NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"

CA No. 610/2019 & IA No. 18/2020
IN
CP (IB) No.119/Chd/Chd/2018

Under Section 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

In the matter of:

Bhagwati Kripa Paper Mills Pvt. Ltd. …Operational Creditor
Vs.

A.P. Enterprises Private Limited …Respondent-Corporate Debtor

And in the matter of CA No. 610/2019 & IA No. 18/2020:-

Rajiv Khurana,
Resolution Professional of
A.P. Enterprises Private Limited
Office: 1299 Sector 15-B, Chandigarh
…Applicant-Resolution Professional

Order delivered on: 18.03.2020

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

For the applicant-
Resolution Professional : 1). Mr. Arora Vishwas Kumar, Advocate
2). Mr. Rajiv Khurana, RP in person.

For the Resolution
Applicant : 1). Mr. Aman Kashyap, Advocate
2). Ms. Diksha Sharma, Advocate

Per: <u>Ajay Kumar Vatsavayi, Member (Judicial)</u>

ORDER

I.A. No. 18/2020

I.A. No. 18/2020 was filed to place on record the Auditor Certificate wherein it stated that the Corporate Debtor falls under the definition of "small enterprise" under the provisions of Micro, Small and Medium Enterprise Development Act, 2006. The above mentioned certificate is accepted and placed on record. Accordingly, I.A. No. 18/2020 is disposed off.

CA No.610/2019

The present application is filed by Resolution Professional (RP) under Section 31 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 20.07.2019.

2. It has been submitted that the insolvency petition was filed by the Operational Creditor i.e. Bhagwati Kripa Paper Mills Pvt. Ltd. under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s A.P. Enterprises Pvt. Ltd. (**Corporate Debtor**) and the same was admitted vide order dated 13.11.2018 and the CIRP of the Corporate Debtor was

initiated. It is submitted that the Mr. Somnath Gupta was appointed as Interim Resolution Professional (**IRP**) vide order dated13.11.2018 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 Financial Express, an English newspaper dated 17.11.2018 and Jan Satta (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 and Operational Creditors including employees of the corporate debtor, which were verified and after collation, the IRP constituted the CoC as per the provisions of Section 21 of the Code. It is stated that initially the CoC was constituted with three Financial Creditors i.e. Kotak Mahindra Bank Ltd. , ICICI Bank and RBL Bank Ltd and three Operational Creditors namely Sylvan Greens Pvt. Ltd., Bhagwati Kripa Paper Mills Pvt. Ltd and Himanshu Paper Limited without voting rights. 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 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 reports as per unamended Regulation 35 which are as follows:-

Asset Class	***Valuation By***	***Location***	***Fair Market Value in (₹)***	***Liquidation Value in (₹)***	***Avg Fair Market Value in (₹)***	***Avg Liquidation Value in (₹)***
Plant & Machinery	*Surender Kumar Kansal*	*77, Ph-II, Indl Area, Chd*	*53,24,673*	*47,25,000*	*57,34,087*	*47,68,500*
	Krishan Kumar Goel		*61,43,500*	*48,12,000*		

Immovabale Property Land & Building	*DOTS*	*77, Ph-II, Indl Area, Chd*	*6,93,00,000*	*5,19,75,000*	*7,09,24,360*	*5,31,93,270*
	Khanna & Associates		*7,25,48,720*	*5,44,11,540*		
Inventory	*Vishal Puri & Co*	*Do*	*18,27,437*	*17,57,224*	*18,97,652*	*17,74,777*
	Manish Jain & Associates		*19,67,867*	*17,92,330*		
Value of Vehicles not included in Plant & Machinery above						
Mercedes Benz GLE	*Krishan Kumar Goel*	*Do*	*43,50,000*	*34,00,000*	*42,87,000*	*36,00,800*
	Surender Kumar Kansal		*42,24,000*	*38,01,600*		
Indica Vista	*Krishan Kumar Goel*		*1,25,500*	*1,05,000*	*1,30,533*	*1,10,115*
	Surender Kumar Kansal		*1,35,565*	*1,15,230*		
Range Rover	*Krishan Kumar Goel*		*8,90,000*	*7,97,000*	*9,20,000*	*8,02,250*
	Surender Kumar Kansal		*9,50,000*	*8,07,500*		
Honda City	*Krishan Kumar Goel*		*4,01,000*	*3,25,000*	*4,03,847*	*3,35,345*
	Surender Kumar Kansal		*4,06,694*	*3,45,690*		
	Krishan Kumar Goel				*0*	*0*
	Surender Kumar Kansal					
	Krishan Kumar Goel				*0*	*0*
	Surender Kumar Kansal					
Financial Assets	*Crest Capital*	*Do*	*22,54,51,352*	*8,49,02,853*	*23,01,40,023*	*7,99,31,539*
	Rajkamal Saraogi		*23,48,28,694*	*7,49,60,225*		
Total					***31,44,37,501***	*14,45,16,596*

