

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**MA 3199/2019**

**In**

**CP (IB) 1767/MB/2017**

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

In the matter of

**Mr. Ramchandra D. Choudhary**

...Resolution Professional/Applicant

And

Under Section 7 of the Insolvency and Bankruptcy  
Code, 2016

In the matter of

**Union Bank of India**

...Petitioner

Vs.

**Maharashtra Shetkari Sugar Limited**

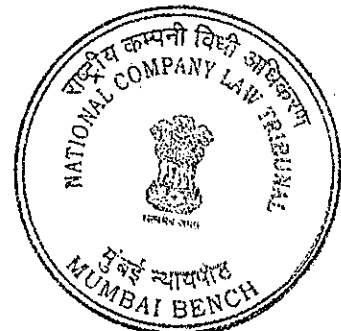
**Order Delivered on 07.11.2019**

**Coram:** Hon'ble Member (Judicial) Mr. Bhaskara Pantula Mohan

Hon'ble Member (Technical) Mr. Rajesh Sharma

For Resolution Applicant: Adv. Rohan Kelkar, Adv. Dhruva Gandhi, Adv.  
Kartikeya Desai, Adv. Asadali Musgoanwala and  
Adv. Vedika

For Resolution Professional: Adv. Shyam Kapadia, Adv. Amey and Adv.  
Geeta Lundwani.



THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

MA 3199/2019 in  
CP (IB)1767/MB/2017

Per: Rajesh Sharma  
Member (Technical)

Per: Bhaskara Pantula Mohan  
Member (Judicial)

**ORDER**

1. The Miscellaneous Application (MA) No. 3199 of 2019 is filed under section 30(6) of Insolvency and Bankruptcy Code, 2016 (**I&B Code**) in C.P. No. 1767 of 2017 which was admitted u/s 7 of I&B Code vide order of this Tribunal dated 30.08.2018, initiating Corporate Insolvency Resolution Process (**CIRP**) against Maharashtra Shetkari Sugar Limited, the Corporate Debtor.
2. The Resolution Professional has filed this application under Section 30(6) of the I&B Code, seeking order for approval of the resolution plan for the Corporate Debtor submitted by the consortium of **Twentyone Sugar Limited** and **Tejas Construction & Infrastructure Private Limited (Resolution Applicant)** as approved by the members of Committee of Creditors (**CoC**).
3. The Resolution Professional invited Expression of Interest (**EoI**) vide publication dated 17.02.2019 and the last date for submission of the EoI was extended till 30.03.2019.
4. The CIRP period for the Corporate Debtor was extended by 90 days vide order of this tribunal dated 26.02.2019. The CIRP period pursuant to the Order dated 24.07.2019 passed by the Hon'ble NCLAT ended on 22.10.2019
5. The Resolution Professional received two resolution plans, one from Dilip G. Deshmukh jointly with Chandrakant Deshmukh and another from the Resolution Applicants. After several rounds of negotiations and subsequent revisions to the resolution plans, the CoC finally voted upon the two resolution plans from 19.08.2019 to 31.08.2019.
6. The resolution plan of the Resolution Applicant was approved by 95.73% votes in favor and 4.27% abstained. The other resolution plan was rejected by the same votes.
7. The Resolution Professional has submitted its Form H under Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency



THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

MA 3199/2019 in  
CP (IB)1767/MB/2017

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 M/s. Twenty-one Sugar Limited along with Tejas Construction Infrastructure Private Limited has 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 95.73% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations. The manner of voting by the CoC is as per the following table:

Sr. No.	Name of the Member	Percentage of voting share	Voted Assent	Voted Dissent	Voted Abstain
1	Punjab National Bank	37.65%	37.65%	—	—
2	Andhra bank	31.41%	31.41%	—	—
3	Union Bank of India	26.67%	26.67%	—	—
4	IFCI Limited	4.27%	—	—	4.27%
	<b>TOTAL</b>	<b>100%</b>	<b>95.73%</b>		<b>4.27%</b>

9. The Resolution Professional has received ₹1,00,00,000/- from the Resolution Applicant as and by way of EMD.
10. The Resolution Professional has confirmed that he has received performance security of ₹4 crore from the Resolution Applicant as required and to the satisfaction of CoC.
11. 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



THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

MA 3199/2019 in  
CP (IB)1767/MB/2017

stakeholders in compliance with the I&B Code and regulations made thereunder.

