



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI VELAMUR G. VENKATA CHALAPATHY,
HON'BLE TECHNICAL MEMBER

IA No. 448/JPR/2024
In CP No. (IB) No. 86(ND)/2018

IN THE MATTER OF:

ORIENTAL BANK OF COMMERCE

...FINANCIAL CREDITOR

VERSUS

MOUNT SHIVALIK INDUSTRIES LTD.

...CORPORATE DEBTOR

MEMO OF PARTIES

IA No. 448/JPR/2024

Ms. Pratibha
Khandelwal,
Resolution Professional for
Mount Shivalik Industries
Ltd.
T 5/1001, Rangoli Greens,
Maharana Pratap Marg,
Panchyawala, Vaishali
Nagar, Jaipur, Rajasthan-
302021.

... Applicant

FOR APPLICANT(S)

: Abhishek Anand , Adv
Karan Kohli, Adv
Yashaswi Bahuguna, Adv
Pratibha Khandelwal, ERP

Order Pronounced On: 16.10.2024

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Order Pronounced On: 16.10.2024

ORDER

Per: Shri Deep Chand Joshi, Judicial Member

1. The present Application bearing *IA No. 448/JPR/2024* vide Dairy No. 2213/2024 dated 09.09.2024 has been filed by *Ms. Pratibha Khandelwal*, Resolution Professional ('Applicant' / 'Resolution Professional' / 'Monitoring Professional') of *M/s Mount Shivalik Industries Ltd.* ('Corporate Debtor') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking to revise and update the claims of unsecured Financial Creditor in terms of the judgment passed by the Hon'ble Supreme Court dated 25.04.2024.
2. This Adjudicating Authority had admitted the Application filed by *Oriental Bank of Commerce* ('Financial Creditor') under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and appointed *Ms. Pratibha Khandelwal*, as Interim Resolution Professional ('IRP') vide Order dated 12.06.2018.
3. The present Application has been filed on the following set of facts:

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- 3.1. It is submitted that the Resolution Professional constituted the Committee of Creditors ('CoC') in accordance with the provisions of the Code. Further, at the 19th meeting of the CoC held on 04.06.2019, the Resolution Plan submitted by one of the prospective resolution applicants i.e. *M/s Kals Distilleries Pvt. Ltd.* was unanimously approved by the CoC.
- 3.2. Subsequently, the Applicant filed an application bearing *I.A. No. 186/JPR/2019* before this Adjudicating Authority under Section 30(6) of the Code for seeking approval of the Resolution Plan submitted by *M/s Kals Distilleries Pvt. Ltd.* However, at the time of approval of resolution plan the constituted Committee of Creditors was as follows:

S. No.	FINANICAL CREDITOR	AMOUNT OF CLAIM ADMITTED	VOTING SHARE
1.	<i>ORIENTAL BANK OF COMMERCE</i>	18,28,78,608	50.85%
2.	<i>NEW VIEW CONSULTANTS PVT. LTD.</i>	3,29,98,110	9.18%
3.	<i>MAHALAKSHMI TRADERS</i>	7,99,85,863	22.24%
4.	<i>NATIONAL WINE & SPIRITS</i>	2,27,85,144	6.33%
5.	<i>GLOBAL CREDIT CAPITAL LTD</i>	4,09,89,586	11.40%
	TOTAL AMOUNT	35,96,37,311	100%

- 3.3. Consequently, during the CIRP process, an application filed by *M/s Sach Marketing Private Limited* was dismissed by this Adjudicating Authority *vide* Order dated 18.01.2021 where it was held that *M/s Sach*

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Marketing Private Limited was an Operational Creditor and not a Financial Creditor of the Corporate Debtor. However, the Hon'ble Appellate Tribunal in its Order dated 07.10.2021, allowed the Company Appeal filed by *M/s Sach Marketing Private Limited* and determined that the claim of this Creditor was that of a Financial Creditor to the Corporate Debtor.

3.4. Further it is submitted that in the meantime four other Creditors i.e. *Sushila H. Mehta, Sakchi Store, Bishwanth Shaw & Company, and Ajit Kumar Gupta* based on similar facts and grounds also filed appeals before the Hon'ble Appellate Tribunal, aggrieved by the orders passed by this Adjudicating Authority that dismissed their applications claiming to be Financial Creditors of the Corporate Debtor.

