

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

**CA No.1033/2019
IN
CP (IB) No.381/Chd/Hry/2018**

**Under Sections 30(6) and the
Insolvency and Bankruptcy
Code, 2016.**

In the matter of:

**Alchemist Asset Reconstruction
Company Limited** ...Financial Creditor

Vs.

Haryana Steel & Alloys Ltd. ...Corporate Debtor

And in the matter of:

CA No.1033/2019

Arunava Sikdar,
Resolution Professional,
Haryana Steel & Alloys Limited,
D-3, LGF, Lajpat Nagar, Part-I,
New Delhi-110024. ...Applicant/Resolution Professional.

Order delivered on:07.02.2020

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

For the Resolution Professional: 1) Mr. Manish Jain, Advocate
2) ArunavaSikdar, Resolution Professional

For the CoC : Mr. Manish Nihalavi

Per: Pradeep.R.Sethi, Member (Technical)

ORDER

CA No.1033/2019 is filed by the Resolution Professional (**RP**) under Sections 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **Code**) read with Regulation 39 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 the CoC held on 04.11.2019.

2. It has been submitted that petition was filed by the Financial Creditor i.e. Alchemist Asset Reconstruction Company Limited under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Haryana Steel & Alloys Limited (hereinafter referred to as **Corporate Debtor**) and the same was admitted vide order dated 13.02.2019 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 13.02.2019 and within three 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. Amar Ujala (Hindi) covering Murthal/Sonipat dated 16.02.2019 and in Financial Express (English), New Delhi & NCR on 16.02.2019 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, total 3 claims were received from the financial creditors which were verified and after collation, the IRP constituted the CoC as per the provisions of Section 21 of the Code.

4. It is submitted that the applicant as IRP also appointed two registered valuers to determine the fair value and liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations and the fair value and liquidation value as assessed on the basis of these two reports as per unamended Regulation 35 comes to ₹153.58 crores and ₹122.87 crores respectively.

5. It is stated that in the first meeting of the CoC held on 13.03.2019, the CoC resolved to continue with the IRP and appointed him as RP and in the second meeting of CoC held on 19.04.2019, the eligibility criteria for prospective Resolution Applicants was approved. The RP made a public announcement for invitation of resolution plan/expression of interest (EOI) in Form G as prescribed in Regulation 36 (A) of the Regulations by publishing the Form G in Financial Express, Delhi/NCR/Chandigarh Region and Jansatta Delhi/NCR Sonipat Edition on 22.04.2019. The last date for submission of EOI is 17.05.2019.

6. The RP apprised the CoC that EOI was received from 12 prospective resolution applicants and the eligibility criteria was sent to all the resolution applicants. With a view to receive additional EOIs, the CoC in its 3rd meeting held on 07.05.2019 decided to publish fresh Form G and the same was published on 09.05.2019. The last date for submission of EOI was extended by 15 days i.e. 24.05.2019. Copy of publication of EOI in Form G dated 09.05.2019 is attached as Annexure A-10.

7. In the 4th meeting of the CoC held on 24.05.2019, the evaluation matrix and the Request for Resolution Plan (RFRP) as proposed by RP was approved by the CoC and the same has been sent to all the prospective resolution applicants alongwith Information Memorandum (IM). The last date for

submission of the resolution plan was fixed at 21.06.2019 but due to request made by some prospective resolution applicants, the last date for submission of resolution plan was extended to 23.07.2019.

8. CA No.582 of 2019 was filed by the RP under Section 12(2) of the IBC, 2016 for extension of the CIRP time period by a further period of 90 days and the same was allowed vide order dated 09.08.2019. A copy of the order is part of document at Annexure A-4 of the paper book.