12. The Resolution Professional appointed Three registered valuers as per the Regulations 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 ₹68.48 crore and the fair market value is ₹109.23 crore.
13. The Resolution Plan defines "Effective Date" as the date after approval of Scheme of Amalgamation as envisaged under this Resolution Plan by NCLT order date of disposal of litigations/appeal before the Hon'ble NCLAT (or any other competent Court of Law or Authority) or any other litigation emanating from the sanctioned Scheme of NCLT.
14. The following table sets out the provisions made for repayment of dues in the Resolution Plan:

Sr. No.	Particulars of Claim	Type of Claim	Admitted Amount (INR)	Settlement Amount provided under Resolution Plan (INR)
1.	CIRP Costs	—	60,00,000	60,00,000
2.	Financial Creditors	Secured	4,69,47,51,648	90,00,00,000
3.	Interest to Financial Creditors	NA	—	15,99,41,619
4.	Farmers Claim	Unsecured	10,94,71,487	2,00,00,000
5.	Statutory Dues	Unsecured	1,60,79,776	8,03,989
6.	Employees/Workmen	Unsecured	71,33,843	13,67,582
7.	Other Operational Creditors	Unsecured	8,54,00,454	59,78,032
	<b>TOTAL</b>		<b>4,91,28,37,208</b>	<b>1,09,40,91,222</b>

15. CIRP Cost has been estimated at an amount of ₹60,00,000/- (Rupees Sixty Lakhs only) which includes payment to IRP and RP, expenses incurred by IRP/RP to the extent approved by COC shall be paid in priority to all other debts by the Corporate Debtor within 7 days from the order of Approval of Resolution Plan by Adjudicating Authority. The source for this amount is identified as a commitment by the Resolution



THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

MA 3199/2019 in  
CP (IB)1767/MB/2017

Applicant for ₹60,00,000/- out of the retained earnings of the Resolution Applicant. Any excess over and above ₹60,00,000/- (as approved by COC) shall be borne and paid by the Resolution Applicant on priority basis. In event of the CIRP costs comes to a lower figure than the estimated level of ₹60,00,000/- the balance amount to be given to the Secured Financial Creditors.

16. The admitted claim amount outstanding due to Operational Creditors of Corporate Debtor is ₹8,54,00,454/- is settled under the Resolution Plan at a total consideration of ₹59,78,032/- which is proposed to be paid in the following manner:
- ₹10,00,000/- (Rupees Ten Lakh only) within 7 days from the date on which this Hon'ble Tribunal is pleased to approve the COC Approved Plan;
  - ₹25,00,000/- (Rupees Twenty-Five Lakh only) within 6 months from the date of payment under point (a);
  - ₹24,78,032/- (Rupees Twenty-four Lakh Seventy-eight Thousand and Thirty-two only) within 6 months from the date of payment under point (b).
17. It is directed that the aforesaid amount shall be paid within a period of not more than 12 months from the date of this Order. 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.
18. On our persuasion, the Resolution Applicant has further improved its offer for payment to the Financial Creditors. As per the Further Affidavit of the Resolution Applicant dated 05.11.2019, the Financial Creditors will be paid ₹90,00,00,000/- along with simple interest at 9% p.a. over a period of 30 months as against the original proposal of 36 months. The Resolution Applicant has also agreed to pay the 1<sup>st</sup> installment within 90 days from the date of approval of the Resolution Plan as against the original proposal of 180 days. This amount shall be paid in the following manner:



**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

MA 3199/2019 in  
CP (IB)1767/MB/2017

Sr. No.	Period	Description	Principal	Interest	Total	%
1.	At EoI	EMD	1,00,00,000.00	0	1,00,00,000.00	1.00
2.	At Plan Submission	EMD	3,56,23,512.00	0	4,56,23,512.00	4.41
3.	7 days from Order	1 <sup>st</sup> instalment	4,43,76,490.00	14,74,677.23	9,14,74,679.23	8.84
4A	90 days from Order	2 <sup>nd</sup> instalment (Tranche 1)	4,80,58,677.00	2,25,69,041.04	16,21,02,397.27	15.67
4B	180 days from Order	2 <sup>nd</sup> instalment (Tranche 2)	4,80,58,677.00	1,12,72,556.53	22,14,33,630.80	21.40
5	12 months from Order	3 <sup>rd</sup> instalment	11,21,36,914.00	3,16,84,654.34	36,52,55,199.14	35.30
6.	18 months from Order	4 <sup>th</sup> instalment	14,01,71,143.00	2,67,07,618.7	53,21,33,960.84	51.43
7.	24 months	5 <sup>th</sup> instalment	23,07,87,293.00	2,04,86,324.14	78,34,07,577.98	75.71
8.	30 months from order	6 <sup>th</sup> instalment	23,07,87,294.00	2,04,86,324.18	1,03,46,81,196.16	100

