contravene any provisions of law. We also hold that the Resolution Plan is in compliance with the provisions stated in Regulations 38 and 39 of the IBBI (CIRP of the Corporate Person) Regulations, 2016, and the interests of all stakeholders are taken care of. The term of the plan is also stated. Hence, we see no reason to reject this Resolution Plan on any grounds.

16. As far as reliefs and concessions claimed by the resolution applicant, the law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021*** in the following words:

I. “The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

II. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of IB Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief...”

17. In view of the above, we hold that the Resolution Applicant cannot be saddled with any previous claim against the Corporate Debtor prior to initiation of its CIRP. For the permits, licenses, leases, or any other statutory right vested in the



Corporate Debtor shall remain with the Corporate Debtor and for the continuation of such statutory rights, the Resolution Applicant has to approach the concerned statutory authorities under relevant laws.

18. With these directions, we approve the Resolution Plan submitted by M/s Agarwal Coal Corporation Private Limited and proceed to pass the following orders:

**ORDER**

- I. Application is allowed.
- II. The Resolution Plan of M/s. Agarwal Coal Corporation Private Limited for Corporate Debtor i.e. M/s Surya Exim Limited, stands allowed as per section 30(6) of the IBC, 2016.
- III. The Resolution Applicant claimed various reliefs and concessions in the resolution plan. However, we grant the reliefs in the following manner and to this extent;
  - a. After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders prior to CIRP against the Corporate Debtor 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 also stand extinguished against the Corporate Debtor after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;
  - b. On the effective date, all claims, except provided in the plan, of the suspended management, erstwhile directors,



- and erstwhile shareholders shall stand permanently extinguished;
- c. On the effective date and with effect from the appointed date, all encumbrances on the assets of the Corporate Debtor prior to the plan shall stand permanently extinguished on completion of procedural formalities as provided in Companies Act, 2013; and laws time in force as applicable;
  - d. 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.
  - e. As regard to 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.
  - f. The Resolution Applicant shall be 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;
  - g. 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;
  - h. 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;

- i. The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;
- j. 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;
- k. 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.
- l. 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.
- m. On the effective date and with effect from the appointed date, the entire equity shares held by the existing shareholders shall stand fully extinguished as a part of this Resolution Plan (standalone capital reduction). The



face value of the equity shares so cancelled shall stand transferred to the capital reserve of the Corporate Debtor. No amounts shall be payable, in addition to the amount mentioned in the Resolution Plan towards the extinguishment of all the equity shares of such existing shareholders.

- IV. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- V. The order of moratorium dated 03.02.2021 passed by this Adjudicating Authority under section 14 of IBC, 2016 shall cease to have effect from the date of passing of this order.
- VI. The RP shall forthwith send a copy of this order to the participants and the Resolution Applicant(s).
- VII. The RP shall forward all records relating to the conduct of the CIRP and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.
- VIII. Accordingly, IA 18 of 2022 in CP (IB) 247 of 2020 is allowed and stands disposed of in terms of the above directions.
- IX. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

**-SD-  
KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

**-SD-  
MADAN B. GOSAVI  
MEMBER (JUDICIAL)**

Shweta Desai