



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, C-IV

IA No. 3034 of 2022  
IN  
CP No. (IB) 1739/ (MB)/ CV-IV/ 2019

*In the matter of Application under section 30(6) for approval of Resolution Plan under section 31(1) and Section 60(5) of the Insolvency and Bankruptcy Code, 2016.*

*In the matter of:*

**Mr. Rajan Deshraj Agarwal**

*Resolution Professional  
of the Corporate Debtor*

*In the matter of:*

**Ingenia FZE**

*... Operational Creditor*

*Versus*

**Infra Industries Limited**

*... Corporate Debtor*

Order delivered on 21.03.2023

*Coram:*

Shri Prabhat Kumar  
Hon'ble Member (Technical)

Shri Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Applicant

:

Ms. Prachi Wazalwar a/w Ms. Princi Jaiswal and Ms. Shaila Taware Advocate for RP.



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Mr. Devarajan Raman, Authorized  
Representative for the RP.

Siddha Pamechaa/w Mr. Raj Dani  
i/b Thodur Law Associates,  
Advocates for Financial Creditor  
(Indian Overseas Bank)

For the Corporate Debtor : None present.

**ORDER**

***Per: Prabhat Kumar, Member Technical***

1. The Bench is convened by videoconference today.
2. This is an Application filed on 14.10.2022 under Section 30(6), 31 and 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “Code”) filed by Resolution Professional (“RP” or “Applicant”) seeking the approval of the Resolution Plan submitted by the Resolution Applicant i.e. Equator Financial Services Limited (hereinafter referred to as “Successful Resolution Applicant” or “SRA”).
3. The Corporate Insolvency Resolution Process (“CIRP”) of the Corporate Debtor was initiated by this Bench by an order dated 12.12.2019 under section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as ‘the Code’) (Admission Order) and Mr. Rajan Deshraj Agarwal, was appointed as Interim Resolution Professional (“IRP”), who was continued as Resolution Professional (RP) of the Corporate Debtor vide resolution passed by CoC its 1<sup>st</sup> meeting held on 15.01.2020.



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4. The IRP published a public announcement in Form A as per Section 13 & 15 of the Code read with Regulation 6 of CIRP Regulations inviting claims from the creditors of the Corporate Debtor. The RP issued Form-A dated 20.12.2019 published on the website of the IBBI and made Public Announcement in “Free Press Journal” (English Language) and “Navshakti” (Marathi Language), Mumbai calling the creditors to submit their claims.
5. On 09.01.2020 the Applicant filed with the Adjudicating Authority the list of creditors and report constituting the Committee of Creditors (“CoC”), which comprised of Indian Overseas Bank, New Marine Lines Branch as sole member. The final list of creditors was drawn on 21.08.2020.
6. During the period of CIRP, the RP issued first Form-G on 29.02.2020, inviting Expressions of Interest (EOI) in Financial Express (Mumbai) in English and Navrashtra (Pune) in Marathi Language. In the 5<sup>th</sup> CoC meeting held on 27.05.2022, the applicant apprised the members of CoC about the Provisional list and Final list of Prospective Resolution Applicants (hereinafter referred to as ‘PRAs’). The Final list of PRAs dated 21.08.2022 contained only the name of SRA.
7. In the 13<sup>th</sup> adjourned CoC meeting held on 06.10.2022, the Resolution Plan submitted by SRA was approved by 100% of CoC members with voting rights.
8. The valuers, appointed for conducting valuation of Corporate Debtor, determined the liquidation value and fair value and the average of Fair Value(s) of all the assets and that the Liquidation Value(s) of all the assets as



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determined by valuer(s) is Rs. 4,35,59,268 and Rs. 3,46,53,333, the details of which are given as under:

<b>GRAND TOTAL OF THE AVERAGE VALUATION</b>		
	<b>FAIR VALUE</b>	<b>LIQUIDATION VALUE</b>
Land & Building (In Rs.)	3,68,21,113/-	2,96,41,375/-
Plant & Machinery (In Rs.)	59,70,210/-	43,77,281/-
Securities or Financial Assets (In Rs.)	7,67,945/-	6,34,677/-
<b>TOTAL</b>	<b>4,35,59,268/-</b>	<b>3,46,53,333/-</b>

