

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

**CA No. 509/2019
IN
CP (IB) No.129/Chd/HP/2018**

**Under Section 30(6) and 31 of the
Insolvency and Bankruptcy Code, 2016
read with Regulation 39(4) of the
Insolvency and Bankruptcy Board of
India (Insolvency Resolution Process
for Corporate Persons) Regulations,
2016**

In the matter of:

Tanishka Agro Ventures Pvt. Ltd.
Main Chandigarh Una Road, Una District,
Himachal Pradesh – 174303

...Corporate Debtor-Non/Applicant

And in the matter of CA No. 509/2019:-

Arvind Kumar
IBBI/IPA-001/IP-P00178/2017-18/10357
Resolution Professional
Tanishka Agro Ventures Pvt. Ltd.,
3rd Floor, Plot D 190, Phase 8 B,
Sector 74, Industrial Area,
SAS Nagar Mohali Punjab
irparvindkumar@gmail.com

...Applicant/Resolution Professional.

Order delivered on: 07.11.2019

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

For the applicant-

Resolution Professional: 1). Mr. Atul V. Sood, Advocate
2). Mr. Sumer Singh Brar, Advocate
3). Ms. Niharika Sohal, Advocate
4). Mr. Arvind Kumar, Resolution Professional in person

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

CA No.509/2019

The present application is filed by Resolution Professional (**RP**) under Section 30(6) 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 25.05.2019.

2. It has been submitted that the insolvency petition was filed by the corporate applicant i.e. Tanishka Agro Ventures Pvt. Ltd. under Section 10 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Tanishka Agro Ventures Pvt. Ltd. (**Corporate Debtor**) and the same was admitted vide order dated 13.09.2018 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 20.09.2018 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 Tribune, an English newspaper dated 22.09.2018 and Divya Himachal (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, Operational Creditors and

Workmen/employees, 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 two Financial Creditors i.e. State Bank of India having a voting share of 99.39% and HDB Financial Services Ltd. having a voting share of 0.61%. 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 two 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 two reports as per unamended Regulation 35 which are as follows:-

Name of the Valuer	Fair Value (₹)	Liquidation Value (₹)
1. CA Vikas Aggarwal	3550784.00	3454000.00
Fixed Assets	3474450.00	2605947.00
Current Assets	76334.00	76334.00
2. Pensar Valuation and Restructuring Advisors	3454000.00	2803216.00
Fixed Assets	3377666.00	2726882.00
Current Assets	76334.00	76334.00

The average values are:

Asset Class	Fair Market Value	Liquidation Value	Market Value
Fixed Assets	3426058.00	2666415.00	
Current Assets	76334.00	76334.00	
Total	3502392.00	2742749.00	

5. It is stated that in the 1st meeting of the CoC held on 17.10.2018, the CoC resolved to continue with the IRP and appointed him as Resolution Professional (**RP**). It is further submitted that in the 3rd meeting of the CoC held on 15.12.2018, the CoC suggested the eligibility criteria for the selection of the suitable resolution applicants and following requirements were laid down:-

- Resolution Applicant must be lawfully organized and carrying business in India or having permission to carry business in India.
- Preference will be given to those Resolution Applicant who are Agriculturist Himachali's.
- Resolution Applicant must not be an ineligible person as defined in Section 29A of the Code. The Resolution Applicant must, at the time of making the bid, disclose full identify of the bidder/the actual person behind the bidder and give a confirmation that the Resolution Applicant is not such ineligible person.

It is also stated that the Expression of Interest (**EOI**) has been called from eligible resolution applicants on 03.12.2018, 21.12.2018 and 04.01.2019 as prescribed in Regulation 36 (A) of the Regulations by publishing Form G in 'The Tribune (English)' and Amar Ujala (Hindi). It is also submitted that a valuation matrix was approved by the CoC in their 3rd meeting held on 15.12.2018.

6. It is submitted that after publication of Form G, four prospective resolution applicants came forward and expressed their interest to submit resolution plan in respect of the corporate debtor and only one resolution applicant was found to be eligible to submit the resolution plan.

7. It is submitted that CoC in 4th meeting 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 14.03.2019 was pleased to extend the period of CIRP in respect of Corporate Debtor by 90 days. Copy of the order is at Annexure A-12 of the application. It is stated that the eligible applicant, Shri Ram Prakash Singh and Smt. Indu Walia jointly submitted a resolution plan within the stipulated time.