5. It is stated that further more claims were received pursuant to publication of Form A and the shares of the members of CoC after incorporating all the claims of all creditors is as follows:-

S. No.	Name of the Creditors	Amount of Claim	Amount of claim admitted	Voting %age
1	Kotak Mahindra Bank Ltd.	19,09,07,445.00	19,09,07,445.00	84.32
2	RBL Bank	9,51,486.00	9,51,486.00	0.42
3	ICICI Bank Loan (Consolidated amount)	80,40,104.00	80,40,104.00	3.55
4	IDFC Capital First	6,82,111.00	6,82,111.00	0.30
5	Edelweiss Retail Finance Ltd		14,09,159.00	0.62
6	Magma Fincorp Ltd		5,71,946.00	0.25
7	Religare Finvest Ltd.	13,16,751.00	13,16,751.00	0.58
8	Tata Capital Financial Services Ltd.		4,97,014.00	0.22
9	Tata Capital Housing Finance Services Pvt Ltd		70,42,355.00	3.11
10	Aashriya Capital & Financial services Pvt Ltd		1,50,00,000.00	6.62
	Total	**20,18,97,896.00**	**22,64,18,370.00**	**100.00**

6. It is stated that in the 1st meeting of the CoC held on 12.12.2018, the CoC resolved to replace Mr. Somnath Gupta with the proposed RP i.e. Mr. Rajiv Khurana and appointed him as Resolution Professional (**RP**) by 95.70% voting right. It is further submitted that in the 2nd meeting of the CoC held on 23.01.2019, the CoC approved the Evaluation Matrix Format unanimously and Form G format was also approved.

7. It is also stated that the Expression of Interest (**EOI**) has been called from eligible resolution applicants on 26.01.2019 as prescribed in Regulation 36 (A) of the Regulations by publishing Form G in 'The Financial Express (English)' and Amar Ujala (Hindi).

8. It is submitted that CoC in 3th meeting was informed that after publication of Form G, no EOI have been received by the RP so far. It was also stated that one Mr. Narinder Garg, director of the suspended board of the corporate debtor, expressed his willingness to submit a resolution plan.

9. It is also submitted that the CoC in 3th meeting, resolved that a draft plan be submitted by Sh. Narinder Garg, Smt Manju Garg and Mr. Shiv Garg jointly to the RP by 10.03.2019 for scrutiny and the next CoC meeting be called before 20.03.2019 to discuss this resolution plan.

10. It is submitted that CoC in 4th meeting dated 18.04.2019 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 03.05.2019 was pleased to extend the period of CIRP in respect of Corporate Debtor by 90 days.

11. It is further submitted that no EOI has been received within the specified period ending on 11.02.2019 and since Mr. Narinder Garg, shareholder-cum-director of the corporate debtor has already expressed his interest in submitting a resolution plan during the third meeting of the CoC, it was resolved that another publication of Form G is not required.

12. It is stated that the resolution plan was placed before the COC in the 5th meeting dated 03.05.2019 and was further analysed in 7th and 8th meeting of the CoC held on 01.07.2019 and 17.07.2019 respectively.

13. It is submitted in the 9th meeting of CoC held on 20.07.2019, the resolution plan after incorporating the suggestions of the Members of CoC, was presented and got approved by 95.30% voting in favour of it and 0.72% voted

against it. Copy of the complete resolution plan is at Annexure 1 of the application.

14. 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.

