

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, DELHI
BENCH III**

I.A. No. 3758/2020 filed in IB-871(ND)/2019 under
Section 31(1), 30(6) read with 60(5) of the
Insolvency and Bankruptcy Code, 2016.

In the matter of **SWASTIK FRUITS PRODUCTS LIMITED (CD).**

Ms. Pooja Bahry, RP for Swastik Fruits Products Limited ... Applicant

Order delivered on 4th December, 2020

CORAM:

CH. MOHD SHARIEF TARIQ, HON'BLE MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER
(TECHNICAL)

For Resolution Professional: Mr. Abhishek Anand, Mr. Viren Sharma (Advocates),

Ms. Pooja Bahry (Resolution Professional)

For Resolution Applicant: Ms. Sunita Sarawgi

ORDER

Per: SHRI NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

1. The Resolution Professional has filed the instant application under section 30(6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC") r/w Regulation 39 (4) of the Insolvency and Bankruptcy board of India (Insolvency Resolution Process for Corporate Persons) Regulations (hereinafter referred as "IBBI (CIRP) Regulations, 2016), in IA No.3758/2020 for seeking approval of

Resolution Plan under section 31(1) of IBC in the matter of Swastik Fruits Products Limited (hereinafter referred as "Corporate Debtor")

2. Mr. Pooja Bahry is the Resolution Professional for Swastik Fruits Products Limited, who has submitted the Resolution Plan duly approved by the Committee of Creditors (hereinafter referred as "CoC") which is accompanied by the compliance certificate in the prescribed Form H.
3. It is submitted that Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was admitted by this authority vide its order dated 06.09.2019 pursuant to the application filed by one of the Financial creditors and Ms. Pooja Bahry was appointed as the Interim Resolution Professional (IRP) vide same order.
4. It is further submitted that in terms of Regulation 6(1) of IBBI (CIRP) Regulations, 2016 the IRP made a public announcement in Form-A dated 08.09.2019 in Jansatta (Hindi) and Financial Express (English) in NCT of Delhi edition and in Time of India (English) and AAJ (Hindi) in Jharkhand Express. In terms of Section 18(1) (a) of the IBC, the IRP collated all claims submitted by the creditors pursuant to public announcement and after determination of the Financial position of the CD, constituted the Committee of Creditors (CoC) comprising of two financial creditors namely, International Asset Reconstruction Company Private Ltd and SREI Equipment Finance Ltd.

5. The first meeting of CoC was convened on October 4, 2019, wherein, the IRP was appointed as RP with 100% votes. In accordance with Regulation 27 of IBBI (CIRP) Regulations, 2016 the applicant appointed the registered valuers on 10.10.2019 namely, Anupam Kumar for Plant and Machinery, Asim Maity for Plant and Machinery, Sekh Tarik Anowar for Land and Building, Anil Saxena for Land and Building for determining the fair value and liquidation value of the CD in order to comply with the Regulation 35 of IBBI (CIRP) Regulations, 2016

6. It is averred that the 2nd meeting of CoC was held on November 8, 2019, wherein the applicant apprised the members that in terms of Regulation 36A of the IBBI (CIRP) Regulations, 2016, the applicant has to publish an invitation of Expression of Interest in form G. Accordingly, the Applicant provided the CoC the draft of the same. Further the CoC decided to publish the form G on 19.11.2019 and the Form G be published in Financial Express and Jansatta (Delhi and NCR) and in Times of India and AAJ (Jharkhand). Moreover, the Information Memorandum was also discussed in the meeting as prepared by the applicant as per the information received. Apart from this the minimum Eligibility Criteria of the Resolution applicant as per Section 25(2) (h) of IBC was also discussed and fixed the eligibility criteria for Resolution Applicant.

7. It is further averred that publication was done in accordance with the decision of CoC and the last date of submission of Expression of Interest was 04.12.2019. During the third CoC meeting held on 13th December, 2019, the applicant apprised the members that the RP has received Expression of Interest from 4 Prospective Resolution Applicant namely, Amrit Kumar Agarwal (Individual), Durgesh

Merchants Limited, Shanti GD Ispat and Power Pvt. Ltd. (Shanti Group) and Shareholder/Director/Promoter of Swastik Fruits Products Ltd. (being a MSME) (a) Sunita Sarawgi b) Binay Sarawgi).

