

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT No. - I

\*\*\*                      \*\*\*                      \*\*\*

IA No. 07/MB/2021  
in  
C.P. (IB) No. 3448/MB/2018

(An Application under Section 30(6) read with Section 31 of the Insolvency and  
Bankruptcy Code, 2016)

Vijendra Kumar Jain, Resolution Professional  
for Transparent Energy Systems Private Limited,  
1507, B Wing, One BKC,  
Plot No. C-66, G Block BKC,  
Bandra East, Mumbai – 400 051.

... *Applicant*

In the matter of  
Tractabel Engineering Private Limited,  
A-3, 2<sup>nd</sup> Floor, Neeta Bagh, New Delhi – 110 049.

... **Petitioner**

V/s

Transparent Energy Systems Private Limited,  
Pushpa Heights, 1<sup>st</sup> Floor, Bibwewadi Corner,  
Pune Satara Road, Pune – 411037.

... **Corporate Debtor**

Date of Order: 16.04.2021

CORAM:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)  
Shri V. Nallasenapathy, Hon'ble Member (Technical)

Appearance:

For the Applicant: Pradeep Sancheti, Sr.Advocate a/w Pallavi Bali, Manan Sanghai  
and Advait Shukla, Advocates

*Per: V. Nallasenapathy, Member (Technical)*

**ORDER**

1. This is an Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the Code), by the Resolution Professional seeking approval of the Resolution Plan.
2. The facts leading to the Application are as under.
  - a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated upon admission of a Petition under Section 9 by order dated 08.03.2019 of this Bench and Mr. Ashish Vyas was appointed as Interim Resolution Professional (IRP).
  - b. The IRP published a public announcement on 09.03.2019 inviting claims from the creditors of the Corporate Debtor. After receipt of claims the IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor on 01.04.2019, State Bank of India being its sole member. The IRP conducted the first meeting of the CoC on 08.04.2019.
  - c. The CoC in its second meeting held on 17.05.2019 passed the resolution to appoint Mr. Nimit Kalsi as Resolution Professional (the erstwhile RP) and the same was confirmed by this Bench vide order dated 15.07.2019.
3. The CoC in its fifth meeting held on 06.08.2019 passed the resolution to extend the period of CIRP by 90 days and exclude 69 days therefrom. The erstwhile RP filed MA No.2778 of 2019 for extension and was allowed by this Bench vide orders dated 12.09.2019 accordingly the CIRP period end on 12.12.2019. Further he filed MA No.3936 of 2019 for exclusion and the same was Allowed by this Bench vide orders dated 20.02.2020.

4. The CoC filed an application MA No. 461 of 2020 to replace the erstwhile RP and to appoint Mr. Vijendra Kumar Jain (Applicant herein) as RP. The same was allowed by this Bench vide order dated 21.02.2020.
5. Since there was no response to the Form G issued by the RP on 16.09.2019 and 30.10.2019, another Form G was issued on 11.03.2020, inviting Expressions of Interest (EOI) from Prospective Resolution Applicants (PRAs). The Applicant received EOIs from 2 PRAs as under.
  - a) Mr. Ashok Atre
  - b) M/s Seftech India Private limited
6. The CoC in its 10<sup>th</sup> meeting held on 30.04.2020 rejected the EOI received from M/s Seftech India Private limited, for delayed submission. The CoC brought some changes in the Request for Resolution Plan (RFRP) document with regard to EMD and provision of Performance Bank Guarantee. Further the date of submission of Resolution Plan was extended by 30 days from the date of amended RFRP and the remaining PRA submitted the revised Resolution Plan on 14.08.2020.
7. Further the Applicant filed an Application IA No. 1034 of 2020 for exclusion of 52 days due to the delay in receiving exclusion order and 42 days for delay in receiving the order for appointment of Applicant as RP, in addition to Covid-19 lockdown period. The same was allowed by this Tribunal vide its order dated 18.12.2020 by extending period of CIRP by 105 days to end on 02.04.2021.
8. After due verification of the eligibility of the PRA in terms of Section 29 (A) of the Code, the CoC in its 16<sup>th</sup> meeting held on 20.11.2020 considered the revised and final Resolution Plan of Mr. Ashok Atre and approved the Plan with 100% voting share.
9. **Salient features of the Resolution Plan:**
  - a. SUCCESSFUL RESOLUTION APPLICANT (SRA):

