

**NATIONAL COMPANY LAW TRIBUNAL  
"CHANDIGARH BENCH, CHANDIGARH"**

**CA No. 505/2019  
IN  
CP (IB) No. 128/Chd/HP/2018**

**Under Section 30(6) and 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**

**In the matter of:**

Shaveta Golden Foods Private Limited ...Corporate Debtor-Non/Applicant

**And in the matter of CA No. 505/2019:-**

Arvind Kumar  
IBBI/IPA-001/IP-P00178/2017-18/10357  
Resolution Professional  
Shaveta Golden Foods Private Limited,  
3<sup>rd</sup> Floor, Plot D 190, Phase 8 B,  
Sector 74, Industrial Area,  
SAS Nagar Mohali Punjab  
[irparvindkumar@gmail.com](mailto:irparvindkumar@gmail.com)

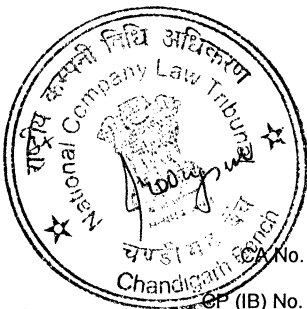
...Applicant/Resolution Professional.

**Order delivered on: 07.11.2019**

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial).  
Hon'ble Mr. Pradeep R. Sethi, Member(Technical).**

For the applicant-

Resolution Professional: 1). Mr. Atul V. Sood, Advocate  
2). Mr. Sumer Singh Brar, Advocate  
3). Ms. Niharika Sohal, Advocate  
4). Mr. Arvind Kumar, Resolution Professional in person



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Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

CA No.505/2019

The present application is filed by Resolution Professional (**RP**) under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **Code**) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the **Regulations**) seeking sanction of resolution plan as approved in the meeting of Committee of Creditors (**CoC**) held on 25.05.2019.

2. It has been submitted that the insolvency petition was filed by the corporate applicant i.e. Shaveta Golden Foods Pvt. Ltd. under Section 10 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Shaveta Golden Foods Pvt. Ltd. (**Corporate Debtor**) and the same was admitted vide order dated 13.09.2018 and the CIRP of the Corporate Debtor was initiated. It is submitted that the applicant was appointed as Interim Resolution Professional (**IRP**) vide order dated 20.09.2018 and within two days of the appointment order, the IRP issued a public announcement as per Regulation 6 of the Regulations read with Section 15 of the Code in Form A in two newspapers i.e. The Tribune, an English newspaper dated 22.09.2018 and Divya Himachal (Hindi) thereby inviting claims from the creditors of the Corporate Debtor as envisaged in the Code.

3. It is submitted that in pursuance of the public announcement, claims were received from the Financial Creditors, Operational Creditors and Workmen/employees, which were verified and after collation, the IRP constituted

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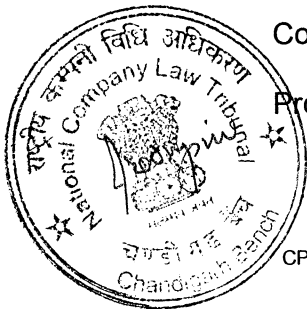


the CoC as per the provisions of Section 21 of the Code. It is stated that initially the CoC was constituted with two Financial Creditors i.e. State Bank of India having a voting share of 99.79% and Ushasti Consultants having a voting share of 0.21%. These creditors filed their claims which were approved by the RP, in view of the unamended Regulation 12 of the Regulations and intimation in this regard was given to this Tribunal.