15. The learned counsel for the RP submitted that as per the Revised Form H dated 20.01.2020 filed vide Diary No. 509 dated 20.01.2020, all the provisions of the Code and Regulations were complied with and that the approval of the resolution plan was made by 95.30 % voting share of the financial creditors in the meeting of the CoC held on 20.07.2019 and therefore, resolution plan submitted by Mr. Narinder Garg, Mrs Manju Garg & Mr. Shiv Garg jointly 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 13.01.1993 for the purpose of manufacturing and distributing of pulp and paper products mainly kraft paper, as discussed above, the CIRP proceedings were initiated by order delivered on 13.11.2018. The present application is filed for approval of the resolution plan submitted jointly by Mr. Narinder Garg, Mrs Manju Garg & Mr. Shiv Garg (Resolution Applicant). The approval has been sought under the provisions of Section 31 (1) of the Code.

18. It is submitted that the Corporate Debtor falls within the definition of "small enterprise" under section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 and by virtue by Section 240 A (1) of the Code, the present resolution applicant is eligible to file a resolution plan. C.A. No. 58/2020 was filed to place on record the Auditor's Certificate to certify the status of the corporate debtor under the MSME Act, 2006. When the matter was listed on 21.01.2020, the following order was passed:-

> *"The Auditor Certificate filed with CA No. 58/2020 does not indicate the data and information basing on which the said certificate was issued. Hence, the Resolution Professional shall take appropriate steps to justify the said opinion. List the matter on 31.01.2020".*

19. I.A. No. 18/2020 was filed to place on record the Auditor Certificate wherein it stated that the Corporate Debtor falls under the definition of "small enterprise" under the provisions of Micro, Small and Medium Enterprise Development Act, 2006. Further I.A. No. 100/2020 (Diary No. 1466 dated 20.02.2020) was also placed on record the fresh Auditor's Certificate along with the Audited Financial Statements of the Corporate Debtor, certifying that as per Section 7(1) of the MSMED Act, 2006 the corporate debtor is covered under the definition of "small enterprise" and the trade of the corporate debtor i.e. "Paper and Pulp Including Paper Products" is listed at serial number 24 of the first schedule of the Industrial (Development & Regulation Act),1951 (Page 57 of Diary no.1466).

20. 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 Revised Form H dated 20.01.2020):-

Sl No.	Name of Financial Creditor	Voting Share %	Assent/ Dissent
1	Kotak Mahindra Bank Ltd	84.32	Assent
2	RBL Bank,	0.42	Dissent
3	ICICI Bank Car Loan (Consolidated amount)	3.55	Assent
4	IDFC First Bank Ltd (Capital First Ltd amalgamated with IDFC Bank Ltd)	0.30	Dissent
5	Edelweiss Retail Finance Ltd	0.62	Absent
6	Magma Fincorp Ltd - 05.3.16	0.25	Absent
7	Religare Finvest Ltd	0.58	Assent
8	Tata Capital Financial Services Ltd	0.22	Assent
9	Tata Capital Housing Finance Ltd	3.11	Absent
10	Aashriya Capital & Financial Services Pvt Ltd	6.62	Assent
	Total	**100.00**	

All the above financial creditors including the dissenting financial creditors are proposed to be paid in full with interest.

21. The details of stakeholders under the resolution plan given in Para 7 of Revised Form H dated 21.02.2020 :-

	Category of Stakeholder	***Amount Claimed***	***Amount Admitted***	***Amount Provided under the Plan***	***Waiver Sought***

A	*Secured Financial Creditors*	*20,59,89,903*	*20,59,89,903*	*17,22,90,677* *(Plus Interest)* *(Refer Explanation A)*	*NIL*
B	*Unsecured Creditors*	*2,04,28,467*	*2,04,28,467*	*2,04,28,467* *(Plus Interest)* *(Refer Explanation A)*	
C	*Operational Creditors*				
	OC upto Rs 1 Lac	*23,43,27,874*	*6,17,320*	*6,17,320*	*NIL*
	OC Rs 1-10 Lac		*91,56,418*	*36,62,567*	*60%*
	OC above Rs 10 Lac		*36,77,68,627*	*14,71,07,451*	*60%*
	OCs Total	*23,43,27,874*	*37,75,42,365*	*15,13,87,338* *(Refer Explanation B)*	
D	*Government Dues*			*(Refer Explanation C)*	
	VAT + CST	*NIL*	*85,87,047*	*42,93,524*	*50%*
	GST Reverse Charge		*7,742*	*7,742*	*NIL*
	TDS		*1,67,957*	*1,67,957*	*NIL*
E	*Employees*	*38,88,016*	*35,38,803*	*11,67,820* *(Refer Explanation D)*	*NIL*
F	*Workmen*	*No workmen in employment of CD*			
G	*Other Debts/Dues*	*0*	*1,34,550*	*53,820* *(Refer Explanation E)*	*60%*

