



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

I.A No. 162/2022
in
CP (IB) No.02/BB/2020
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Ms. Shirley Mathew,
Resolution Professional of
Maylari Agro Products Limited.

... Applicant/Petitioner

In the matter of:

Smt. Yogitha Vijaykumar

... Operational Creditor

Versus

Maylari Agro Products Limited

... Corporate Debtor

Order delivered on: 15th February, 2023

Coram: Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the RP : Ms Aishwarya Prasad

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. This Application is filed by Ms. Shirley Mathew (hereinafter referred to as 'Applicant/Resolution Professional') under section 30 (6) read with section 31 read with section 60(5)(c) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking approval of the Resolution Plan as approved by the entire CoC Members.
2. Brief facts of the case are given hereunder:



- (a) The main Company Petition bearing CP(IB) No. 02/BB/2020 filed by Operational Creditor i.e Smt Yogitha Vijaykumar Proprietor of Shree Ratne Farm Products u/s 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s Mylari Agro Products Limited was admitted by this Adjudicating Authority, vide order dated 08.03.2021, and appointed Mr. S. Viswanathan as the Interim Resolution Professional and he was directed to take necessary actions in accordance with relevant provisions of the Code and Regulations made thereunder.
- (b) It is stated that IRP made a public announcement on 13.03.2021 in the prescribed form about the commencement of CIRP against Corporate Debtor in accordance with the provisions of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Claims were invited by public announcement and the last date for submission of claims was 27.03.2021. The IRP constituted the Committee of Creditors as per the provisions of Section 21 of the Code. The Committee of Creditors of the Corporate Debtor consisted of only Canara Bank holding 84.66% of the voting share and Karnataka Bank holding 15.34% of the voting share.
- (c) It is submitted that Canara Bank, the financial creditor and member of the CoC holding 84.6% of the voting share, filed I.A. No. 276 of 2021 seeking replacement of Mr. S Viswanathan, as resolution professional of the Corporate Debtor, and also appointed the Applicant as the RP of the Corporate Debtor. Further, by way of an order dated 30.11.2021, this Tribunal allowed I.A No. 276 of 2021 and accordingly directed that Mr. S Viswanathan be replaced as resolution professional of the Corporate Debtor and the applicant be appointed as the RP of the Corporate Debtor. It is submitted that the RP received the said order dated 30.11.2021 on 08.12.2021.
- (d) It is submitted that the RP took charge of the Corporate Debtor and reconstituted the CoC so that the COC consisted of Canara Bank holding 85.42% of the voting share and Karnataka Bank holding 14.58% of the voting share. Further, the period of 180 days for completion of the CIRP of the Corporate Debtor was scheduled to expire



on 04.09.2021 and I.A No. 330 of 2021 was filed seeking exclusion of 100 days from the CIRP of the Corporate Debtor on account of the lockdown imposed in the state of Karnataka due to coronavirus. This Tribunal by way of an order dated 27.10.2021 allowed I.A.No. 330 of 2021 to the limited extent of excluding the period from 27.04.2021 to 05.08.2021.

- (e) It is further submitted that during the 3rd meeting of the COC held on 10.12.2021, it was inter-alia resolved to file an application under Section 12 of the Code for seeking an extension of the CIRP period of the Corporate Debtor by a period of 90 days. According, I.A.No. 80/2022 was e-filed on 10.12.2021, seeking extension of the CIRP period and this Tribunal vide order dated 29.03.2022 allowed the said I.A, whereby the CIRP period of the Corporate Debtor was extended by 90 days after excluding the period from 13.12.2021 to 29.03.2022. The CIRP period of the Corporate Debtor is extended till 26.06.2022.
- (f) It is submitted that during the 4th meeting of the Committee of Creditors of the Corporate Debtor held on 21.12.2021 the quotations received for the conduct of Transaction Audit of the Corporate Debtor were noted by the Committee of Creditors and the fees payable to M/s Pipara & Co. LLP for conducting the Transaction Audit of the Corporate Debtor were inter-alia unanimously approved. It is submitted that the transaction auditors duly carried out the transaction audit of the Corporate Debtor and submitted their final report on 08.03.2022. Accordingly the applicant filed I.A No. 89 of 2022 under Section 43,45, and 66 of the Code, in respect of certain preferential transactions, undervalued transactions and fraudulent transactions carried out by the Corporate Debtor prior to the commencement of insolvency.
- (g) It is submitted that during the 4th meeting of the COC held on 21.12.2021, the COC approved publication of Form G for invitation of expression of interest for Resolution Plans as well as the eligibility criteria. Accordingly, the approved Form G was published in Financial Express (English) and Hosadiganatha (Kannada) newspapers on 23.12.2021 and responses were received from 3 prospective resolution applicants.