4. It is submitted that the applicant as IRP has also appointed two valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations and the liquidation value as assessed on the basis of these two reports as per unamended Regulation 35 which are as follows:-

Name of the Valuer	Fair Value (₹)	Liquidation Value (₹)
<b>1. CA Vikas Aggarwal</b>		
Fixed Assets	<b>3,05,03,466.00</b>	<b>1,67,31,312.00</b>
Current Assets	26,039.00	26,039.00
<b>Total</b>	<b>3,05,29,505.00</b>	<b>1,67,57,351.00</b>
<b>2. Pensar Valuation and Restructuring Advisors</b>		
Fixed Assets	2,99,39,851.00	1,85,88,039.00
Current Assets	26,039.00	26,039.00
<b>Total</b>	<b>2,99,65,889.00</b>	<b>1,86,14,078.00</b>
<b>Average Values</b>	<b>3,02,47,697.00</b>	<b>1,76,85,714.00</b>

5. It is stated that in the 1<sup>st</sup> meeting of the CoC held on 17.10.2018, the CoC resolved to continue with the IRP and appointed him as Resolution Professional (RP). It is further submitted that in the 3<sup>rd</sup> meeting of the CoC held on

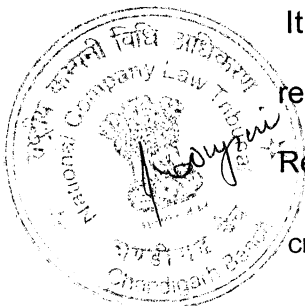


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15.12.2018, the CoC suggested the eligibility criteria for the selection of the suitable resolution applicants and following requirements were laid down:-

- Resolution Applicant must be lawfully organized and carrying business in India or having permission to carry business in India.
- Resolution Applicant may be a single bidder or may be a consortium (not more than 4 members), having minimum net worth/Assets under management, as per last available audited balance sheet, as follows:
  - Net worth in case of a single bidder: ₹50 lakhs;
    - ❖ Net worth in case of a consortium: Lead member – ₹20 Lakhs, consortium – ₹50 Lakhs.
    - ❖ Preference will be given to those Resolution Applicant who are Agriculturist Himachali's.
- Resolution Applicant must not be an ineligible person as defined in Section 29A of the Code. The Resolution Applicant must, at the time of making the bid, disclose full identify of the bidder/the actual person behind the bidder and give a confirmation that the Resolution Applicant is not such ineligible person.
- Resolution Applicant obtaining a copy of the Information Memorandum must sign the confidentiality undertaking in the format provided in the form of EOI.

It is also stated that the Expression of Interest (EOI) has been called from eligible resolution applicants on 03.12.2018, 21.12.2018 and 04.01.2019 as prescribed in Regulation 36 (A) of the Regulations by publishing Form G in 'The Tribune



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(English)' and Amar Ujala (Hindi). It is also submitted that a valuation matrix was approved by the CoC in their 3<sup>rd</sup> meeting held on 15.12.2018.

6. It is submitted that after publication of Form G, six prospective resolution applicants came forward<sup>8</sup> and expressed their interest to submit resolution plan in respect of the corporate debtor and only one resolution applicant submitted the resolution plan evidencing the compliance with eligibility criteria.

7. It is submitted that CoC in 4<sup>th</sup> meeting resolved and directed the applicant-RP to file an application before the Adjudicating Authority seeking an extension of the CIRP by 90 days. This Tribunal vide its order dated 14.03.2019 was pleased to extend the period of CIRP in respect of Corporate Debtor by 90 days. Copy of the order is at Annexure A-12 of the application. It is stated that the eligible applicant, Shri Ram Prakash Singh and Smt. Indu Walia jointly submitted a resolution plan within the stipulated time.

8. It is further stated that CoC in its 7<sup>th</sup> meeting dated 08.02.2019 decided the terms and conditions of the performance security to be provided by the resolution applicants after the approval of the plan by CoC. It is also submitted that the requirement of performance security was communicated to the prospective resolution applicants.

9. It is stated that the resolution plan was opened in front of COC in the 8<sup>th</sup> meeting and was further analysed in 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> meeting of the CoC held on 08.04.2019, 15.04.2019 and 14.05.2019 respectively.

10. It is submitted in the 12<sup>th</sup> meeting of CoC held on 25.05.2019, the resolution plan after incorporating the suggestions of the Members of CoC, was presented and got approved by 100% voting in favour of it. Copy of the complete resolution plan is at Annexure A-14 of the application.