8. It is further stated in the seventh meeting of the CoC held on 08.02.2019, 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 CoC. It is also submitted that the requirement of performance security was communicated to the prospective resolution applicants.

9. It is stated that the resolution plan was opened in front of COC in the 8th meeting and was further analysed in 9th, 10th and 11th meeting of the CoC held on 08.04.2019, 15.04.2019 and 14.05.2019 respectively.

10. It is submitted in the 12th meeting of CoC held on 25.05.2019, the resolution plan after incorporating the suggestions of the Members of CoC, was presented and got approved by 99.39% voting in favour of it. Copy of the complete resolution plan is at Annexure A-14 of the application.

11. 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. Learned counsel for the RP submitted that no claim with regard to the statutory dues or labour dues have been received. The learned counsel for the RP submitted that as per Form H (Annexure-A1 of Diary No.4029

dated 13.08.2019), all the provisions of the Code and Regulations were complied with and that the approval of the resolution plan was made by 99.39% voting share of the financial creditors in the meeting of the CoC held on 25.05.2019 and therefore, resolution plan submitted by Mr. Ram Prakash Singh and Smt. Indu Walia may be approved.

12. 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.

13. The corporate debtor was incorporated on 20.11.2013 for the purpose of constructing, building, owing and maintaining to do business as keepers of cold storage, storage chambers, ice plants, godowns, warehouses, refrigerators, freezing houses and cold chain solutions etc. and as discussed above, the CIRP proceedings were initiated by order delivered on 13.09.2018. The present application is filed for approval of the resolution plan submitted jointly by Shri Ram Prakash Singh & Smt. Indu Walia (Resolution Applicant). The approval has been sought under the provisions of Section 31 (1) of the Code.

14. 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 Form H – Annexure-A1 of Diary No.4029 dated 13.08.2019):-

Sl. No.	Name of Creditor	Voting Share (%)	Voting for approval of Resolution Plan (Voted for / Dissented / Abstained)
1.	State Bank of India	99.39%	Voted for
2.	HDB Financial Services Ltd	0.61%	Dissented

	Total	100%	
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15. The details of stakeholders under the resolution plan given in Para 7 of Form H, Annexure-A1 of Diary No.4029 dated 13.08.2019):-

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*	232106	232106	-----	----
2	Other Secured Financial Creditors	37748766	37748766	11908936	31.55%
3	Dissenting Unsecured Financial Creditors	-	-	-	-
4	Other Unsecured Financial Creditors	-	-	-	-
5	Operational Creditors	-	-	-	-
	Government	-	-	-	-
	Workmen	-	-	-	-
	Employees	-	-	-	-
				
6	Other Debts and Dues				
Total		37980872	37980872	11908936	

*The Financial Creditor HDB Bank recovered their dues from one of the guarantors of CD and hence nothing has been proposed for their payment in this plan.

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

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Relevant pages and annexures of the paper book	Compliance (Yes / No)
25(2)(h)	<p>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?</p> <p>The resolution applicant meets the criteria and submitted certificate of net worth along with request for EOI.</p>	Clause 4 Page no 7-9	561-563	Yes

Section 29A	<p>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?</p> <p>The resolution professional is eligible to submit resolution plan as per the criteria fixed by the COC. The Adjudicating Authority has not passed any order regarding eligibility of the applicant.</p>	Clause-4 Page no 7-9	561-563	Yes
Section 30(1)	<p>Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?</p> <p>The resolution applicants have submitted an affidavit on 02.03.2019 stating that they are eligible to submit resolution plan.</p>	Yes as per Clause 4.2 Page 8	562	Yes
Section 30(2)	<p>Whether the Resolution Plan:</p> <p>(a) Provides for the payment of insolvency resolution process costs? The resolution plan provides for payment of full CIRP cost in priority to all other debts with in 1month of the approval of the plan</p> <p>(b) Provides for the payment of the debts of operational creditors? ** There are no Operational Creditors as the Corporate Debtor never commenced any business</p> <p>(c) Provides for the management of the affairs of the Corporate debtor? As per the plan the Land of Corporate Debtor will be utilized for the benefit of m/s Shaveta Golden Foods Pvt. Ltd. As the land is un-demarcated and there are no other asset. Thus , the affairs of the CD will be managed by KMP of Shaveta Golden Foods Pvt. Ltd.</p>	Clause-6.1 Page 11	565	Yes
		Clause 6.3&6.4 Page 12-16	566-574	Yes
		Clause-16 Page 28	582	Yes