9. It is submitted that out of total 11 prospective resolution applicants, the RP received resolution plan from 4 prospective resolution applicants namely, 1. Haldiram Snacks Private Limited, 2. JFC Finance India Limited, 3. Cygnet Projects Private Limited and 4. KRBL Limited for consideration of the CoC. Out of the aforesaid four resolution applicants, only 2 resolution applicants namely Haldiram Snacks Private Limited (HSPL) and Cygnet Projects Private Limited (CPPL) had submitted their Earnest Money. As the number of resolution plans received from the prospective resolution applicants were below the expectation of CoC and in order to maximize the value of the Corporate Debtor, the members of the CoC unanimously decided to publish fresh EOI in Form G to invite more prospective resolution applicants to submit their plans and a fresh Form G dated 14.08.2019 was again published on 15.08.2019 (Annexure A-16). The last date for submission of the EOI was fixed at 30.08.2019.

10. It is submitted that in the 8th meeting of CoC held on 07.10.2019, the RP apprised the members that the final list consisting 8 prospective resolution applicants was published on 14.09.2019 and the IM, Evaluation Matrix and RFRP were issued on 09.09.2019. The last date for submission of resolution plan was on 09.10.2019 which was further extended to 19.10.2019.

11. The RP apprised the members of the CoC that the resolution plan in sealed envelope alongwith EMD was received from three prospective resolution applicants out of which two were previous applicants namely Haldiram Snacks Private Limited (HSPL), Cygnet Projects Private Limited (CPPL) and the third applicant is Aarone Developers Private Limited (ADPL). It is submitted that the resolution plan was opened and presented to the CoC members in the 9th meeting of the CoC on 31.10.2019. The prospective resolution applicants requested additional time to submit the revised resolution plan along with the revised bid amount.

12. In the 10th meeting of the CoC members on 04.11.2019, the resolution applicants submitted their revised resolution plan and the RP apprised the CoC that the plan submitted by ADPL and the revised plan of HSPL are above the liquidation value. The members by exercising their commercial wisdom approved the revised resolution plan submitted by Haldiram Snacks Private Limited by 100% voting share in favour of it. It is also stated that the CoC decided the terms and conditions of the performance security to be provided by the resolution applicants after the approval of the plan by the CoC and the CoC decided and agreed for obtaining 50% of the performance security in the form of Demand Draft and remaining 50% in the form of Bank Guarantee from the resolution applicant. It is also submitted that the requirement of performance security was communicated to the prospective resolution applicants.

13. The RP has filed compliance certificate in revised Form H (Annexure A-3, Diary No.7149 dated 16.12.2019). It is certified by the RP in para 4 of Form H that the resolution plan complies with all the provisions of the Code, CIRP Regulations and does not contravene any of the provision of law for the time

being in force and that the resolution plan stands duly approved by the 100% of the voting share of the financial creditors. It is also stated in para 4 (ii) of revised Form H that the affidavit of the successful resolution applicant regarding its eligibility under Section 29A of the Code is in order.

14. It is submitted that the CoC while accepting the bid had taken care of all the provisions of the Code and the Regulations. It is prayed that the application may be allowed and the resolution plan as approved by the CoC in the CIRP of the corporate debtor be approved.

15. The learned counsel for the resolution professional submitted that as per revised Form H (Annexure A-3, Diary No.7149 dated 16.12.2019), all the provisions of the Code and the 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 04.11.2019 and therefore, the resolution plan submitted by M/s. Haldiram Snacks Private Limited may be approved.

16. 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.

17. The corporate debtor was incorporated on 10.12.1969 and as discussed above, the CIRP proceedings were initiated by order delivered on 13.02.2019. The present application is filed for approval of the resolution plan submitted by M/s.Haldiram Snacks Private Limited. The approval has been sought under the provisions of Section 31 (1) of the Code.