9. The summary of the payments proposed to be made under the Resolution Plan dated 14.10.2022 vis-à-vis the claims admitted by RP are as follows-

Sr. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	2,25,17,832	2,25,17,832	2,25,17,832	100%
		(i) who did not vote in favour of	NIL	NIL	NIL	NIL



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		the resolution Plan				
		(ii) who voted in favour of the resolution plan	2,25,17,832	2,25,17,832	2,25,17,832	100%
		Total[(a) + (b)]	2,25,17,832	2,25,17,832	2,25,17,832	100%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21 (Related Party)	4,23,06,302	4,23,06,302	0	0%
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		Total[(a) + (b)]				
3	Operational Creditors	(a) Related Party of Corporate Debtor	16,65,527	16,36,497	98,653	5.92%
		(b) Other than (a) above:				
		(i) Government -	(i) 5,05,64,967	(i) 5,05,64,967	(i) 17,05,894	3.37%



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		Emp. Provident Fund	14,23,966	14,23,966	14,23,966	100%
		Other Govt Dues	4,91,41,001	4,91,41,001	2,81,928	0.57 %
		(ii) Workmen	(ii) 28,33,918	(ii) 28,33,918	(ii) 28,33,918	(ii) 100%
		(iii) Employees	(iii) 10,76,503 [Employees – non related]	(iii) 9,68,921 [Employees – non related]	(iii) 9,68,921	(iii) 90.01%
		(iv) Goods and Service Tax	2,78,99,730	2,13,95,168	1,22,747	0.44%
		Total[(a) + (b)]	8,40,40,645	7,73,99,471		
4	Other debts and dues		65,20,613	59,18,707	33,956	0.52
<b>Grand Total</b>			<b>15,53,85,392</b>	<b>14,81,42,312</b>	<b>2,82,81,921</b>	<b>18.20</b>

10. The Applicant has submitted that the Resolution Plan submitted by Equator Financial Services Limited, which is approved by 100% of the members of the Committee of Creditors and the Resolution Plan -
- i. provides for payment of Insolvency Resolution Process Costs in a manner specified by the board in priority to the payment of other debts of Corporate Debtor;
  - ii. provides for payment of the debts of the Operational Creditors in such manner as specified by Regulation 38 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations) 2016;
  - iii. provides for management of the affairs of the Corporate Debtor after the approval of the Resolution Plan; and



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- iv. does not contravene any of the provisions of the law for the time being in force.
11. It has been further submitted that transaction(s) falling under the provisions of section 43, 45, 50 & 66 of the Code were determined by the Applicant in accordance with the provisions of the Code and two applications numbered as, IA 2375 of 2021 and IA 2215 of 2021 are pending before the Adjudicating Authority. Upon approval of the plan, these applications shall be pursued by the sole Secured financial creditor i.e. Indian Overseas Bank.
12. The Applicant has filed application along with Form 'H' prescribed under Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and has appended a tabular summary of Applicant's determination of compliance of the Resolution Plan with various provisions and regulations under the Code and CIRP Regulations and has declared that –
- a. The Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the Corporate Debtor;
  - b. The Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional;
  - c. The Resolution Applicant has submitted an affidavit stating that it is eligible;
  - d. The Resolution Plan-
    - (a) provides for the payment of insolvency resolution process costs.
    - (b) provides for the payment to the operational creditors.
    - (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan.



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- (d) provides for the management of the affairs of the corporate debtor.
- (e) provides for the implementation and supervision of the resolution plan;
- e. The Resolution Plan-
- (a) is feasible and viable, according to the CoC, and
- (b) has been approved by the CoC with 66% voting share;
- f. The Resolution Plan has provisions for its effective implementation plan, according to the CoC;
- g. The resolution professional 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;
- h. The amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors;
- i. The resolution plan includes a statement as to how it has dealt with the interests of all stakeholders;
- j. The Resolution Applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code;
- k. The Resolution Plan provides:
- (a) the term of the plan and its implementation schedule,
- (b) for the management and control of the business of the corporate debtor during its term, and
- (c) adequate means for supervising its implementation;
1. The resolution plan demonstrates that –
- (a) it addresses the cause of default,
- (b) it is feasible and viable,
- (c) it has provisions for its effective implementation,