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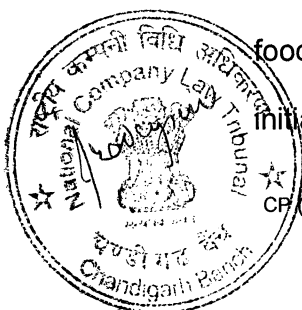
11. It is also submitted that CoC while accepting the bid had taken care of all the provisions and Regulations. It is prayed that the application may be allowed and resolution as approved by the CoC in the CIRP of the Corporate Debtor be approved. Learned counsel for the RP submitted that the following claims were received from the creditors in pursuant to advertisement made in newspaper:-

Sr. No.	Category of Creditor	Claim Amount	Claim Accepted
1	Workmen/Employees (Form D)	410293.00	410293.00
2	Secured Creditors (Form C)	63695790.00	63695790.00
3	Unsecured Financial Creditors (Form C)	134400.00	134400.00
5	Operational Creditors (Form B)	4367494.00	4367494.00
5	Govt Agencies (Form B)	11734068.00	11734068.00

The learned counsel for the RP submitted that as per Form H (Annexure A1 of Diary No. 4028 dated 13.08.2019), all the provisions of the Code and Regulations were complied with and that the approval of the resolution plan was made by 100% voting share of the financial creditors in the meeting of the CoC held on 25.05.2019 and therefore, resolution plan submitted by Mr. Ram Prakash Singh and Smt. Indu Walia may be approved.

12. We have carefully considered the submissions of the learned counsel for the RP and the learned Counsel for the resolution applicant and have also perused the record.

13. The corporate debtor was incorporated on 11.11.2013 for the business of mushroom growing, agro processing, to produce, mix, pack, preserve, freeze, extract, refine, manufacture, import, export, buy, sell, trade and deal in processed foods, health foods, etc. and as discussed above, the CIRP proceedings were initiated by order delivered on 13.09.2018. The present application is filed for



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approval of the resolution plan submitted jointly by Shri Ram Prakash Singh & Smt. Indu Walia (Resolution Applicant). The approval has been sought under the provisions of Section 31 (1) of the Code.

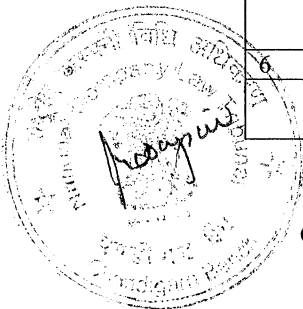
14. We may first of all state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditor, the distribution of voting share among them and the position of voting for the resolution plan is as under (para no.5 of Form H – Annexure A1 of Diary No. 4028 dated 13.08.2019):-

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	State Bank of India	99.79%	Voted for
2.	Ushasti Consultants	0.21%	Voted for
	<b>Total</b>	<b>100%</b>	

15. The details of stakeholders under the resolution plan given in Para 7 of Form H, Annexure A1 of Diary No. 4028 dated 13.08.2019):-

Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Dissenting Secured Financial Creditors	00	00	00	00
2	Other Secured Financial Creditors	63695790	63695790	21191000	33.27%
3	Dissenting Unsecured Financial Creditors	00	00	00	00
4	Other Unsecured Financial Creditors	134400	134400	44714	33.27%
5	Operational Creditors	4368035	4368035	87361	2.00%
	Government	11734068	11734068	234681	2.00%
	Workmen	410293	410293	136504	33.27%
	Employees	00	00	00	00
6	Other Debts and Dues	00	00	00	00
	<b>Total</b>	<b>80342586</b>	<b>80342586</b>	<b>21694260</b>	

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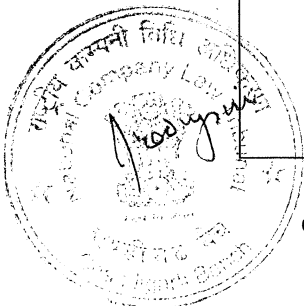
16. The compliance of the resolution plan has been given in Para No. 9 of Form H as follows:-