18. 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 creditors, the distribution of voting share among them and the position of voting for the resolution plan is as under (para no.4 of Form H – Annexure A-1, Diary No.7149 dated 16.12.2019)

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Alchemist Asset Reconstruction Company Limited (AARCL)	10.93	Voted For Resolution Plan
2	Cygnat Projects Private Limited	89.00	Voted For Resolution Plan
3	JFC Finance Limited	0.07	Voted For Resolution Plan

19. The details of stakeholders under the resolution plan given in para 7 of Form H (Annexure A-3, Diary No.7149 dated 16.12.2019) is as follows:-

(Amount in Rs. lakh)

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	0	0	0	N A
2	Other Secured Financial Creditors	110735.92	110735.92	11490.00	10.38%
3	Dissenting Unsecured Financial Creditors	0	0	0	N A
4	Other Unsecured Financial Creditors	0	0	0	N A
5	Operational Creditors	616.96	351.62	0	0
	Government	0	0	0	0
	Workmen	11.72	2.21	0	0
	Employees	16.55	0	0	0
				
6	Other Debts	0	0	0	0

	<i>and Dues</i>			
<i>Total</i>				

20. The compliance of the resolution plan has been given in para No.9 of Form H (supra) as follows:-

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/ No)
25(2)(h)	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?	As per Financial Statements submitted	YES
Section 29A	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?	As per Final List of PRA dated 14.09.2019	YES
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	YES	YES
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment of the debts of operational creditors? (c) provides for the management of the affairs of the Corporate debtor? (d) provides for the implementation and supervision of the resolution plan? (e) contravenes any of the provisions of the law for the time being in force?	Para 5.2.3 of the Plan provides for payment of CIRP cost. As per Para 5.7 of the Plan, it has been proposed to settle the 100% of the admitted OC at zero. Para 6 of the Plan gives the detail of Management of the CD after approval of the Plan. Para 7 of the Plan states	YES

		<p>the manner of implementation and supervision of plan.</p> <p>Para 11.1(g) of the Plan states that it is not in contravention of the provisions of the Applicable law.</p>	
Section 30(4)	<p>Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?</p>	<p>a) The COC has approved the Resolution Plan after considering the feasibility and viability in terms of manner of distribution proposed in accordance with order of priority amongst creditors as laid down in sub-section (1) of Section 53 in terms of the provisions of IBC.</p> <p>b) The Resolution Plan has been approved by 100% votes of the members of the COC.</p>	YES
Section 31(1)	<p>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</p>	<p>Para 7 of the Plan states the manner of the</p>	YES

		implementation and supervision of the plan.	
Regulation 35A	Where 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?	Based on Transaction Audit Report obtained by the Resolution Professional, no such transaction was determined by the RP.	YES
Regulation 38 (1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the – (a) insolvency resolution process costs? (b) liquidation value due to operational creditors? (c) liquidation value due to dissenting financial creditors?	Para 9 of the Plan specifies the source of fund for CIRP cost. Para 5.7, clause ii states that since, as per estimates of the Resolution Applicant, the Liquidation Value for the operational creditor is Zero, it has been proposed to settle the 100% of the admitted OC at zero. As stated at para 5.5, clause ii of the approved Resolution Plan, the Dissenting Financial Creditors	YES There is no dissenting Financial Creditor in the matter.

		shall be paid in accordance with Section 30(2) of IBC.	
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Para 8 of the Plan includes a statement as to how it has dealt with interest of all stakeholder.	YES
Regulation 38(2)	Whether 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? (c) adequate means for supervising its implementation?	Para 5.11 gives the timeline for implementation of the Resolution Plan. Para 6 of the Plan gives the detail of Management of the CD after approval of the Plan. Para 7 of the Plan states the manner of implementation and supervision of the plan.	YES
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable?	Para 4.4, clause a) addressed the cause of default. Para 4.4, clause b) provides the proposed action for making it	YES