The SRA is the Promoter of the Corporate Debtor i.e., Transparent Energy Systems Private limited (TESPL). The SRA founded TESPL in 1986. He holds more than three decades of experience in the field of Boilers and Thermal systems related equipment's design and manufacturing. The Company is registered as MSME and certificate of the same is in force (annexed to the Application). The SRA is accordingly eligible under section 240A of the Code and the bared under section 29A is not applicable. **TERM OF RESOLUTION PLAN:**

The period of implementation of the Resolution Plan is Three years.

b. **FINANCIAL TERMS:**

The plan envisages infusion of ₹. 2273.52 lakh over a period of 36 months as per the Financial terms below:

Sr. No.	Particulars	Claim Amount Admitted (INR in lakhs)	Amount of pay-outs ( INR in lakhs)	Schedule of fund infusion from the date of approval of Resolution Plan
1	Unpaid CIRP cost as on date of RFRP		135.97	To be paid in priority on actual basis
2	Employees (Note 1)	666.62	349.59	1. 155.04 Lakhs in 0-6 Months 2. 21.62 Lakhs in 6-12 Months 3. 21.62 Lakhs in 12-18 Months 4. 10.81 Lakhs in 18-24 Months 5. 32.42 Lakhs in 24-30 Months 6. 108.08 Lakhs in 30-36 Months
3	Operational Creditors who have filed their claims (Admitted Claims)	2964.84	236.26	1. 23.63 Lakhs in 0-6 Months 2. 23.63 Lakhs in 6-12 Months 3. 23.63 Lakhs in 12-18 Months 4. 11.81 Lakhs in 18-24 Months 5. 35.44 Lakhs in 24-30 Months 6. 118.13Lakhs in 30-36 Months
4	Operational Creditors who did not file their claims	354.01	47.94	1. 4.79 Lakhs in 0-6 Months 2. 4.79 Lakhs in 6-12 Months 3. 4.79 Lakhs in 12-18 Months 4. 2.40 Lakhs in 18-24 Months

				5. 7.19 Lakhs in 24-30 Months 6. 23.97 Lakhs in 30-36 Months
5	Statutory dues – PF/ESIC/PT/LFW	8.79	8.79	0-6 Months
6	Statutory Dues – TDS/ Panchayat Taxes	31.98	1.60	0-6 Months
7	Financial Creditor	5823.87	1327.84	1. 132.78 Lakhs in 0 – 6 Months 2. 132.78 Lakhs in 6 – 12 Months 3. 132.78 Lakhs in 12-18months 4. 66.39 Lakhs in 18-24 Months 5. 199.18 Lakhs in 24-30months 6. 663.92 Lakhs in 30-36months
8	Working Capital		165.54	1. 82.77 Lakhs in 0-6 months 2. 43.04 Lakhs in 6-12 months 3. 24.83 Lakhs 12-18 months 4. 14.90 Lakhs 18-24 months
	Total	9,850.11	2,273.52	

- c. Note 1: The total amount to be paid to employees is ₹. 349.59 Lakhs including Gratuity amount of ₹. 84.42 Lakhs. The gratuity amount would be a part of Rs. 155.04 to be paid to the employees within 0-6 months MEANS OF FUNDS:  
The Resolution Plan amount of ₹. 2273.52 Lakhs is sourced in the following manner:

Means of Finance	Amount (Rs. In Lakhs)	Schedule of Fund infusion from the date of approval of Resolution Plan
Current balance in Bank account of Company at SBI, Lonand Branch 9 as on date of RFRP)	322.65	0-6 Months
Withdrawal of amount deposited by M/s Chettinad Cement with the High Court of Madras	404.00	0-6 Months
Administrative charges deducted by the High Court of Madras to be recovered from M/s Chettinad Cement	9.00	0-6 Months
Accrued interest on amount deposited by M/s Chettinad Cement in the High Court of Madras	16.00	0-6 Months
Current balance in the bank	24.86	6-12 Months

account of the Company at HDFC Bank, Pune		
Sale of Scrap	35.00	0-6 Months
Fresh Equity infusion by RA	10.00	0-6 Months
Payment by Mr. Ashok Atre to SBI for release of his personal Guarantee	40.00	30-36 Months
Withdrawal of amount deposited by the Creditors of Company in the High Court of Bombay	12.00	0-6 Months
Recovery from Litigations	1285.00	1. 50.00 Lakhs in 12-18 months 2. 200.00 Lakhs in 18-24 months 3. 400.00 Lakhs in 24-30 months 4. 635.00 Lakhs in 30-36 months
Sale of Thane Office	50.00	12-18 months
Group Gratuity Fund (Note 2)	65.00	0-6 months
<b>Total</b>	<b>2,273.52</b>	

Note 2: The amount of ₹. 65 Lakhs available in the form of Group Gratuity Fund (held in LIC of India in the name of a trust formed by the Corporate Debtor) will be used entirely for payment of Gratuity amount. The balance amount of ₹. 19.42 Lakhs (84.42 - 65 Lakhs) will be made available for Gratuity payment from the funds available in the bank account of Corporate Debtor with SBI.

The SRA provided the alternate source of fund i.e. through infusion of funds, funding through Debts and sale of factory in Shirwal, Maharashtra.

d. **REDUCTION OF SHARE CAPITAL:**

The estimate of valuation of assets and enterprise of Corporate Debtor as assessed by SRA does not cover the full claim of FC i.e. SBI, and there is therefore, no amount available for Equity and Preference Share Capital holders of Corporate Debtor. Also, the holders of issued share capital (equity shareholders and preference shareholders) of Corporate Debtor have no amount available to them in the event of its liquidation. In view of the above circumstances, the SRA proposes to reduce the issued Equity and Preference Share capital of the Corporate Debtor to Zero, i.e., NIL value. It is therefore, proposed that there will be complete extinguishment of 51,91,400 issued fully

paid up Equity Shares and fully paid up 17,66,505 Preference Shares of Corporate Debtor, which will have the effect of making the issued share capital of Corporate Debtor to Zero, i.e., NIL value. The SRA will infuse fresh share capital into Corporate Debtor to the tune of Rs. 10 lakhs from his own resources by subscribing to 1 lakhs fully paid up equity shares of ₹.10 each and the shareholding of SRA and his affiliates all acting as new promoters of the Corporate Debtor, will be 100% of its issued and paid up share capital.

e. **MANAGEMENT OF THE CORPORATE DEBTOR:**

The management of the Corporate Debtor will be by its erstwhile Board of Directors and Board will be represented by Mr. Ashok Atre as Chairman and Managing Director, Mrs. Meghana Ashok Atre, Mr. Pradeep Venkatesh Apte and Mr. Jayant Narhar Deo after the approval of the Resolution Plan.

f. **SUPERVISION OF THE RESOLUTION PLAN:**

The Monitoring Committee shall be constituted for supervision of the Resolution Plan and represented by Mr. Ajit Apte, Mr. H N Wadghule and Mr. C S Vaidya and SRA purposes to include the Applicant and one nominee from SBI in the Committee. The Committee shall function till the claims of all the Creditors of the Corporate Debtor are fully settled.

g. **COMPLIANCE OF MANDATORY CONTENTS OF RESOLUTION PLAN UNDER THE CODE AND CIRP REGULATIONS:**

It is submitted that the Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 and 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (the Regulations) and has submitted his Form H under Regulation 39 (4) thereof. That the Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that Section 29A of the Code does not apply to the SRA as the Corporate Debtor is an MSME and SRA being its Promoter is eligible under Section 240A of the Code to submit Resolution Plan.

h. **PERFORMANCE SECURITY:**

The SRA conveyed the acceptance of Letter of Intent (LoI) on 22.11.2020 and complied with the requirement of Performance Security of ₹. 40,00,000/- in the form of Bank Deposit. Copy of the said LoI, cheque dated 22.06.2020 towards EMD of ₹. 10,00,000/- and Demand Draft dated 20.11.2020 of ₹. 30,00,000/- has been submitted as proof.

