

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

MA 3636/2019

In

C.P. (IB) 410/MB/2018

Under Section 30(6); Section 31 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Vishal Ghisulal Jain

...Resolution Professional / Applicant

And

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

**Renoir Management Consulting (India)
Private Limited**

...Petitioner

V/s

Govind Rubber Limited

...Corporate Debtor

Order Delivered on 31st January 2020

Coram: Hon'ble Member (Judicial): Mr Bhaskara Pantula Mohan
Hon'ble Member (Technical): Mr Rajesh Sharma

For Resolution Applicant: Advocate Mayur Khandeparker i/b. Advocate Prajakta Menezes

For Resolution Professional: Advocate Anirudh Purushothaman



Per: Hon'ble Member (Judicial): Mr Bhaskara Pantula Mohan
Hon'ble Member (Technical): Mr Rajesh Sharma

ORDER

1. This Miscellaneous Application (MA) No. 3636/2019 is filed by **Vishal Ghisulal Jain**, Applicant Resolution Professional, under section 30(6) of Insolvency and Bankruptcy Code, 2016 (I&B Code) in C.P. (IB) 410/MB/2018 which was admitted u/s 9 of I&B Code vide order of this Tribunal dated 18.01.2019, initiating Corporate Insolvency Resolution Process (CIRP) against **Govind Rubber Limited**, the Corporate Debtor.
2. The Resolution Professional (RP) has filed this application under Section 30(6) of the I&B Code, seeking order for approval of the resolution plan, as approved by the members of Committee of Creditors (CoC), for resolution of the Corporate Debtor submitted by the consortium of Mr Brij Bhushan Gupta, Mrs Seema Gandhi, M/s. Kapivar Finlease Private Limited, Mr Mukesh Desai and Mr Iqbal Nabi (Resolution Applicant), and **Mr Brij Bhushan Gupta** being the lead member.
3. The Resolution Professional Invited Expression of Interest (EoI) vide publication dated 17.04.2019 and also vide re-publication dated 13.05.2019 and the last date for submission of the EoI was extended till 28.05.2019.
4. The CIRP period for the Corporate Debtor was extended by 90 days vide order of this Tribunal dated 17.07.2019. Further, since the CIRP of the Corporate Debtor was not completed as per the time mentioned in the second proviso of Section 12(3) of the I&B Code, therefore, the CIRP of the Corporate Debtor was to be completed within 90 days from the date of commencement of the Insolvency Code (Amendment) Act, 2019 i.e. from 16.08.2019, as per the third proviso of Section 12(3) of the I&B Code. Therefore, the CIRP period, pursuant to third proviso of Section 12(3) of the I&B Code, ended on 14.11.2019.



57 The Resolution Professional received two resolution plans, one from Kohinoor India Private Limited and another from the Resolution

Applicant. However, Kohinoor India Private Limited failed to give the Bank Guarantee / Earnest Money Deposit (EMD) and subsequently Kohinoor India Private Limited informed the RP that they are no more interested in the resolution process and do not want to submit the Bank Guarantee / EMD. Further, the RP informed the CoC that the Resolution Applicant had already remitted an amount of ₹1,00,00,000/- (Rupees One Crore Only) to the account of the company. Therefore, after multiple rounds of negotiations and subsequent revisions to the resolution plan, the CoC requested the RP to put up the approval of the resolution plan for e-voting. The e-voting line was kept open until 16th October 2019 till 4 p.m.

- 6. The resolution plan of the Resolution Applicant was approved by 85.29% members of CoC voting in favor and 0.21% CoC members abstained from voting. Further, 14.50% members of CoC voted against the resolution plan.**
7. The Resolution Professional has submitted his Form H under Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Resolution Professional has certified that the resolution plan complies with all the provisions of the I&B Code, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
8. The Resolution Applicant Mr Brij Bhushan Gupta and others have submitted an Affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The Resolution Professional has further certified that the said Resolution Plan has been approved by the CoC in accordance with the provisions of the I&B Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 85.29% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.