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause and page of Resolution Plan	Annexures and Relevant Page of the Paper book	Compliance (Yes / No)
25(2)(h)	<p><b>Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?</b></p> <p>The criteria for the resolution applicant was that the applicant should have net worth of 50.00 Lakh. The resolution applicant meets the criteria and submitted certificate of net worth along with request for EOI.</p>	Clause 4 Page 7-9	469-471	Yes
Section 29A	<p><b>Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?</b></p> <p>The resolution professional is eligible to submit resolution plan as per the criteria fixed by the COC. The Adjudicating Authority has not passed any order regarding eligibility of the applicant.</p>	Appendix 3 Page A-1 to A-3	542-545	Yes
Section 30(1)	<p><b>Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?</b></p> <p>The resolution applicants have submitted an affidavit on 11-11-11 stating that they are eligible to submit resolution plan.</p>	Affidavit submitted as per clause 4.2 Page 8	542	Yes
Section 30(2)	<p>Whether the Resolution Plan:</p> <p><b>(a) provides for the payment of insolvency resolution process costs?</b></p> <p>The resolution plan provides for payment of full CIRP cost in priority to all other debts with in 1month of the approval of the plan.</p>	Clause-6.1 Page 11	473	Yes

	<p><b>(b) provides for the payment of the debts of operational creditors? **</b></p> <p>The resolution plan provides for payment of the debt due to operational creditors in priority to all other debts with in 1 month of the approval of the plan</p>	Clause-6.2 to 6.5 Page 11-16	473-490	Yes
	<p><b>(c) provides for the management of the affairs of the Corporate debtor?</b></p> <p>The resolution plan provides complete plan for the management of the affairs of the corporate debtor by reconstituting the board and appointing KMP's</p>	Clause-17 Page 29	491	Yes
	<p><b>(d) provides for the implementation and supervision of the resolution plan?</b></p> <p>The resolution plan provides for constitution of monitoring committee which shall be responsible for implementation and supervision of the resolution plan. The COC has constituted the monitoring committee and nominated the persons who shall be par of the committee.</p>	Clause-15 Page 27	489	Yes
	<p><b>(e) Contravenes any of the provisions of the law for the time being in force?</b></p> <p>The resolution plan does not contravene any provision of the code. Details of the compliance of plan with Code is provided by the resolution applicant.</p>	Compliances of Code given on Page No. 65-66	527-528	No
Section 30(4)	<p>Whether the Resolution Plan <b>(a) is feasible and viable, according to the CoC?</b></p> <p>The resolution plan was circulated to the COC and the members of COC deliberated</p>	Yes	Minutes of 12 <sup>th</sup> meeting page 547-551 (Annexure A-15)	Yes