8. It is submitted that after detailed discussion on all the Expressions of Interest the two were shortlisted as eligible namely, Amrit Kumar Agarwal (Individual) and Shareholder/Director/Promoter of Swastik Fruits Products Ltd., (being a MSME) (a) Sunita Sarawgi (b) Binay Sarawgi) and as per the Regulation 36A (10) of IBBI (CIRP) Regulations, 2016. On 14th December 2019, the applicant issued a provisional list of Eligible Prospective Resolution Applicants to the members of CoC and the Eligible Resolution Applicants. After that the applicant issued the information memorandum, Evaluation Matrix and request of the Resolution Plan ("RFRP") to the eligible resolution applicant on 19th December, 2019 in order to comply with the Regulation 36B (1) of IBBI (CIRP) Regulations, 2016. The list was later finalized as per the regulation 36A (11) as there was no objection from any CoC member.
9. It is further submitted that in 4th CoC meeting held on 20th January, 2020, the applicant informed the members of the CoC that only one Prospective Resolution Applicant has submitted the Resolution plan, which was submitted by Shareholder/Director/Promoter of Swastik Fruits Products Ltd. (being a MSME) (a) Sunita Sarawgi (b) Binay Sarawgi). In the meeting the resolution plan was discussed in detail and decided that in the next meeting of the CoC the final decision regarding the resolution plan will be taken and meanwhile, the

prospective resolution applicant is at liberty to increase its bid and submit revised resolution plan.

10. It is further averred that in 5th CoC meeting held on 11th February, 2020, wherein, the Applicant apprised the members of CoC that as per the timelines of RFRP, the applicant has submitted the revised resolution plan along with its legal compliance report to the members of CoC on 27th January, 2020. Thereafter, the applicant informed the members of CoC that another revised plan was received by the Applicant from the Prospective Resolution Applicant on 10th February, 2020 and the same was shared with the CoC members on same date and legal compliance on 11th February, 2020. The revised resolution plan was discussed in detail by the CoC members and requested the Prospective Resolution Applicant to increase their bid on the resolution plan and it was decided that revised bid of resolution plan shall be given by the Prospective Resolution Applicant and thus the voting of the same was deferred till the next meeting of CoC.

11. It is submitted that 6th meeting of the CoC was convened on 28th February, 2020 and the applicant informed that revised resolution plan was received on 25th February, 2020 and same was shared with members of CoC on same day and compliance report on 26th February, 2020. In the meeting detailed discussion was there on the revised and final resolution plan and on its salient points and same was unanimously approved by the CoC with 100% voting rights voting on the Ballot Paper.

12. The summary of the Resolution plan submitted by the Resolution Applicant is as follows:

#	Description of Payment	Amount (in INR)
1.	IRP Costs	INR 18,00,000
2.	Provident Fund	INR 4,555
3.	Professional Tax	Nil
4.	Secured Financial Creditors	INR 5,11,50,000 the lenders settlement amount
5.	Unsecured Financial Creditors	Nil
6.	Operational Creditors (other than workmen and employees but including government agencies)	JBVNL: INR 21,91,317 RAIDA: INR 371,981 Ganpati Enterprises: INR 975,000 KK And Shivvay Enterprises: INR 50,000
7.	Contingent Liabilities	Nil
Total		INR 5,65,42,853

It is made clear in the resolution plan that the CIRP cost shall be paid in priority to any other creditors of Corporate Debtor. The IRP costs shall be paid within 30 days from the date of approval of this plan by this Bench.

13. The payment proposed in the resolution plan for **Secured Financial Creditors** is as follows:

Amount in Lakhs										
S. No.	Name of CoC Member/financial Creditor	Amount Claimed submitted by Financial Creditors	Amount of Claimed Admitted	Terms of Payments	On or before 90 th day from the approval of RP	On or before 180 th day from the approval of RP	On or before 270 th day from the approval of RP	On or before 360 th day from Approval of RP	Total	% of admitted claim
1.	International Asset Reconstruction	1839.10	1839.10	4 Equal	125	125	125	125	500	27.2%

	Company Private Limited			Installments*						
2.	SREI Equipment Finance Ltd	29.56198	29.56198		5.75	5.75	0.00	0.00	11.5	38.90%
	Total	1868.70938	1868.70938						511.50	