H	*OTHER CREDITORS*	*60,30,000*	*60,30,000*	*24,12,000* *(Refer Explanation F)*	*60%*
		70,49,92,134	*62,24,26,834*	*35,63,94,250*	

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

Section of Code/Reg	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?	No such criteria specified by COC	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 terms of the RFRP	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit dated 19.07.2019	Yes
Section 30(2)	Whether the Resolution Plan:		
	(a) provides for the payment of insolvency resolution process costs?	Clause 4.3C i **Refer Page 57 of Paperbook**	Yes
	(b) provides for the payment of the debts of operational creditors?	Clause 4.3C iv **Refer Page 61 of Paperbook**	Yes
	(c) provides for the management of the affairs of the Corporate debtor?	Clause 4.3G **Refer Page 72 of**	Yes

		Paperbook	
	(d) provides for the implementation and supervision of the resolution plan?	Clause 4.3H **Refer Page 72 of Paperbook**	Yes
	(e) contravenes any of the provisions of the law for the time being in force?	Clause IV Declaration **Refer Page 31 of Paperbook**	No
Section 30(4)	Whether the Resolution Plan		
	(a) is feasible and viable, according to the CoC?	Recorded in the minutes of 8th CoC meeting	Yes
	(b) has been approved by the CoC with 66% voting share?	Recorded in the minutes of 9th CoC meeting	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clauses 4.3 G&H **Refer Page 72 of Paperbook**	Yes
Regulation 35A	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?	No such transaction discovered/determined	Yes
84[Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority	Clause 4.3C iv **Refer Page 61-63 of**	Yes

	in payment over financial creditors?]	**Paperbook**	
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 4.3C **Refer Page 57 Paperbook**	Yes
85[Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	Resolution Applicant's statement **Refer Page 52 of Paperbook**	No
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	Resolution Applicant's statement **Refer Page 52 of Paperbook**	NA
Regulation 38(2)	Whether the Resolution Plan provides:		
	(a) the term of the plan and its implementation schedule?	Clause 4.3B a **Refer Page 56 of Paperbook**	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Clauses 4.3G **Refer Page 72 of Paperbook**	Yes
	(c) adequate means for supervising its implementation?	Clause 4.3H **Refer Page 72 of Paperbook**	Yes
38(3)	Whether the resolution plan demonstrates that		
	(a) it addresses the cause of default?		Yes

	(b) it is feasible and viable?	As assessed by COC	Yes
	(c) it has provisions for its effective implementation?		Yes
	(d) it has provisions for approvals required and the timeline for the same?		Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	Clause 4.3F **Refer Page 70 of Paperbook**	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No such application filed	NA
86[Reg 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Clause 4.3B ii **Refer Page 64 of Paper book**	Yes

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, 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.

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 95.30% of voting share of the financial creditors 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 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;]"

(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:-

(a) **Section 30(2)(a):** The resolution plan (page 57 of the application and Clause 4.3C i of the Resolution Plan) states that payment of insolvency resolution process cost estimated to be ₹16,00,000/- shall be paid in full and in priority, before payment of any liability, within 30 days from the date of approval of resolution plan by the Adjudicating Authority.