	<p>on the plan and its feasibility and viability for over 2 months. Many discussions were held with the resolution applicants. The COC member SBI has its own in house standard operating procedure to evaluate the resolution plan. The member of COC have specifically evaluated the economic viability and operational feasibility of the resolution plan. The members of COC have recorded their reasoning to approve the plan in the 12<sup>th</sup> meeting of the COC, as stated herein below:</p> <p><i>“The members of the committee of creditors were of the opinion that the plan is viable and feasible, and the resolution applicant has capability to implement the same within the given resources.</i></p> <p><i>The members also agreed to the composition of the monitoring committee which will supervise and assist in implementation of the resolution plan.</i></p> <p><i>The Resolution Professional informed the members that the resolution plan meets the requirement of regulation 38A in respect of the mandatory contents of the resolution plan. The members evaluated the treatment of the all stakeholders provided in the resolution plan and they were of the opinion that interest of all the stake holders has been taken care of. The members stated that the plan provides for payment to all the creditors irrespective of the liquidation value of the assets of the corporate debtor. The committee agreed to the term of the plan which is 9 months. The committee was satisfied with the proposed plan of management and control of the business of the corporate debtor.”</i></p>	<p>Yes with 100% voting share in favour</p>	<p>551</p>	<p>Yes</p>
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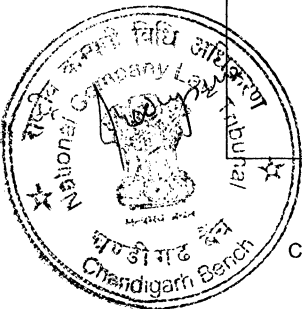
	<p><b>(b) has been approved by the CoC with 66% voting share?</b></p> <p>The resolution plan has been approved by the COC with a vote of 100% in favour of the plan.</p>			
Section 31(1)	<p><b>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</b></p> <p>The resolution plan provides for the following measures for effective implementation of the resolution plan;</p> <p><i>-The Resolution Applicant has proposed formation of monitoring agency for effective supervision and implementation of the plan and the same has been duly approved by COC in 12<sup>th</sup> meeting by passing the following Resolution:</i></p> <p><i>“The Resolution Applicant proposes the following measures between the Effective Date and the Completion Date (“Interim Period”) for effective supervision and implementation of the Resolution Plan:</i></p> <p>(a) <i>A committee consisting of the Resolution Professional (Subject to consent by RP) or any other experienced professional, nominee of financial creditors, resolution applicant or nominees of the Resolution Applicant (“Monitoring Agency”) shall be constituted who will manage the Corporate Debtor during the Interim Period.</i></p> <p>(b) <i>The Monitoring Agency shall oversee the effective implementation of the Resolution Plan under its supervision, until the completion date.</i></p> <p>(c) <i>Upon appointment of the Monitoring Agency and on full hand-over of assets of the Corporate Debtor including business records and all statutory records, tax filings, account books and account</i></p>	Clause-15 Page No 27	551-553	Yes

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records taken into custody under Sections 17 and 18 of the Code read with Sections 23 and 25 of the Code by the Resolution Professional, the Resolution Professional shall be released of his statutory duties and responsibilities and liabilities except as required by law.

- (d) The Monitoring Agency shall manage the affairs of the Corporate Debtor and shall exercise the powers of the Board of Directors of the Corporate Debtor till reconstitution of the board of director by the resolution applicant.
- (e) From effective date to till handover by the RP of the control of corporate debtor to resolution applicant, all decisions in relation to the corporate debtor shall be taken by the Monitoring Agency.
- (f) The monitoring agency shall meet regularly on an interval not more than 30 days during the first year from effective date and not more than 90 days thereafter till completion of the implementation of resolution plan.
- (g) The monitoring agency shall be responsible for all reporting requirements in relation to the implementation of resolution plan including reporting of any breach of any term, failure on part of resolution applicant to implement the plan, contravention of terms of plan by any stakeholder etc.
- (h) The monitoring agency shall extend all cooperation to the Resolution Professional including making payment of the fee and charges in excess of the earlier provisions, if required, in pursuing the applications filed before the Adjudicating Authority in



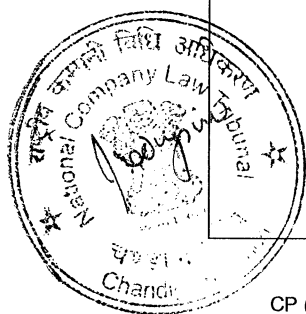
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	<p><i>relation to preferential/fraudulent transactions.</i></p> <p><b>The COC has constituted the monitoring committee in 12<sup>th</sup> meeting by passing the following resolution.</b></p> <p><b>Resolved that the following persons shall be the members of the monitoring committee as proposed in para 15 of the resolution plan;</b></p> <ol style="list-style-type: none"> <li>1. SurjeetKaushal (AGM, SBI)</li> <li>2. Ravinder Kumar Goel (Insolvency Professional)</li> <li>3. Ram Prakash Singh (Resolution Applicant)<sup>3</sup></li> </ol> <p>The monitoring committee shall assume charge on the approval of the resolution plan.</p>			
Regulation 35A	<p><b>Where the resolution profesional 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?</b></p> <p>The resolution professional based on the examination of the books of accounts has made a determination of the transactions within 115 days of the insolvency commencement date and intimated the board about these transactions. The resolution professional has filed an application under section 66 of the code before the adjudicating authority seeking appropriate direction to the respondents to make contribution to the assets of the corporate debtor.</p>	Application filed with NCLT u/s 66 of IBC 2016	243-246 (Annexure A-8)	Yes
Regulation 38 (1)	<p><b>Whether the Resolution Plan identifies specific sources of funds that will be used to pay the-</b></p> <p>(a) insolvency resolution process costs?</p> <p>(b) liquidation value due to operational creditors? Operational creditors are being paid</p>	Appendix-6 Page A8-A12	536-540	Yes