- (h) Further, during the 4th COC meeting held on 21.12.2021 the quotations received for the conduct of Valuation of the Corporate Debtor were noted by the Committee of Creditors and the fees payable to two valuers for each class of assets were inter-alia unanimously approved. Accordingly by way of an e-mail dated 28.12.2021 the two valuers each were separately appointed to conduct the valuation of (i) Plant and Machinery of the Corporate Debtor; (ii) Land and Building of the Corporate Debtor; and (iii) Securities and Financial Assets of the Corporate Debtor. It is submitted that as per the valuation reports submitted the average of Liquidation value of the assets of the Corporate Debtor is Rs. 4.74 Crore and the average Fair Market value of the same is Rs. 6.59 Crore.
- (i) It is submitted that during the 5th COC meeting held on 30.12.2021, the Evaluation Matrix, with both qualitative and quantitative parameters, was unanimously approved by the COC. Further during this meeting the members of the COC discussed and made changes to the Draft Request for Resolution Plan. Thereafter the initial RFRP was circulated to the prospective resolution applicants and detailed expressions of interest were received from three prospective resolution applicants.
- (j) It is submitted that ultimately, only Mr.S. Padmanaban, Proprietor of SP Constructions along with Mr. M. Bhaskar submitted a Resolution Plan. The Resolution Plan was shared with the COC members who were requested to give their observations to the Resolution Plan by 17.02.2022. The RP received comments from the members of the COC, and thereafter the 7th meeting of the COC was convened on 21.02.2022. The members of the COC requested the resolution applicant to improve their bid and submit a revised bid and accordingly, the resolution applicant requested for three days' time to submit a revised bid. On 24.02.2022 the resolution applicant submitted a revised bid, however, the secured creditor having majority voting share in the COC requested the resolution applicant to further improve the bid. Thereafter the resolution applicant submitted a revised Resolution Plan dated 02.03.2022 along with an addendum, which was placed before the COC



during its 8th meeting held on 03.03.2022. The revised Resolution Plan dated 02.03.2022 along with the addendum was put up for voting and was rejected by the COC by a voting share of 85.42%.

- (k) It is submitted that the secured creditor holding majority voting share in the COC who voted against the Resolution Plan in the 8th COC meeting issued an e-mail dated 09.03.2022 requesting the RP to re-issue the RFRP. Accordingly, the applicant reissued the RFRP (Request for Resolution Plan) to all prospective resolution applicants by way of an e-mail dated 09.03.2022. On account of paucity of time, all the prospective resolution applicants were requested to submit the Resolution Plan by 08.00 p.m on 10.03.2022. It is submitted that only one Resolution Plan from Mr. S. Padmanabhan, proprietor of SP Constructions along with Mr. M. Bhaskar was received.
- (l) It is submitted that Resolution Plan dated 10.03.2022 submitted by the resolution applicant was placed before the COC in its 9th meeting held on 11.03.2022. The resolution applicant submitted a Corrigendum to the Resolution Plan on 24.03.2022. the Resolution Plan dated 10.03.2022 along with the Corrigendum dated 24.03.2022 was placed before the COC for voting during the 10th meeting held on 25.03.2022 and it was unanimously resolved to approve the Resolution Plan dated 10.03.2022 submitted by Mr. S. Padmanaban Proprietor of SP Constructions along with Mr. M. Bhaskar.
- (m) Further, as per the Resolution Plan and the commercial bid submitted along therewith, the total payout towards settlement of CIRP costs and claims of creditors shall be Rs. 5,05,00,000/-. The CIRP Cost is Rs. 45 lakhs and the remaining Rs 4.60 crores is the plan value. Further, as per the plan and the commercial bid, there shall be an infusion of Rs. 8,25,00,000/- as funds into the Corporate Debtor for the purpose of reviving the business of the Corporate Debtor.
- (n) It is submitted that in accordance with Section 30(1) of the Code, Mr. S. Padmanaban proprietor of SP Constructions and Mr. M. Bhaskar have submitted separate affidavits, both dated 08.02.2022 declaring that they are eligible under Section 29A of the Code to submit the Resolution Plan. It is submitted that in accordance with the revised