10. The Applicant submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code in the following manner:

- A. Plan provides for the payment of CIRP cost in full and in priority from the fund to be infused by the Resolution Applicant [Section 30(2)(a)].
- B. Proposes to pay the Operational Creditors of the Corporate Debtor as stated above in Para 9(c) in priority over the Financial Creditor. [Section 30(2)(b)].
- C. The Management of the affairs of the Corporate Debtor after approval of the Resolution Plan would be with the Resolution Applicant [Section 30(2)(c)].
- D. The Plan also provides for implementation and supervision of the Resolution Plan as stated above [Section 30(2)(d)].
- E. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force [Section 30(2)(e)].

11. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) of the Code as under:

- a) Payment to Operational Creditor will be made in priority over Financial Creditor (Regulation 38(1)(a) of the Regulations).

- b) Since the plan has been approved by 100% voting share of the CoC, provision of dissenting financial creditor does not arise. This is in compliance of Regulation 38(1)(b) of the Regulations.
  - c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A) of the Regulations).
  - d) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38(1B) of the Regulations).
  - e) The Plan also provides for term and implementation schedule, management and control of the Corporate Debtor and adequate means for supervising its implementation (Regulation 38(2) of the Regulations).
  - f) The Resolution Plan also addresses the cause of default, feasibility and viability, as required under Regulation 38(3) of the Regulations.
12. The SRA has not sought certain reliefs, concessions and waivers. The Resolution Applicant needs to approach the authorities concerned for permits, if required (such as licenses, renewal of license, electricity connection etc.), and same will be considered by the authorities in accordance with law.
13. It is beneficial to refer to the observation of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta &Ors.:* (2019) SCC OnLine SC 1478 as under:
- “67. ....
- A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution*

*professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.”*

14. In view of the above ruling of the Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. As already indicated the Resolution Plan has been approved by the CoC in its meeting held on 20.11.2020 with 100% votes.
15. In *K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150* the Hon’ble Apex Court held that if the CoC had approved the Resolution Plan with 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 Court observed that the role of the NCLT is ‘no more and no less’. The Hon’ble 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.
16. In **CoC of Essar Steel** (*supra*) 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 have approved. In para 42 Hon’ble Court observed as under:

*“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the*

*Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

17. In view of the discussions and the law thus settled, we are satisfied that the Resolution Plan as approved by the CoC under Section 30(4) of the Code meets the requirements of Section 30(2) of the Code and Regulations 37 and 38 of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved as provided under Section 31 of the Code. Hence ordered.

#### ORDER

18. The Application be and the same is allowed. The Resolution Plan submitted by Mr. Ashok Atre annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.
- a. 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 arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
  - b. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned 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.
  - c. As far as the permits held by the Corporate Debtor and the rights and benefits accrued therein, the Corporate Debtor (under the new

Management) needs to approach the authorities concerned for renewal and that the same may have to be considered by them favourably, subject to relevant Law and Rules, so that the implementation of Plan becomes smooth.

- d. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in Paras supra.
- e. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- f. The Applicant shall supervise the implementation of the Resolution Plan and shall file Status Report of its implementation before this Authority periodical status report, preferably every quarter.
- g. 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.
- h. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant for necessary compliance. The certified copy so granted shall include the Resolution Plan approved herein.

Sd/-  
V. Nallasenapathy  
Member (Technical)

Sd/-  
Janab Mohammed Ajmal  
Member (Judicial)