*The Payment to secured creditors in any case shall be completed by 31st December, 2020

Operational Creditors other than Workmen/Employees

Amounts in Lakhs

S.No.	Name of Operational Creditors	Amount of claim submitted by Operational Creditor	Amount of claim Admitted	Terms of Payment	Payment to be Made	% of admitted claim
1.	EPFO, Regional Office Jharkhand	0.7755	.7755	Within 180 days*	.04555^	5.87%
2.	Electrical Superintending Engineer Electric Supply Circle on behalf of JBVNL	35.03488	35.03488		21.91317	63%
3.	RAIDA Ranchi	3.71981	3.71981		3.71981	100%
4.	Ganpati Enterprises	Claim not submitted – Court cases under Negotiable Instruments Act.	Claim not submitted – Court cases under Negotiable Instruments Act.		9.75	100%
5.	KK and Shivaay Enterprises	2.42	2.42		.50	20.67%
	TOTAL	51.70019	39.53019		35.92853	

*From the approval of the plan by NCLT

^The Original Claim amount is Rs 4555 for which the provision has been made, the balance seems to be interest and penalties which shall be waived. It was also submitted that the Resolution Applicant shall pay the Operational Creditors in priority to the Financial Creditors. Moreover, all the payments will be made by 31.12.2020.

14. It is on record that the resolution applicant is one of the promoters of the Corporate Debtor, therefore, as per the provision of Section 240A of IBC the provisions in Clause (c) & (h) of 29A shall not apply to the Resolution Applicant in respect of Corporate Insolvency Resolution Process of Corporate Debtor, which is an MSME.

15. It is submitted that as per the terms of the request for resolution plan ("RFRP") the successful Resolution Applicant was to submit an amount equivalent to 10% of the Resolution Plan amount as Performance Bank Guarantee amounting as required by regulation 36B (4A) of IBBI (CIRP) Regulations, 2016. However, due to Nationwide Lockdown the Resolution Applicant could not deposit the Performance Security Amount and assured that the same will be fulfilled on or before 7th June, 2020. The Resolution Applicant duly submitted their unconditional acceptance on 7th June 2020 and submitted the entire performance security of Rs. 56.55 Lakhs till 9th June 2020.

16. It is further averred that in terms of provisions of regulation 39(4) of IBBI (CIRP) Regulation, the RP is required to submit the Resolution plan approved by the CoC along with a compliance certificate in form H of the schedule and the evidence

of receipt of performance security required under sub-regulation (4A) of regulation 36B. The same is complied with.

17. Appointment of monitoring agency--Approval

A committee consisting of a member of the CoC and nominees of the Resolution Applicant shall manage the Corporate Debtor during the Interim Period. Moreover, the Monitoring Committee 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-handover of assets of the Corporate Debtor.

Number of Members	Comprising of
1	Member of CoC
1	Nominee of Resolution Applicant

18. The parameters for approval of resolution plan are set out in section 30 and 31 of the IBC, 2016 and iBBI (CIRP) Regulations, 2016. The Resolution Plan seems to have complied with such mandatory compliance, which are briefly set forth herein below:

Section/Regulation	Compliance made
Section 30(1) of the IBC, 2016	Resolution Applicant has submitted an affidavit that he is not disqualified under the provisions of section 29A read with section 240 (A) (Being a MSME Corporate Debtor)
Section 30(2)(a) of the IBC, 2016 And	The Resolution Plan provides for payment of CIRP cost in priority to the payment of other debts of the Corporate Debtor.
Regulation 38(1A) of IBBI (Insolvency Process for Corporate Persons)	The Resolution Plan provides that the estimated outstanding dues of the Secured Financial Creditors is