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	<p>more than the liquidation value due to them as per Section 53 of the code</p> <p>(c) Liquidation value due to dissenting financial creditors.</p> <p>The Resolution Applicant will pay the CIRP cost and other priority dues within 1 month from the last date of approval by the Adjudicating Authority out of own resources. There are no dissenting Financial Creditors.</p>			
Regulation 38(1A)	<p><b>Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?</b></p> <p>The resolution plan includes statement as to how it has dealt with the interest of all the stakeholders. The plan provides details of the settlement proposed with all the stake holders.</p>	Clause-8 Page 22-23	484-485	Yes
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p><b>(a) the term of the plan and its implementation schedule?</b></p> <p>The resolution plan provides that he terms of the plan is 9 months and provides that it will be implemented by making payments as below;</p> <ul style="list-style-type: none"> <li>• CIRP cost within 1 month</li> <li>• Payment to Operational Creditors within 1 month;</li> <li>• Payment to secured creditors 10% within three months and balance in next 2 equal quarterly instalments.</li> </ul>	Clause-34 Page 42 & Appendix 6 Page A8 –A10	504&536-540	Yes
	<p><b>(b) for the management and control of the business of the corporate debtor during its term?</b></p> <p>The plan provides that the board of directors of the corporate debtor shall be reconstituted and manned with professionals. The plan provides for appointment professional KMP's. Monitoring agency will supervise the implementation of the plan and ensure compliance with the terms of the plan.</p>	Clause-17 Page 29 & Schedule 7 Page 56-57	491&517-519	Yes  Yes

	<p><b>(e) adequate means for supervising its implementation?</b></p> <p>The plan provides for appointment of Monitoring agency which will supervise the implementation of the plan and ensure compliance with the terms of the plan. The composition of the monitoring agency has been finalised by the COC in its 12<sup>th</sup> meeting. The monitoring agency shall be responsible for reporting the progress and breaches if any in the implementation schedule of the resolution plan. The COC has also provided for fixed meeting schedule of the monitoring agency.</p>	Clause-15 Page 27	489	Yes
38(3)	<p>Whether the resolution plan demonstrates that –</p> <p><b>(a) it addresses the cause of default.</b></p> <p>The plan has identified diversion of the funds and lack of focus on the business as main cause of the failure of the corporate debtor. The resolution applicant has proposed a strict financial discipline scenario and undivided focus on the business activity.</p>	Clause-2.2 Page 4 & Schedule 12 Page-64	466-468 &526	Yes
	<p><b>(b) it is feasible and viable?</b></p> <p>As per the assessment of the COC and having regards to the net worth and projected working plan of the applicants, the plan is feasible and viable.</p>	Schedule-8 Page 58-59	520-521	Yes
	<p><b>(c) it has provisions for its effective implementation?</b></p> <p>The plan provides for appointment of Monitoring agency which will supervise the implementation of the plan and ensure compliance with the terms of the plan. The composition of the monitoring agency has been finalised by the COC in its 12<sup>th</sup> meeting. The monitoring agency shall be responsible for reporting the progress and breaches if any in the implementation schedule of the resolution plan. The COC has also provided for fixed meeting schedule of the monitoring agency. The resolution applicant has also</p>	Clause-15 Page 27	489	Yes