3.5. However, this Adjudicating Authority *vide* Order dated 13.10.2021 approved the Resolution Plan submitted by *M/s Kals Distilleries Pvt. Ltd.* as passed by the CoC. Pursuant to the approval of the Resolution Plan the following amounts from the allocated funds to the unsecured creditors have already been paid which are part of the total amount of Rs. 16,43,85,593/- (Rupees Sixteen Crore Forty-Three Lakh Eighty-Five Thousand Five Hundred Ninety-Three Only) as reproduced below:



S. No.	UNSECURED FINANCIAL CREDITOR	AMOUNT PROPOSED UNDER THE PLAN	AMOUNT PAID
1.	NEW VIEW CONSULTANTS PVT. LTD.	3,06,88,242	2,07,88,246
2.	MAHALAKSHMI TRADERS	7,43,86,852	5,03,89,731
3.	NATIONAL WINE & SPIRITS	2,11,90,183	1,43,54,252
4.	GLOBAL CREDIT CAPITAL LTD	3,81,20,314	2,58,22,740
	TOTAL AMOUNT	16,43,85,593	11,13,54,969

3.6. Further, the Hon'ble Appellate Tribunal passed a common Order dated 29.10.2021, allowing the appeals of *Sushila H. Mehta, Sakchi Store, Bishwanth Shaw & Company, and Ajit Kumar Gupta*, which resulted in their being treated as unsecured Financial Creditors of the Corporate Debtor. Subsequently, the existing members of the CoC who were unsecured Financial Creditors, filed an appeal before the Hon'ble Supreme Court. However, the Hon'ble Supreme Court in its judgment dated 25.04.2024, dismissed the appeal and upheld the view taken by the Hon'ble Appellate Tribunal. The Court also directed the Applicant to continue with the CIRP process. A copy of the Judgment dated 25.04.2024 passed by the Hon'ble Supreme Court is annexed as Annexure A-7 to this Application.

3.7. The Resolution Plan as approved by this Adjudicating Authority in total provides for payment of Rs. 41,29,71,940/- (Rupees Forty-One

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Crore Twenty-Nine Lakh Seventy-One Thousand Nine Hundred Forty Only). The unsecured Financial Creditors of Corporate Debtor are offered Rs. 16,43,85,593 (Rupees Sixteen Crore Forty-Three Lakh Eighty-Five Thousand Five Hundred Ninety-Three Only) and Operational Creditors are offered Rs. 3,69,93,000/- (Rupees Three Crore Sixty-Nine Lakh Ninety-Three Thousand Only) as reproduced below:

<i>S. No.</i>	<i>RESOLUTION PLAN ITEM</i>	<i>RESOLUTION PLAN</i>	<i>PAY-OUT PLAN</i>
1.	<i>Insolvency Resolution Process Cost</i>	<i>1.25 Crores</i>	<i>Immediate pay-out upon approval (within 30 days from the day of NCLT approval)</i>
2.	<i>Settlement cum Restructuring of dues of Secured Financial Creditor</i>	<i>18.2879 Crores</i>	<i>INR 11 Crores immediately upon NCLT approval INR 6.5 Crores within 60 days from the date of NCLT approval INR 0.788 (within 90 days from the date of approval of NCLT)</i>
3.	<i>Settlement of dues of Unsecured Financial Creditors</i>		
3 (i)	<i>Unsecured Financial Creditors- Non-related</i>	<i>16.4385 Crores</i>	<i>INR 2.83 Crores immediately upon NCLT approval INR 5.5 Crores</i>

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			<i>within 60 days from the date of NCLT approval INR 4.71 within 90 days from the date of NCLT approval & balance INR 3.4 Crores within 365 days (equal monthly instalments of 42.5 lakhs for 8 months ending 365 days)</i>
4.	<i>Settlement of Dues of Operational Creditors</i>		
4(i)	<i>Operational Creditors (Employees Dues)</i>	<i>INR 58,34,000</i>	<i>100% immediately upon NCLT approval (max 30 days upfront payment)</i>
4(ii)	<i>Operational Creditors (Goods & Services)</i>	<i>INR 3,69,93,000</i>	<i>100% immediately upon NCLT approval (max 30 days upfront payment)</i>
4(iii)	<i>Operational Creditors (Statutory Dues-Claim Admitted)</i>	<i>INR 51,33,000</i>	<i>100% immediately upon NCLT approval (max 30 days upfront payment)</i>
4(iv)	<i>Operational Creditors (Statutory Dues-Claim Not Admitted) (Contingent Claims)</i>	<i>INR 12,48,000</i>	<i>100% immediately upon NCLT approval</i>

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			<i>(max 30 days upfront payment)</i>
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3.8. Subsequently, An amount of Rs. 16,43,85,593/- (Rupees Sixteen Crore Forty-Three Lakh Eighty-Five Thousand Five Hundred Ninety-Three Only) under the approved resolution plan has been offered to unsecured Financial Creditors. However, due to change in the status of certain Operational Creditors to financial creditors a surplus amount of Rs. 83,87,599/- (Rupees Eighty-Three Lakh Eighty-Seven Thousand Five Hundred Ninety-Nine Only) which was allocated to such Operational Creditors who have now been converted into Financial Creditors is available to be distributed.