9. The manner of voting by the CoC is as per the following table:

Sr. No.	Name of the Creditors	Percentage of voting share	Voted Assent	Voted Dissent	Voted Abstained
1.	State Bank of India	28.66%	28.66%	—	—
2.	Bank of Baroda	26.46%	26.46%	—	—
3.	Central Bank of India	24.58%	24.58%	—	—
4.	Indian Overseas Bank	14.5%	—	14.5%	—
5.	Park Chambers	5.59%	5.59%	—	—
6.	ICICI Bank	0.21%	—	—	0.21%
7.	TOTAL	100%	85.29%	14.5%	0.21%

10. The Resolution Professional has received ₹1,00,00,000/- from the Resolution Applicant as and by way of EMD.

11. The Resolution Professional has confirmed that he has received Performance Bank Guarantee of ₹5,00,00,000/- (Rupees Five Crore Only) from the Resolution Applicant as required and to the satisfaction of CoC.

12. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the I&B Code and Regulations made thereunder.

13. The Resolution Professional appointed two registered valuers as per the Regulation 27 of the CIRP Regulations to determine fair value and liquidation value of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations. The liquidation value of the corporate



debtor as arrived at by the registered valuers appointed by Resolution Professional is ₹28,76,87,233/- (Rupees Twenty Eight Crore Seventy Six Lakh Eighty Seven Thousand Two Hundred Thirty Three Only) and the fair market value is ₹54,15,70,844 (Rupees Fifty Four Crore Fifteen Lakh Seventy Thousand Eight Hundred Forty Four Only).

Salient features of the Resolution Plan:

14. The Resolution Plan provides that the term of the Resolution Plan shall be from the Effective date until the Completion Date. The Resolution Plan defines "Effective Date" as the date of approval of this Resolution Plan by the Hon'ble National Company Law Tribunal, Mumbai and "Completion Date" means the date on which all measures specified in Part E of the resolution plan has been implemented, being a day not later than 45 days from the effective date. However, any approvals or permission required by the resolution applicant under any law for time being in force, shall be obtained from relevant statutory and regulatory authorities in time specified under the law, but in no event later than 1 (One) year from the effective date. It must be clarified here that the said grace period cannot be availed for making payments to creditors and other stakeholders under the Resolution Plan and the Resolution Applicant shall simultaneously endeavor to get all the approvals without deviating from the timelines finalized for such payments.
15. The Resolution Applicant proposes following payments to various stakeholders:

Sr. No.	Particulars of Claim	Amount Proposed
1.	CIRP Costs	At Actuals
2.	Financial Creditors	INR 30 Crores less the IRPC at actuals
3.	Operational Creditors including Statutory Liabilities (excluding Provident Fund for Workmen & Employees) and other creditors	INR 1 Crore



4.	Workmen & Employees including Gratuity	INR 3.15 Crores
5.	Provident Fund for Workmen & Employees	INR 0.7 Crores
6.	Any other liability, including – Contingent Liabilities	NIL
7.	Total Proposed financial consideration	INR 34.85 Crores

16. The following table sets out the provisions made in the Resolution Plan for repayment of dues:

Particulars of Claim	Claim admitted (in Rupees)	Total payable as per the Plan (in Rupees)	Term of payment
1. CIRP COST			
IRP Costs	-	At Actuals (Approximately ₹10,00,000/-)	Upfront payment
2. FINANCIAL CREDITORS			
Secured Financial Creditors			INR 6.0 Crores Less IRPC (at actuals) within 45 days from the effective date.
State Bank of India	43,76,85,413	9,00,39,672	
Bank of Baroda	40,41,05,637	8,31,28,043	
Central Bank of India	37,54,03,448	7,72,21,743	
Indian Overseas Bank	22,14,30,689	4,55,53,916	
ICICI Bank	32,02,261	32,02,261	INR 24.0 Crores in 10 equal quarterly instalments of INR 2.4 Crore each after the end of moratorium of 6 months from Completion date.
Unsecured Financial Creditors			
Park Chambers Limited	8,54,36,450	8,54,365	Instalments to be paid at the end of each quarter



3. OPERATIONAL CREDITORS			
Operational Creditors (Other than workmen, employees and statutory dues)	24,91,70,355	1,89,901	Within 45 days from the effective date.
Government	12,85,60,01,155	97,97,986	
Others	1,58,93,616	12,113	
4. EMPLOYEES AND WORKMEN			
Workmen	1,69,02,142	1,69,00,000	Within 45 days from the effective date
Employees	5,93,17,805	1,46,00,000	
5. OTHER DEBTS AND DUES			
Provident Fund	69,36,509	70,00,000	Within 45 days from the Completion date.