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	furnished performance security in form of fixed deposit equal to 2.5% of the plan value and immovable property equal to 30% of the plan value.			
	<p><b>(d) it has provisions for approvals required and the timeline for the same?</b></p> <p>The plan does not envisage any special approval from any agency except for the permissions already available and required in normal course of business.</p>	Clause-5.2 Page 9-10 & Schedule -9 Page 60 & Schedule 10 Page 61-62	471-472 & 522-524	Yes
	<b>(e) the resolution applicant has the capability to implement the resolution plan?</b>	Schedule-6 Page No. 54	(i) 516	(ii) Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Application filed with NCLT u/s 66 of IBC 2016	247-327 (Annexure A-8)	Yes

**\*\***It was observed that when the matter was under consideration before this Tribunal an amendment was introduced under Section 30(2)(b) and the following provision was inserted by Act No. 26 of 2019 w.e.f. 06.08.2019:-

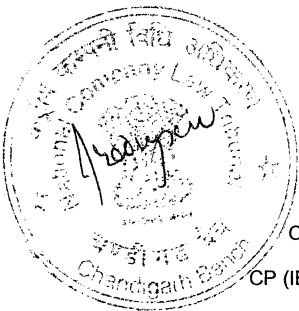
*"[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—*

*(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*

*(ii) the 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 provides for the 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, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.*

*Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*

*Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of*



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*the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—*

*(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;*

*(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*

*(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]"*

It is observed that the amount available to the operational creditors, as provided in the resolution plan is ₹87,361/- which is more than the liquidation value. Further, the amount to be distributed between operational creditors in the event of liquidation, if distributed in order of priority in Section 53(1) of the Code would be NIL. As discussed above, there are no dissenting financial creditors, so no question of payment to dissenting financial creditors arises here, in the event of liquidation of the corporate debtor. Hence, Section 30(2)(b) (Act No. 26 of 2019) w.e.f. 06.08.2019 stands complied with.

17. The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading as follows:-

*If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and 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 such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.*

*Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.*

18. The conditions provided for in Section 31(1) of the Code for approval of resolution plan are therefore:-

- (a) *The Resolution Plan is approved by the CoC under Section 30(4) of the Code;*
- (b) *The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*
- (c) *The Resolution Plan has provisions for its effective implementation.*

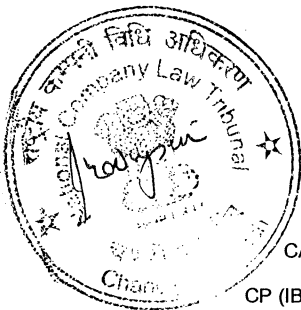
The satisfaction of the conditions is discussed below.

19. It is submitted by the RP that the resolution plan has been approved by a vote of 100% of voting share of the financial creditors and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

20. The provisions of Section 30(2) of the Code are as follows:-

*The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—*

- (a) *provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;*
- (b) *provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;*
- (c) *provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;*
- (d) *the implementation and supervision of the resolution plan;*
- (e) *does not contravene any of the provisions of the law for the time being in force;*
- (f) *confirms to such other requirements as may be specified by the Board.*



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21. The compliance of Section 30(2) of the Code is given in para No.9 of Form H (*supra*). The same is being further examined as under:-

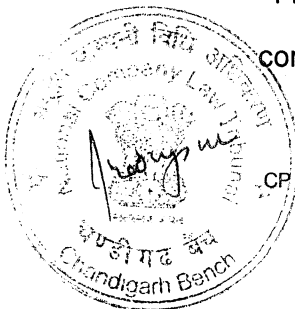
(a) **Section 30(2)(a):** The resolution plan (page 473 of the application) states that payment of insolvency resolution process cost amounting to ₹33.33 lacs shall be paid in priority with payments to the other creditors of the corporate debtor;

(b) **Section 30(2)(b):** The resolution plan (Page 474 of the application) states that according to the Information Memorandum issued by the RP to the resolution applicant, there is sum of ₹43.68 lacs payable to the operational creditor of the corporate debtor other than employees, workmen and Government dues. The resolution, therefore, proposes ₹87,361/- as the amount payable to the operational creditors. There is also provision of ₹2,34,681/- for Government dues and ₹1,36,504 against workmen dues of the corporate debtor.