	<p>(d) provides for the implementation and supervision of the resolution plan?</p> <p>The resolution plan provides for constitution of monitoring committee which shall be responsible for implementation and supervision of the resolution plan. The COC has constituted the monitoring committee and nominated the persons who shall be part of the committee.</p>	Clause-15 Page 26-27	580-581	Yes
	<p>(e) Contravenes any of the provisions of the law for the time being in force?</p> <p>The resolution plan does not contravene any provision of the code. Details of the compliance of plan with Code is provided by the resolution applicant.</p>	Compliance s of Code given on Page 49-50	603-604	No
Section 30(4)	<p>Whether the Resolution Plan</p> <p>(a) Is feasible and viable, according to the CoC?</p> <p>The resolution plan was circulated to the COC and the members of COC deliberated on the plan and its feasibility and viability for over 2 months. Many discussions were held with the resolution applicants. The COC member SBI has its own in house standard operating procedure to evaluate the resolution plan. The member of COC have specifically evaluated the economic viability and operational feasibility of the resolution plan. The members of COC have recorded their reasoning to approve the plan in the 12th meeting of the COC, as stated herein below: <i>“That the members of the committee specifically discussed the issue of reason for the failure of the corporate debtor and the remedial measures proposed by the resolution applicant. The major reason of the failure of the corporate debtor have been identified as under: The corporate Debtor has</i></p>	Yes	Annexure A-15 , page 620-624	Yes

	<p><i>created no tangible assets, there is no building and machinery at the premises of the corporate debtor and business funds were diverted.</i></p> <p><i>The corporate debtor has mortgaged land as collateral security for obtaining loan. This land has not been specifically demarcated and comprises in one plot of land of 51 kanals. There are two other entities who own land in the said plot of land. None of these entities have demarcated their portion in the land and only one entity has constructed three buildings on the land. Due of lack of demarcation it can't be ascertain on which land these buildings have been constructed. Since no other asset except this land has been created, the business of one other entity which has constructed building on the said plot of land is affected due to non-demarcation. To resolve the issue of this entity which has setup its sophisticated factory, the collateral security in this account of Tanishka Agro Ventures Pvt Ltd is proposed to be transferred to Corporate Debtor M/s Shaveta Golden Foods Pvt Ltd which is also under going CIRP process and in which the resolution applicant is the same.</i></p> <p><i>The members took note of the fact that the resolution applicant has proposed to transfer the land mortgage as collateral security in this account to M/s Shaveta Golden Foods Pvt Ltd.</i></p> <p><i>The members of the committee of creditors were of the opinion that the plan is viable and feasible, and the resolution applicant has capability to implement the same within the given resources.”</i></p> <p>(b) has been approved by the CoC with 66% voting share? The resolution passed with 99.39% votes in favour</p>	<p>Yes with 99.39% voting share</p>	<p>Annexure A-15 Page-624</p>	<p>Yes</p>
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Section 31(1)	<p>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</p> <p>After detailed discussion and deliberation on the Constitution of Monitoring Committee as provided in the plan , the CoC , passed the following Resolution:</p> <p><i>“After detailed deliberation on the matter the members of COC suggested that the monitoring committee may consist of following, one member of Financial Creditors (SBI), One Independent Professional (Insolvency Professional) and One representative of Resolution Applicant.</i></p> <p><i>The following resolution put to before COC for voting:</i></p> <p><i>Resolved that the following persons shall be the members of the monitoring committee as proposed in para 15 of the resolutionplan;</i></p> <ol style="list-style-type: none"> <i>1. SurjeetKaushal (AGM, SBI)</i> <i>2. Ravinder Kumar Goel (Insolvency Professional)</i> <i>3. Ram Prakash Singh (Resolution Applicant)”</i> 	Clause-15 Page No 26-27	Page-581 of the Plan & Annexure A-15, Page 624-626	Yes
Regulation 35A	<p>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?</p> <p>The resolution professional based on the examination of the books of accounts has made a determination of the transactions within 115 days of the insolvency commencement date and intimated the board about these transactions. The resolution professional has filed an application under section 66 of the code before the adjudicating</p>	Application filed with NCLT u/s 66 of IBC 2016	Annexure A-8, Page 218-228	Yes