(b) **Section 30(2)(b):** The resolution plan (Page 61 of the application and Clause 4.3C iv of the Resolution Plan) states that according to the Information Memorandum issued by the RP to the resolution applicant, the operational creditors have been segregated into three categories. The first category being operational creditors upto 1 lac and the resolution plan proposes 100 % payment against the payable amount of ₹6,17,320. The Next category being, operational creditors between Rs 1 lac to Rs 10 lac and the resolution plan proposes 40 % payment i.e. Rs. 36,62,567 against the payable amount of Rs. 91,56,418. The third category being operational creditors above 10 lac and the resolution plan proposes 40 % payment i.e. Rs. 14,71,07,451 against the payable amount of Rs. 36,77,68,627. There is also sum payable of ₹87,62,746/- as Government dues and the Resolution Plan has proposed an amount of ₹44,69,222/- against it, and there is also a liability of ₹38,984/- under the head "Proposed payment of other dues" and there is a provision of ₹38,984/- against it in the resolution plan. Also, the resolution plan proposes to pay 40 % of the payable amount i.e. Rs. 24,12,000 in case of the Unsecured loans/deposits to the tune of Rs. 60,30,000 and to pay Rs. 35,38,803/- as Proposed payment of dues of Workmen & Employees against the liability of Rs. 38,88,016/-.

It is observed that the amount payable towards the operational creditors is ₹15,13,87,338/- as provided in the resolution plan. Further, the amount to be distributed between operational creditors in the event of liquidation would be NIL (Page 41 of Diary No. 509), if distributed in order of priority in Section 53(1) of the Code, there may not be any liquidation value available for the operational creditors since, as per regulation, operational creditors comes at No.5

in order of priority of distribution of assets under Section 53 of the Code. As discussed above, there are two dissenting financial creditors i.e. RBL Bank and IDFC First Bank Ltd. (Capital First Ltd. amalgamated with IDFC Bank Ltd.), which have been given the same treatment of payment of 100 % in the same ratio as is being paid to the other secured financial creditors. Hence, Section 30(2)(b) stands complied with.

(c) **Section 30(2)(c):** In Clause 4.3 G of the resolution plan (page 72 of the application), it is stated that the management and control of the business of the Corporate Debtor during the term of the resolution plan will be with the Resolution Applicant. It is also stated that that there is no change in the Directorship and Shareholding of the Corporate Debtor.

(d) **Section 30(2)(d)**: In Clause 4.3 H of the Resolution Plan (Page 72 of the application), it is stated that the supervision of the resolution plan as finally approved by the Adjudicating Authority is proposed to be done by the Resolution Professional for the entire period of its implementation.

(e) **Section 30(2) (e)**: In Clause IV, Point 5 (Page No.31 of the application), it is stated that the resolution plan does not contravene any of the provisions of the 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 the supervision of the resolution plan as finally approved by the Adjudicating Authority is proposed to be done by the Resolution

Professional for the entire period of its implementation. It is also stated that in case any violation of any terms of the resolution plan by the Resolution Applicant or the Corporate Debtor is observed, the relevant provisions of the Code dealing with such violations shall be invoked. The Plan proposes an implementation Schedule of sixteen quarters or 48 months from the date of approval of the resolution plan. It is stated that the implementation of the plan will be made by making payments towards the outstanding CIRP costs, financial creditors, operational creditors, government dues and payment of other dues and towards unsecured loans/deposits and by fulfilling all other terms laid out in this resolution plan.

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 Revised Form H (Diary No. 509 dated 20.01.2020) 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 applicants Shri Narinder Garg, Smt. Manju Garg and Shri Shiv Garg has submitted affidavits dated 19.07.2019 pursuant to Section 30(1) of the Code confirming their 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 95.30% 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. We shall now discuss the requirements of Regulation 39(4) of the Regulations. In Part D of the Resolution Plan (Page No. 74 of application), it is

mentioned that the resolution applicant has furnished a performance guarantee by way of upfront payment of Rs. 1.5 Crores. As per the requirement of performance security, a Term Deposit Advice Certificate for a sum of ₹1.5 crores with Kotak Mahindra Bank 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.

31. It is also stated that no transaction has been discovered or determined in the case of the Corporate Debtor under Sections 43,45,50, and 66 of the Code and also no application has been filed under Section 66 of the Code in respect of the Corporate Debtor.

32. In view of the above discussion, the resolution plan submitted by Shri Narinder Garg, Smt. Manju Garg and Shri Shiv Garg as approved by the CoC under Section 30 (4) of the Code is hereby approved subject to comments in para No. 30 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.

33. 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 13.11.2018 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.610/2019 is disposed of.

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

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

March 18th, 2020
Yashpal