(c) **Section 30(2)(c):** At page 29 of the resolution plan (page 491 of the application), it is stated that The Corporate Debtor shall be professionally managed by the professionals/experts nominated by the resolution applicant. As per Form H, the business of the corporate debtor will be managed and controlled by reconstituting the Board of Directors and appointing Key Managerial Personnel.

Further, as per Form H Monitoring Agency will supervise the implementation of the plan and ensure compliance with the terms of the plan.

(d) **Section 30(2)(d):** At Page 27 of the resolution plan (Page 489 of the application), it is stated that a Committee consisting of resolution professional or any reputed firm of professionals, a nominee of CoC and nominees of the resolution applicant ("Monitoring Agency") shall be constituted which will manage the corporate debtor during the interim period. It is further stated that the Monitoring



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Agency shall be responsible for reporting all the requirements in relation to the implementation of the resolution plan.

(e) **Section 30(2) (e):** In Form H (para No.4), the RP has certified that the resolution plan complies with the provisions of the Code and Regulations and does not contravene any of the provisions of law for the time being in force.

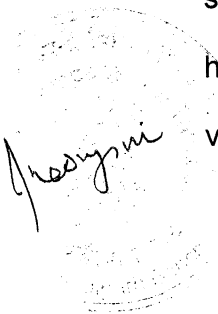
22. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan states that the resolution applicant undertakes that on approval of the resolution plan by the Adjudicating Authority, the resolution applicant also proposes to appoint a Monitoring Agency as would be decided by the Secured Financial Creditors. The term of the plan is stated to be 9 months from the approval of the plan by the Adjudicating Authority. The implementation of the plan will be made by making payments towards the CIRP cost within one month, payment to operational creditors within one month and payment to secured creditors being 10% within three months and balance in next two equal quarterly instalments.

23. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No. 4 of Form H the RP has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that the joint resolution applicant Shri Ram Prakash and Smt. Indu Walia has submitted affidavit dated 02.03.2019 pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The RP has submitted that the resolution plan has been approved by the CoC with 100% voting share in accordance with the provisions of the Code and CIRP Regulations

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made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.

24. We shall now discuss the requirements of Regulation 39(4) of the Regulations. It is observed that in the meeting of CoC held on 08.02.2019, approval was given for obtaining performance security from the resolution applicant. As per the requirement of performance security, Fixed Deposit Certificate for a sum of ₹6,25,000/- in the nature of Kuber Yojna Deposit Scheme with UCO Bank in (Annexure A-16) and a copy of jamabandi in respect of the mortgaged land as performance security is found attached with the application as Annexure A-16. The RP should ensure that the performance security is received as per the decision of the CoC.

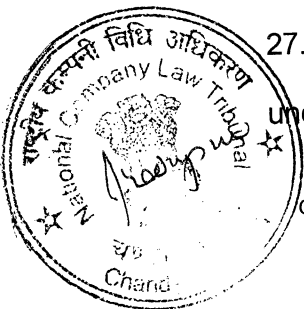
25. It is also stated that application dated 25.04.2019 has been filed with this Tribunal regarding fraudulent transactions under Section 66 of the Code. The relevant CA No. 129/2019 is presently under hearing by the Tribunal.

26. In view of the above discussion, the resolution plan submitted by Shri Ram Prakash and Smt. Indu Walia as approved by the CoC under Section 30 (4) of the Code is hereby approved subject to comments in para No.24 regarding performance security. The resolution plan so approved shall be binding on the corporate debtor and 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 such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

27. Under the provisions of Section 31 (3) of the Code, we also direct as

under:-

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- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 13.09.2018 shall cease to have effect; and
- b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

CA No.505/2019 is disposed of.

—sd—

(Pradeep R. Sethi)  
Member (Technical)

November 7<sup>th</sup>, 2019  
Yashpal

—sd—

(Ajay Kumar Vatsavayi)  
Member (Judicial)



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