	authority seeking appropriate direction to the respondents to make contribution to the assets of the corporate debtor.			
Regulation 38 (1)	<p>Whether the Resolution Plan identifies specific sources of funds that will be used to pay the -</p> <p>(a) insolvency resolution process costs? The Resolution Applicant will pay CIRP cost within 1 month of approval of the plan by Adjudicating Authority.</p> <p>(b) liquidation value due to operational creditors? There are no operational creditors</p> <p>(c) liquidation value due to dissenting financial creditors? The dissenting financial creditor HDB Bank recovered their dues from one of the guarantors of the CD and hence nothing has been proposed for their payments in this plan.</p>	Appendix-6 Page A9 &Clause - 6 (Page No. 11)	613,617 & 565	Yes
Regulation 38(1A)	<p>Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?</p> <p>The resolution plan includes statement as to how it has dealt with the interest of all the stakeholders. The plan provides details of the settlement proposed with all the stake holders.</p>	Clause-8 Page No. 21-22	575-576	Yes
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule? The resolution plan provides that the terms of the plan is 9 months and provides that it will be implemented by making payments as below;</p> <ul style="list-style-type: none"> • CIRP cost within 1 month • Payment to secured creditors to be made in 2 equal quarterly instalments, after moratorium of 3 months. <p>(b) for the management and control of the business of the corporate debtor during its term? As per the plan the Land of Corporate Debtor will be utilized for the benefit of</p>	<p>Clause-17 Page 28, Appendix 6 Page A8- A12</p> <p>Clause-16 Page 28 & Schedule 5 Page 44</p>	<p>582 & 613-617</p> <p>582&598</p>	<p>Yes</p> <p>Yes</p>

	<p>m/s Shaveta Golden Foods Pvt. Ltd. As the land is un-demarcated and there are no other asset. Thus , the affairs of the CD will be managed by KMP of Shaveta Golden Foods Pvt. Ltd.</p> <p>(c) adequate means for supervising its implementation?</p> <p>The plan provides for appointment of Monitoring agency which will supervise the implementation of the plan and ensure compliance with the terms of the plan. The composition of the monitoring agency has been finalised by the COC in its 12th meeting. The monitoring agency shall be responsible for reporting the progress and breaches if any in the implementation schedule of the resolution plan. The COC has also provided for fixed meeting schedule of the monitoring agency.</p>	Clause-15 Page 26-27	580-581	Yes
38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default?</p> <p>The plan identifies reasons of default as CD failed to commence business and did not create any assets . The land mortgaged as collateral security is un-demarcated with land of Shaveta Golden Foods Pvt. Ltd., this land will be used for the benefit of the same company</p> <p>(b) it is feasible and viable?</p> <p>The only asset available is land mortgaged as collateral security which is un-demarcated with land of Shaveta Golden Foods Pvt. Ltd., this land will be used for the benefit of the same company</p> <p>(c) it has provisions for its effective implementation?</p> <p>The plan provides for appointment of Monitoring agency which will supervise the implementation of the plan and ensure compliance with the terms of the plan. The composition of the monitoring</p>	Schedule– 10 Page 48	602	Yes
		Schedule-6 Page 45	599	NA
		Clause-15 Page 26-27	580-581	Yes

	<p>agency has been finalized by the COC in its 12th meeting. The monitoring agency shall be responsible for reporting the progress and breaches if any in the implementation schedule of the resolution plan. The COC has also provided for fixed meeting schedule of the monitoring agency. The resolution applicant has also furnished performance security in form of fixed deposit equal to 2.5% of the plan value .</p> <p>(d) it has provisions for approvals required and the timeline for the same?</p> <p>The plan does not envisage any special approval from any agency except for the permissions already available and required in normal course of business.</p> <p>the resolution applicant has the capability to implement the resolution plan?</p>	<p>Clause-25 Page 32-33 & Schedule-7 Page 45 & Schedule-8 Page 46-47</p> <p>Schedule-6 Page 45</p>	<p>586-587 & 599,600- 601</p> <p>599</p>	<p>Yes</p> <p>Yes</p>
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Application filed with NCLT u/s 66 of IBC 2016		Yes