3.9. Consequently, the judgment passed by the Hon'ble Supreme Court the distribution to the unsecured Financial Creditors as per the approved resolution plan has been done as follows:

<i>S. No.</i>	<i>UNSECURED FINANCIAL CREDITORS</i>	<i>AMOUNT OF CLAIM ADMITTED</i>	<i>AMOUNT PAID AS PER JUDGMENT</i>	<i>Proposed Distribution of Rs surplus Rs 83,87,599 pro rata to unsecured Financial Creditors</i>

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1	NEW VIEW CONSULTANTS PVT LTD	3,29,98,110	2,07,88,246	10,56,837
2	MAHALAKSHMI TRADERS	7,99,85,863	5,03,89,731	25,66,605
3	NATIONAL WINE & SPIRITS	2,27,85,144	1,43,54,252	7,29,721
4	GLOBAL CREDIT CAPITAL LTD	4,09,89,586	2,58,22,740	13,16,853
5	SACH MARKETING PVT LTD	1,42,97,751	90,07,339	4,61,318
6	SUSHILA H MEHTA	38,19,726	24,06,362	1,25,814
7	SAKCHI STORES	1,90,58,904	1,20,04,199	6,12,295
8	BISHWANATHA SHAW & COMPANY	3,56,81,153	2,24,78,518	11,49,101
9	AJIT KUMAR GUPTA	1,13,76,541	71,67,027	3,69,054
	TOTAL AMOUNT	26,09,92,778	16,44,20,999	83,87,599

3.10. However, in compliance with the Hon'ble Supreme Court Judgment dated 25.04.2024, it is submitted that there will be no change proposed to the resolution plan in any manner and it is reiterated that the surplus 83,87,599/- (Rupees Eighty-Three Lakh Eighty-Seven Thousand Five

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Hundred Ninety-Nine Only) in the amount allocated to Operational Creditors shall be distributed equally amongst all the unsecured Financial Creditors. That the amount available for unsecured Financial Creditors for distribution will be Rs. 17,28,08,598/-(i.e. 16,44,20,999/- plus 83,87,599/-). Also, the 15th meeting of the Monitoring Committee was convened on 28.06.2024, wherein the Monitoring Committee resolved to file this Application.

4. We have heard the Learned Counsels for the parties and perused the averments made in the application and the documents enclosed.
5. In the present matter, the Resolution Plan approved by this Adjudicating Authority provides for a total payment of ₹41,29,71,940 (Rupees Forty-One Crore Twenty-Nine Lakh Seventy-One Thousand Nine Hundred Forty Only). The unsecured financial creditors of the Corporate Debtor are offered ₹16,43,85,593 (Rupees Sixteen Crore Forty-Three Lakh Eighty-Five Thousand Five Hundred Ninety-Three Only). However, the status of certain Operational Creditors has changed to Financial Creditors in light of the Hon'ble Supreme Court judgment dated April 25, 2024. Subsequently, the amount of ₹83,87,599 (Rupees Eighty-Three Lakh Eighty-Seven Thousand Five Hundred Ninety-Nine Only), which was allocated to those

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operational creditors who have now been converted into financial creditors, is available for distribution.

6. In the instant Application, Applicant has requested permission to revise and update the claims of the unsecured Financial Creditors which were previously classified as Operational debt and deemed Operational Creditors of the Corporate Debtor in light of the Hon'ble Supreme Court Judgment dated 25.04.2024
7. In the light of the aforementioned Judgment and findings, the present Application is allowed the Monitoring Committee to distribute the amount of Rs. 17,28,08,598/- (Rupees Seventeen Crore Twenty-Eight Lakh Eight Thousand Five Hundred Ninety-Eight Only) to the unsecured Financial Creditors as detailed above in Para no. 3.9 for final implementation of the approved plan.
8. In view of the aforementioned observation the I.A. bearing No. 448/JPR/2024 stands allowed and disposed off.

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

**VELAMUR G. VENKATA CHALAPATHY,
TECHNICAL MEMBER**