<p>Regulations, 2016</p>	<p>approx. Rs. 18.69 Crore which is proposed to be paid by the Resolution Applicant. At a consideration of Rs. 5.1150 in full and final settlement and to be paid to the original secured financial creditors within a period of 12 months.</p> <p>The other stakeholders are proposed to be paid/settled as under:</p> <p>The Unsecured Financial Creditors (related parties to the Corporate Debtor) with dues of Rs. 20.10 Crore proposed to be waived.</p> <p>The Operational creditors with dues of Rs. 51.70 Lacs is proposed to be paid Rs. 35.93 Lacs in full and final settlement in priority to financial creditors, within 180 days of approval of resolution plan. Balance amount is proposed to be waived.</p> <p>Workmen and employees' dues are NIL.</p> <p>Statutory dues are already considered in Operational Creditors above.</p> <p>There will be no change in the equity of the existing equity holders.</p>
<p>Section 30(2)(b) of the IBC, 2016</p> <p style="text-align: center;">And</p> <p>Regulation 38(2)(c) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016</p>	<p>The Resolution plan provides an amount of Rs.35.93 Lacs as payment to operational creditors.</p> <p>Sufficiently liquidity declared as per net-worth certificate.</p>
<p>Section 30(2)(c) and Section 30(2)(d) of the IBC, 2016</p> <p style="text-align: center;">And</p>	<p>A committee consisting of a member of the CoC and nominees of the Resolution Applicant shall manage the Corporate Debtor during the Interim Period.</p>

Regulation 38(2) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	The implementation of plan as stated by the Resolution Applicant in the Resolution Plan is on or before 31 st December, 2020 from the approval date.
Section 30(2)(e) of the IBC, 2016	The Resolution Plan does not contravene any of the provisions of law for the time being in force.
Section 30(4) of the IBC, 2016	The Committee of Creditors, after considering the feasibility and viability of the Resolution Plan have approved the same by 100% voting share.

19. Thus, the resolution plan filed with the Application meets the requirements of section 30 and 31 of IBC, 2016 and Regulation 37, 38, 38(1A) and 39(4) of the IBBI(CIRP) Regulations, 2016. The provisions of Section 29A read with 240-A (being a MSME Corporate Debtor) of IBC are not attracted. The RP has also verified that the "Resolution Plan" approved by the CoC does not contravene any of the provisions of the law for the time being in force. The RP has filed compliance certificate in Form H as required under regulation 39(4) of the IBBI (CIRP) Regulations, 2016.

20. The resolution applicant falls within the category of MSME and have submitted the certificate issued by Ministry of Corporate Affairs and Industry dated 20.07.2004 and certificate issued by Ministry of MSME dated 22.10.2019.

21. The Resolution Applicant has prayed for the reliefs as enumerated under the Resolution Plan approved by the CoC. From the plan approval date, all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the

Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn, satisfied and discharged. From the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorized to seek appropriate orders from respective authorities/courts/tribunals for renewal of licences/withdrawal/dismissal or abatement of the proceeding as the case may be.

22. The Corporate Debtor shall be entitled to carry forward all accumulated business losses and unabsorbed depreciation, if any, from the date of approval of the Resolution Plan, except as provided in the Resolution Plan, all the pending statutory dues including taxes/cess/interest/penalty and other liabilities due to the operational creditors shall stand satisfied/waived off. The reason for these waivers and abatement is that the Operational Creditors would not get more than that as provided in the Resolution Plan, in the event of liquidation of the Corporate Debtor, as per the waterfall mechanism provided under Section 53 of the I&B Code, 2016. Moreover, this is with a view to implement the Resolution Plan successfully as approved by the CoC.

23. In view of the above, the "Resolution Plan" annexed with IA No.3758/2020 in IB-871(ND)/2019 is hereby **approved**, shall be binding on the corporate debtor and its employees, members, creditors, guarantors, other stakeholders including statutory authorities and the Resolution Applicant. **It is also made clear that no relief is granted by this authority against the relief sought in 6.9 (f) of Resolution Plan to any promoter or to 3rd party.**

24. The Resolution Applicants or Monitoring Agency as the case may be is at liberty to approach this authority for seeking appropriate directions for effective implementation of the Resolution Plan.
25. The order of moratorium date 06.09.2019 passed by this adjudicating authority under section 14 of IBC shall cease to have effect from the date of this order.
26. The RP shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI, so that the Board may record the same on its data base.
27. The approved resolution plan shall become effective from the date of passing of this order.
28. The Resolution Professional shall forthwith send a copy of this order to the participants and the Resolution Applicant.
29. The Registry is directed to communicate this order to the Registrar of Companies concerned with which the Corporate Debtor is registered for updating the master data.
30. Accordingly, IA No.3758/2020 in IB-871(ND)/2019 stands **allowed**.

31. The order is pronounced.

- Sdr

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

- Sdr

(CH. MOHD SHARIEF TAR0IQ)
MEMBER (JUDICIAL)