**It was observed that when the matter was under consideration before this Tribunal an amendment was introduced under Section 30(2)(b) and the following provision was inserted by Act No. 26 of 2019 w.e.f. 06.08.2019:-

“(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;]”

It is observed that there is no amount payable to the operational creditors of the corporate debtor as provided in the resolution plan. Further, 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 also be NIL. As discussed above, there is one dissenting financial creditor i.e. HDB Financial Services Limited consisting of 0.61% of the voting share. It is submitted that the sole dissenting financial creditor i.e. HDB Financial Services Limited recovered their dues from one of the guarantors of CD and hence nothing has been proposed for their payment in this plan. Therefore, no question of payment to dissenting financial creditors arises here, in the event of liquidation of the corporate debtor. Hence, Section 30(2)(b) (Act No. 26 of 2019) w.e.f. 06.08.2019 stands complied with.

17. 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.

18. 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.

19. It is submitted by the RP that the resolution plan has been approved by a vote of 99.39% of voting share of the financial creditors and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

20. 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.

21. 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 565 of the application) states that payment of insolvency resolution process cost amounting to ₹18.91 lacs shall be paid in priority with payments to the other creditors of the corporate debtor;

(b) **Section 30(2)(b):** The resolution plan (Page 566 of the application) states that according to the Information Memorandum issued by the RP to the resolution applicant, there is no amount payable to the operational creditor of the corporate debtor other than employees, workmen and Government dues. In view of the debts of the secured financial creditors, the liquidation value available for the operational creditor would be NIL. The resolution plan, therefore, does not provide for any amount for statutory dues and labour dues.

(c) **Section 30(2)(c):** At page 28 of the resolution plan (page 582 of the application), it is stated that The Corporate Debtor shall be professionally managed by the officials nominated by the resolution applicant at its sole discretion. As per Form H, the business of the corporate debtor will be managed

and controlled by Key Managerial Personnel of M/s Shaveta Golden Foods Pvt. Ltd.

Further, as per Form H Monitoring Agency will supervise the implementation of the plan and ensure compliance with the terms of the plan.

(d) **Section 30(2)(d)**: At Page 26 of the resolution plan (Page 580 of the application), it is stated that a Committee consisting of resolution professional or any reputed firm of professionals, a nominee of CoC and nominees of the resolution applicant (“Monitoring Agency”) shall be constituted which will manage the corporate debtor during the interim period. It is further stated that the Monitoring Agency shall be responsible for reporting all the requirements in relation to the implementation of the resolution plan.

(e) **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.

22. 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 resolution applicant undertakes that on approval of the resolution plan by the Adjudicating Authority, the resolution applicant also proposes to appoint a Monitoring Agency as would be decided by the Secured Financial Creditors. The term of the plan is stated to be 9 months from the approval of the plan by the Adjudicating Authority. The implementation of the plan will be made by making payments towards the CIRP cost within one month and payment to secured creditors in two quarterly instalments, after moratorium of three months. It is submitted that the corporate debtor is not in operation since inception

and there are not any existing workman/employee working with the corporate debtor and the employees will be appointed by the resolution applicant as an endeavour to re-establish the operations of the corporate debtor.

23. 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 joint resolution applicant Shri Ram Prakash and Smt. Indu Walia has submitted affidavit dated 02.03.2019 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 99.39% 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.

24. We shall now discuss the requirements of Regulation 39(4) of the Regulations. It is observed that in the 7th meeting of CoC held on 08.02.2019, approval was given for obtaining performance security from the resolution applicant. As per the requirement of performance security, Fixed Deposit Certificate for a sum of ₹3,45,000/- in the nature of Kuber Yojna Deposit Scheme with UCO Bank in (Annexure A-16) and a copy of jamabandi in respect of the mortgaged land as performance security 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.

25. It is also stated that application dated 24.01.2019 has been filed with this Tribunal regarding fraudulent transactions under Section 66 of the Code. The relevant CA No.521/2019 is presently under hearing by the Tribunal.

26. In view of the above discussion, the resolution plan submitted by Shri Ram Prakash and Smt. Indu Walia as approved by the CoC under Section 30 (4) of the Code is hereby approved subject to comments in para No.24 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.

27. 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 13.09.2018 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.509/2019 is disposed of.

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

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

Nov., 07, 2019
Anchal