	<p>(c) it has provisions for its effective implementation?</p> <p>(d) it has provisions for approvals required and the timeline for the same?</p> <p>(e) the resolution applicant has the capability to implement the resolution plan?</p>	<p>feasible and viable.</p> <p>Para 7 of the Plan states the manner of implementation and supervision of the plan.</p> <p>Para 5.12 specifies the various grants, exemptions and permissions required.</p> <p>Para 4.4 (b) of the Plan states that the Resolution Applicant has the capability to implement the Resolution Plan.</p>	
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Based on Transaction Audit Report obtained by the Resolution professional, no such transaction was determined by the RP.	No

21. Section 30(2)(b) as substituted by Act No. 26 of 2019 w.e.f. 06.08.2019 is as follows:-

“(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 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;]”

22. It is observed that the total admitted claim due to Operational Creditors (including workmen) is Rs.3.53 crores but as the liquidation value i.e. ₹122.87 crores, is not sufficient to cover the dues of Financial Creditors, therefore, nothing is paid to be operational Creditors. Since, the Liquidation Value for the Operational Creditors is Zero, the resolution plan proposes to settle the 100% of the admitted Operational Creditors (including Workmen & Employee and Statutory Dues) at Zero. Therefore, 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. Further, there are no dissenting financial creditors as the resolution plan has been approved by 100% voting share of the Financial Creditors. Also it is stated in para 5.5 (ii) of the plan that Dissenting Financial Creditors shall be paid in accordance with Section 30(2) of the IBC provided that such payment shall not be made in priority to Financial Creditors who vote in favour of the plan. Hence, Section 30(2)(b) of the Act stands complied with.

23. 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, 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.

24. 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.

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

26. 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.*

27. 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: -

Section 30(2)(a): The resolution plan provides for the payment of ₹10,00,000/- as CIRP cost in priority to any other creditors of the corporate debtor within ninety (90) days from the approval of the Resolution Plan by the Adjudicating Authority. It is also stated that any payment above the CIRP costs of Rs.10 lacs will be deducted from the payment made to the Financial Creditors. Copy of letter by the HSPL is attached as Annexure A-1 (Diary No.7149 dated 16.12.2019).

Section 30(2)(b): It is stated in Form H that the average liquidation value of the corporate debtor is ₹122.87 crores. It is further stated that since the liquidation value of the corporate debtor is not sufficient to pay the outstanding debts of secured financial creditors in full, therefore the liquidation value payable to the operational creditors including Workmen & Employee and statutory dues is Nil. It is also stated that the claims by Government are nil.

Section 30(2)(c) & (d): The resolution plan provides complete plan for management of the affairs of the corporate debtor (page 47-49 of the application).

As per para 6 of the resolution plan (pg. 47) and upon the NCLT Approval Date, the corporate debtor will be managed by the Monitoring Agency and Turnaround Experts in which the Resolution Professional will be the Monitoring Professional till the payments as per the plan are made. It is stated in the resolution plan that the board of directors of the corporate debtor will be reconstituted and key managerial personnel will be appointed. The possible list of Board of Directors of the Resolution Applicant consists of Mr. Manohar Lal Agarwal, CMD, Mr. Ashok Tyagi, Executive President and Mr. Pankaj Agarwal, Managing Director of HSPL. It is also stated in para 7.2 of the plan that the Resolution Applicant will appoint a firm of Chartered Accountants/a firm of Company Secretaries/Individual Professional as Monitoring Agency for independent supervision of the plan.

Section 30(2) (e): In Form H (*supra*) (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.

28. 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 upon NCLT Approval Date, a Monitoring Agency and Turnaround Experts will be constituted. The constitution of the Committee is given in para no 6 and 7 of the plan (*supra*). The terms of the plan and its implementation schedule is stated to be 90 days from the approval of the plan by the Adjudicating Authority. Apart from upfront payment of ₹ 115,00,00,000 (Rupees One Hundred Fifteen Crores) to financial creditors), the resolution applicant will also infuse a payment of ₹ 5,00,000/- as Equity Share Capital in the Corporate Debtor to be utilized for New Capital Expenditure and Working Capital. Also, it is also stated that in addition to a sum of Rs.115.00

crore, the Financial Creditors will also be paid from the refund (to the tune of 9.2 crores), if (any) received arising from the pending Writ Petition No. 11052/2009 before Delhi High Court and there is no obligation on the part of the RA to pay any amount to the Financial Creditors in case no such refund is received by the CD. The above has been stated by the RP and CoC by way of separate affidavits filed vide Diary No. 519 and 512 both dated 20.01.2020 respectively.