19. During hearing, we expressed our concern that since the Corporate Debtor being highly dependent upon the raw material from farmers, they shall be paid more than what has been proposed in the Resolution Plan. Accordingly, in order to enhance the viability and feasibility of the Resolution Plan, the Resolution Applicant has improved its offer to pay the farmers' dues. Vide their Affidavit dated 04.11.2019 the Resolution Applicant undertakes that they shall pay ₹2 crores towards the farmers' claim. The said sum shall be paid in two equal annual instalments of ₹1,00,00,000/- (Rupees One crore only) each. The first instalment shall be paid within a period of 12 months from the receipt of the Order of this Tribunal approving the Resolution Plan and the second instalment of ₹1,00,00,000/- (Rupees One crore only) will be paid on the expiry of the twelve (12) months from the date of the payment of the first instalment. It is directed that the said payments shall be made within a period not exceeding 24 months from the date of this Order.



THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

MA 3199/2019 in  
CP (IB)1767/MB/2017

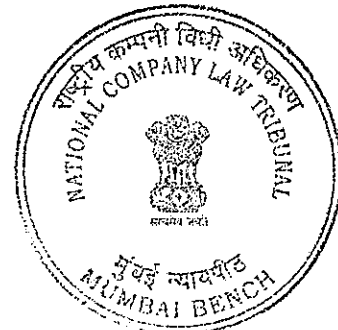
20. The Resolution plan proposes that all Workers and Employees of the Corporate Debtor will cease to be the employees of the Corporate Debtor and the Resolution Applicant shall re-employ the existing workers of the Corporate Debtor after being reviewed interviewed. **We are not inclined to accept this condition and the Resolution Applicant is directed to comply with all the Industrial, Labour and any other applicable laws in this regard.**
21. The Resolution Plan envisages that the term of the resolution plan and its implementation schedule for payment to the Financial Creditors, Operational Creditor and Statutory Dues/Liabilities, shall commence from Effective Date (i.e. the date of approval of the resolution plan by this Tribunal) and ends in 36 months from date of Effective Date, excluding a grace period of 12 months to cover inadvertent delay, if any, which may happen in getting statutory approvals for proposed amalgamation. **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.**
22. The Resolution Applicant shall source 65% of the total amount payable through a loan from Financial Creditors and the remaining 35% of the total amount payable shall be paid through the Company's own funds.
23. During the hearing, on being enquired by the Bench regarding the source of finance under the Resolution Plan, the Resolution Applicant vide its Affidavit dated 04.11.2019 has submitted two letters acknowledging receipt of Resolution Applicant's application for financing from Allahabad Bank and Maharashtra State Co-operative Bank Ltd.
24. The management and control of Corporate Debtor shall be handed over to the Board of Directors of Resolution Applicant for proper running and operation of the plant of the Corporate Debtor subject to approval of Committee of Creditors and Adjudicating Authorities. Further the



THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

MA 3199/2019 in  
CP (IB)1767/MB/2017

- existing technical team of the other plants of the Resolution Applicant shall be involved for smooth overhauling, as well as restarting of the commercial operations of the plant. Further, Resolution Applicant shall do necessary compliance with MCA and other concerned and applicable authorities as per Applicable laws.
25. The Board of Directors of Resolution Applicant shall supervise the implementation and execution of Resolution Plan. The Resolution Applicant shall submit a half yearly progress report in the format suggested by the CoC to appraise them about the supervision of the implementation of the Resolution Plan. For supervision and implementation of Resolution plan, a core committee consisting following persons shall be formed:
- Resolution Professional (Chairperson)
  - One Representative of Resolution Applicant
  - One Representative of Punjab National Bank
  - One Representative of Union Bank of India
  - One Representative of Andhra Bank
  - One Representative of IFCI
26. The resolution applicant has sought certain reliefs and concessions in the resolution plan. The resolution applicant has sought exemption from the levy of stamp duty on the value of assets transferred on account of amalgamation. Further, the Resolution Plan envisages 100% exemption on stamp duty and any other levy. **We are not inclined to allow the said relief. The Resolution Applicant may apply to the relevant regulatory authority for this exemption and the relevant authority may consider it as per law.**
27. The Resolution Plan seeks benefits available under BIFR Policies and benefits under incentives for labour intensive industries scheme of the State Govt. **The Resolution Applicant is directed to apply to the relevant authority for seeking relief under the said scheme who may decide the application of the resolution applicant as per the applicable law.**





THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

MA 3199/2019 in  
CP (IB)1767/MB/2017

28. The Resolution Plan seeks directions to the Ministry of Environment, Central Pollution Control Board and Pollution Control Board of Maharashtra and all other Government Authorities concerned to grant all environmental business permits as required by the Corporate Debtor. **We are not inclined to allow the said relief. The Resolution Applicant may apply to the relevant regulatory authority for this exemption and the relevant authority may consider it as per law.**
29. The Resolution Plan seeks exemptions for Resolution Applicant Company from applicable provisions of Income Tax Act with respect to setoff and carry forward loss, MAT credit, VAT credit. Further, it seeks 100% gross SGST reimbursement for 10 years. **We are not inclined to allow the said relief. The Resolution Applicant may apply to the relevant regulatory authority for this exemption and the relevant authority may consider it as per law.**
30. All business permits and/or licenses and/or approvals required by the Corporate Debtor to conduct its business and which have not been granted/cancelled/terminated/revoked/suspended or not renewed may please be directed to be granted /restored/renewed/reinstated as the case may be (by the concerned competent authority of State/Central Government/any other competent authority) at no additional cost to the Resolution Applicant. **In this regard, it is directed that if any business permit, license and approval as envisaged above is cancelled/terminated/revoked/suspended for default committed prior to initiation of CIRP shall be restored/renewed/reinstated as the case maybe. However, if any such business permit, license and approval as envisaged above is not granted before initiation of CIRP, then the Resolution Applicant may apply to the appropriate Authority under relevant law for granting business permit, license and approval and we are not inclined to grant any such business permit, license and approval as envisaged above.**
31. The Resolution Applicant in its Affidavit dated 04.11.2019 has submitted that in the course of preparing the Resolution Plan, they



THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

MA 3199/2019 in  
CP (IB)1767/MB/2017

have inspected the plant of the Corporate Debtor along with various experts to ascertain the nature and extent of repairs that would have to be undertaken to operate the plant efficiently. After conducting a close inspection, these experts have given their respective quotations for overhauling and repairing the machineries presently situated at the plant.

32. On a concern raised by the Bench regarding absence of financial statements of the Corporate Debtor after 31.03.2016, the Resolution Professional has submitted that the fact has been disclosed to the Resolution Applicant at the initial stages of the CIRP. The Counsel for the Resolution Applicant, on instructions, has orally undertaken that Resolution Applicant has knowledge of the missing statements and that the Resolution Applicant will not make any claims based on the missing financial statements and information.
33. The Resolution Applicant in its resolution plan, has dealt with interests of all stakeholders of the Corporate Debtor, including the Financial Creditors, the Operational Creditors and the CIRP cost.
34. 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.
35. The Resolution Applicant, on taking control of the Corporate Debtor, shall ensure compliance under all applicable law for the time being in force.
36. 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,



THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

MA 3199/2019 in  
CP (IB)1767/MB/2017

reliefs/exemptions from only existing liabilities which are specifically identified can be sought and allowed in the Resolution Plan.

37. On perusal of the Resolution Plan, we find that the resolution plan has necessary provisions for its effective implementation.
38. 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.
39. 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.
40. 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.
41. The Resolution Plan is approved as per directions above, under section 31(1) of I&B Code. The MA 3199/2019 is accordingly allowed and disposed of.

Sd/-

**RAJESH SHARMA**  
Member (Technical)

Sd/-

**Bhaskara Pantula Mohan**  
Member (Judicial)

7<sup>th</sup> November 2019



Certified True Copy  
Copy Issued "free of cost"  
On 08/11/19  
  
Assistant Registrar  
National Company Law Tribunal Mumbai Bench