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- (d) it has provisions for approvals required and the timeline for the same, and
- (e) the resolution applicant has the capability to implement the resolution plan;
- m. The RP has filed applications in respect of transactions observed, found or determined by him;
- n. The Resolution Plan is not subject to any contingency;
- o. Provided details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.
13. No new approvals are required. Only renewal of the licenses and approvals is to be done which have expired due to non-payment of the fees payable.
14. Resolution Plan is being filed 12 days before the expiry of the period of CIRP provided in the section 12 of the Code. The CoC had resolved for Liquidation of the CD in its 4<sup>th</sup> meeting held on 30.01.2021, consequent to which the RP had filed an IA 1166/2021 for Liquidation. During the pendency of this IA, the SRA approached the Adjudicating Authority seeking to offer Resolution Plan. The Adjudicating Authority vide its Order dated 26.04.2022 allowed the prayer and directed the CoC to consider the proposal and convey its decision on the proposal or liquidation of CD. CoC considered the plan and approved the same. Vide order dated 29.06.2022, the Adjudicating Authority further allowed exclusion of 715 days from 15/03/2020 to 28/02/2022 in view of suo moto order of Hon'ble Supreme Court. Accordingly, the CIRP comes to an end on 26.10.2022.
15. We notice that the plan value is less than the liquidation value and the plan has been approved by 100% vote of CoC. The Hon'ble Supreme Court in the case of *Maharashtra Seamless Steel Ltd. v. Padmanabhan Venkatesh & Ors*



{*Civil Appeal No. 4242 of 2019*} upholding the primacy of 'commercial wisdom' of the Committee of Creditors and further held that the approved resolution plan can provide for payment of amounts lower than the liquidation value of the Corporate Debtor if it complies with the provisions of Section 30 (2) (b) of the Insolvency and Bankruptcy Code, 2016.

16. Pursuant to queries raised by this Bench, the Resolution Applicant has submitted that
  - a. though the *Rainbow judgement* is not applicable to the dues arising under MVAT as held by Hon'ble NCLAT in the case of *Department of Sales Tax vs. Zicom Saas Private Limited [CA (AT) (Insolvency) No. 246 of 2022]*, yet the plan has allocated additional sum towards VAT liabilities in the revised Form H and same has been approved by CoC; and
  - b. The IA 2375 of 2021 and IA 2215 of 2021, pending before this Adjudicating Authority, shall be pursued by the Secured financial creditor i.e. Indian Overseas Bank and the amount realised therefrom shall be distributed towards unsatisfied claims of the Creditors in accordance with the provisions under Section 53 read with Sec. 30(2) of the Insolvency and Bankruptcy Code, 2016, after appropriation of cost incurred in pursuing these applications and recovery arising thereunder, in view of the fact that the claim of sole is being satisfied in full.
17. In view of the facts, we find that that the resolution plan meets the requirement of Sec. 30(2) of the Insolvency and Bankruptcy Code, 2016.

**ORDER**

- c. The Interlocutory Application No. **3034 of 2022** is **allowed**. The Resolution Plan submitted by Equator Financial Services Limited is



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hereby approved, subject to the orders in the following para(s). It shall become effective from this date and shall form part of this order. 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 of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

- a. In terms of the judgement of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited*, "on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan."

*"95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;*



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*(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;*

*(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”*

In the view of the above judgement the applicant is entitled to waivers/ concessions/ reliefs as expressly provided under the Code and under any other law for the time being in force.

- d. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to compliance with the provisions of relevant statutes/rules/procedures and approval by the Authorities concerned.
- e. 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.



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- f. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- g. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- h. 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.
- i. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- j. The Interlocutory Application No. 3034/2022 in CP-1739/2019 is accordingly allowed and disposed of.

Sd/-

Prabhat Kumar  
Member (Technical)  
/LRA Akshata /

Sd/-

Kishore Vemulapalli  
Member (Judicial)