29. 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 (supra) 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 resolution applicant Haldiram Snacks Private Limited has submitted affidavit 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 made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.

30. The RP has also filed affidavit vide Diary No.519 dated 20.01.2020 that Clause 5.2 of the resolution plan submitted by HSPL provided for infusion of ₹115.10 crore towards full and final settlement of the claim of the financial creditor and the CIRP cost and that it was completely within the knowledge of the CoC as well as the Resolution Professional that this amount was below the average liquidation value of the assets of the corporate debtor i.e. ₹122.87 crore. It has been submitted that the CoC while exercising the commercial wisdom and in the

interest of the corporate debtor, consciously resolved to approve the resolution plan of HSPL with 100% voting share.

31. The CoC has also filed affidavit vide Diary No.512 dated 20.01.2020 submitting that it was within the knowledge of the members of the CoC that the amount proposed to be infused by the resolution applicant in the corporate debtor was below the average liquidation value and that there was no certainty as regards receipt of the amount of refund in the litigation pending before the Hon'ble High Court of Delhi in Writ Petition (C) # 11052/2009 and that any refund accruing in favour of the financial creditor is contingent in nature. It is submitted that the members of the CoC, by exercising commercial wisdom, duly approved the resolution plan of HSPL by taking into consideration all the relevant factors, such as the amount to be infused by the resolution applicant, contingency of Writ Petition (C) # 11052/2009 and liquidation value of the corporate debtor.

32. It has been held in para 42 of **K. Sashidhar Vs. Indian Overseas Bank &Ors. (Civil Appeal No. 10673 of 2018 dated 05.02.2019)** by the Hon'ble Supreme Court *inter alia* that no corresponding provision has been envisaged by the legislature to empower the resolution professional, the Adjudicating Authority (NCLT) or for that matter the Appellate Authority (NCLAT), to reverse the "commercial decision" of the CoC. It was also held that whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority.

33. We may add that in the case of **Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Ors. in Civil Appeal Nos. 4242 of 2019** it has been held in para 26 thereof that "No provision in the Code or Regulations has

been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016....”

34. In view of the above discussion, the decision taken by the financial creditors falls within the ambit of its commercial and banking wisdom and is therefore, not being interfered with.

35. We shall now discuss the requirements of Regulation 39(4) of the Regulations. It is observed that in the 10th meeting of CoC held on 04.11.2019, approval was given for obtaining 50% of the performance security in the form of Demand Draft and remaining 50% in the form of Bank Guarantee from the resolution applicant. It is submitted that as per the requirement of performance security, the Performance Guarantee has been provided in the way of Bank Draft for Rs.11,50,00,000/- and remaining in the form of unconditional Bank Guarantee for Rs.11,50,00,000 both favouring the Financial Creditor. A copy of Demand Draft and Unconditional Bank Guarantee is annexed as Annexure A-3 (Colly).It is thereby submitted that the requirements of performance security under Regulation 39(4) of the Regulations read with 36B(4A) of the Regulations are complied with.

36. On the basis of discussion made above and in view of the provisions of Section 30(4) of the Code, we approve the resolution plan submitted by Haldiram Snacks Private Limited as approved by the CoC. The resolution 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.

37. Under the provisions of Section 31 (3) of the Code, we also direct as under:-

a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 13.02.2019 shall cease to have effect; and

38. 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.

39. CA No. 1033/2019 is disposed of.

Pronounced in open court.

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

Sd/-
(Pradeep R. Sethi)
Member (Technical)

February 07,2020
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