17. The Resolution Plan proposes that on the effective date, the Resolution Professional shall provide a certified statement containing details of the Insolvency Resolution Process Costs (IRPC) to the Resolution Applicant. The IRPC shall be paid in priority to the payment of other debts of the Corporate Debtor and the IRPC shall be paid out of the total consideration offered to the financial creditors.
18. The Resolution Plan proposes a payment of INR 1.0 Crore on pro-rata basis to all Operational Creditors (including statutory liability but excluding workmen, employees, gratuity and provident fund dues). The amount due to the Operational Creditors shall be given priority in payment over Financial Creditors. It is further directed that the Resolution Professional and the Resolution Applicant shall ensure that the amount due to Operational Creditors under resolution plan must be paid in accordance with the amended section 30(2) of the I&B Code.
19. The Resolution Plan proposes that the claims of the Financial Creditors shall be settled at an amount of INR 30 Crores less the insolvency resolution process costs.



20. The Resolution Plan proposes that the claims of the Workmen & Employees including gratuity dues and all such other claims / benefits / dues accrued / admitted / denied shall be settled at INR 3.15 Crore, with INR 1.69 Crores to be paid to Workmen and INR 1.46 Crores to be paid to Employees. The amount due to the workmen and employees under the Resolution Plan shall be given priority in payment over financial creditors as per Regulation 38(1) of the CIRP Regulations. Under the Resolution Plan 100% of the Workmen dues have been proposed to be paid by the Resolution Applicant.
21. The Resolution Plan proposes that the Provident Fund dues of Workmen & Employees and all such other claims / benefits / dues accrued / admitted / denied shall be settled at INR 0.70 Crores. The provident fund amount due to the workmen and employees under the Resolution Plan shall be given priority in payment over financial creditors as per Regulation 38(1) of the CIRP Regulations.
22. The Resolution Plan proposes that any liabilities, claim and debts, both current and future, arising out of the on-going litigations, shall not be a liability on the Resolution Applicant in the event of adverse outcome. Further, the Resolution Professional may not have received claims for certain liabilities of the Corporate Debtor as on the Insolvency Commencement Date whether arising on account of contractual obligation or otherwise and which are not identified as liabilities / contingent in financial statements provided in information memorandum. Such liabilities shall be called as "Unidentified Potential Liabilities". Without prejudice to the rights of the Corporate Debtor to challenge the validity of any claims relating to such Unidentified Potential Liabilities, such Unidentified Potential Liabilities shall stand extinguished and fully discharged without any monetary payment. Also, any remaining claims and debts and other dues from the Corporate Debtor to any person for the period prior to the Effective Date, that is not expressly provided for in the Resolution Plan, including any claims from third parties relating to any contract entered into by the Corporate Debtor including damages on account of termination of such contracts pursuant to this Resolution Plan or claims which are in the nature of recovery, disgorgement, penalty, fees or recoupment of loss, shall be



deemed to have been extinguished upon approval of this Resolution Plan, without any liability whatsoever on the Corporate Debtor.

23. Upon approval of the Resolution Plan, the Resolution Applicant expects the ground breaking of the business of Corporate Debtor during the first quarter itself and expects that the business of the Corporate Debtor will require significant amount of capital expenditure for modification / renovation / replacement, therefore, the Resolution Applicant under the Resolution Plan has provided to undertake approximately INR 10 Crores for further capital expenditure and INR 12 Crores for infusion of working capital fund.
24. The Resolution Plan is to be financed by the consortium of Brij Bhushan Gupta and others. The details of Sources of Funds of Resolution Applicant are set out in the following table:

Members of Consortium	Source of Fund	Amount (₹ in Lacs)
Kapivar Finlease Private Limited & Seema Gandhi	Bank Balance in the name of Mrs Seema Gandhi	11.72
	Bank Balance & Fixed Deposits in the name of Kapivar Finlease Pvt. Ltd.	210.20
	Loans & Advances of Kapivar Finlease (immediately encashable out of Rs. 741.78 lacs)	400.00
	Loans & Advances of Seema Gandhi (immediately encashable out of Rs. 236.91 lacs)	100.00
	Unutilised Bank OD Limit of CBG Estates Pvt. Ltd., a wholly owned company of Seema Gandhi & Family	348.30
Brij Bhushan Gupta	Bank Balance & amount recoverable from his Loans & Advances	270.00



Iqbal Nabi	Bank Balance	122.51
Mukesh G Desai	Bank Balance	34.53
Immediate Finance facilities from Hapur Motor Finance Private Limited		600.00
TOTAL		2097.26

In addition, all the members of consortium have agreed to raise funds from their investment in shares, immovable properties, loans and other assets. They shall also raise funds through assets of their immediate family members.

25. On acquisition of the Corporate Debtor by the Resolution Applicant in accordance with the present Resolution Plan, the resolution applicant proposes that the workmen and employees of the corporate debtor will be employed by the resolution applicant on their suitability as per operational requirement. We accept this proposal and further direct the Resolution Applicant to comply with all the Industrial, Labor and any other applicable laws in this regard.
26. Pursuant to approval of the Resolution Plan, the suspended Board of directors shall stand dissolved and the directors of the corporate debtor immediately prior to the completion date, shall be deemed to have resigned and shall vacate their office. Further the persons nominated by the resolution applicant and the financial creditors including whole time director, if any, shall be appointed as the directors of the corporate debtor. Further, Resolution Applicant shall do necessary compliance with MCA and other concerned and applicable authorities as per applicable laws.
27. The Resolution Plan proposes to appoint a monitoring agency consisting of the three members of the CoC and two nominees of the resolution applicant. The monitoring agency shall manage the corporate debtor in trust and shall appoint the resolution professional to manage the day to day affairs of the corporate debtor under its supervision, until the full hand over of assets of the corporate debtor including business records.

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The resolution applicant has sought certain reliefs and concessions in the resolution plan. The said relief and concessions are mentioned in



Para Nos. 11 (i) to 11 (xii) of the Resolution Plan annexed to the application. This bench is not inclined to allow any of the said reliefs and concessions prayed by the Resolution Applicant. Therefore, the resolution applicant may apply to the relevant regulatory authorities for said reliefs and concessions and the relevant authorities may consider it as per relevant applicable laws.

29. Any relief sought for in the Resolution Plan, where the contract / agreement / understanding / proceedings / actions / notice etc. is not specifically identified or is for future and contingent liability, is at this moment rejected.
30. The Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance under all applicable laws for the time being in force.
31. We shall clarify here that any resolution applicant shall takeover the Corporate Debtor with all its assets and liabilities as per terms of the approved Resolution Plan. If any relief concerning any identified liability of the Corporate Debtor is required, then that needs to be specifically mentioned and sought for in the Resolution Plan. This bench cannot allow any general power to any resolution applicant absolving him of liability of the corporate debtor company without knowing about the liability against which such exemption is sought. In other words, reliefs/exemptions from only existing liabilities which are specifically identified can be sought and allowed in the Resolution Plan.
32. On perusal of the Resolution Plan, we find that the resolution plan has necessary provisions for its effective implementation.
33. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.

34. Given the above observations, we approve the resolution plan with modifications, as mentioned above, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors,



Resolution Applicant and other stakeholders involved in the resolution plan.

35. The resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.
36. **The Resolution Plan is approved as per directions above, under section 31(1) of I&B Code. The MA 3636/2019 is accordingly allowed and disposed of.**

Sd/-

RAJESH SHARMA

Member (Technical)

Sd/-

BHASKARA PANTULA MOHAN

Member (Judicial)

31st January 2020



Certified True Copy
Copy Issued "free of cost"
On 04.02.2020

Assistant Registrar
National Company Law Tribunal Mumbai Bench