RFRP dated 09.03.2022 the resolution applicants have also paid EMD of Rs. 5 Lakhs by way of a Cheque, further, the said cheque has been deposited in the bank account of the Corporate Debtor.

- (o) It is submitted that the Resolution Plan provides for payment of the CIRP costs in the manner specified by the Board in priority to the payment of other debts of the corporate debtor in accordance with Section 30(2)(a) of the Code. Further, the plan provides for payment of Rs. 7,284/- (0.001% of admitted claims) to operational creditors whose claims have been admitted by the RP. As per the Resolution Plan there is no payment to operational creditors whose claim has not been filed. Since the Liquidation value of the corporate debtor is not sufficient to cover the debt of the secured financial creditor, in terms of Section 53 of the Code there would be no requirement to make any payment to the operational creditors. Hence, the Resolution Plan fulfils the requirements of Section 30(2)(b) of the Code.
- (p) It is submitted that the Resolution Plan (Section 14) provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan through appointment of a new board of directors by the resolution applicant as per their respective equity contribution as follows: (a) Mr. S Padmanaban – 51% of equity (b) Mr. M Bhaskar- 49% of equity.
- (q) Further, in accordance with Section 30(2)(d) of the Code, the Resolution Plan (Section 15) provides for the implementation and supervision of the Resolution Plan including by way of (i) induction of professionals to manage day to day affairs of the Company (ii) appointment of an Insolvency Professional as “Monitoring Professional” to monitor and supervise the implementation of the Resolution Plan, and (iii) constitution and composition of the Monitoring Committee for Implementation of Resolution Plan (“MCIRP”). As per the Resolution Plan the MCIRP shall consist of 4 members namely (i) One Monitoring Professional, present RP shall be the chairperson of the MCIRP; (ii) Two Directors of the Corporate Debtor; and (iii) One member from the Financial Creditor holding majority voting share in the COC (i.e. Canara Bank).



- (r) It is submitted that in accordance with Section 30(2)(e) of the Code the Resolution Plan does not contravene any of the provisions of the law for the time being in force, as has been declared in Section 16 of the Resolution Plan.
- (s) Further, in accordance with Regulation 37 of the CIRP Regulations, the Resolution Plan provides for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets by inter-alia providing for the restructuring of the share capital of the corporate debtor.
- (t) It is submitted that regulation 38 of the CIRP regulations, the Resolution Plan provides for the payment to operational creditors will be paid in priority over the financial creditors in accordance with Regulation 38(1)(a) of the Code and further there are no financial creditors who did not vote in favour of the Resolution Plan.
- (u) Further, the plan deals with the interest of the stakeholders, including financial creditors and operational creditors of the corporate debtor in accordance with Regulation 38(1A) (a) of the CIRP Regulations. The Resolution Plan confirms that none of the resolution applicants or any of its related parties have failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past in accordance with Regulation 38 (1B) of the CIRP Regulations.
- (v) It is submitted that the Resolution Plan provides that the term of the plan shall be one year (Section 15) and further the Resolution Plan provides for the implementation schedule in accordance with Regulation 28(2)(a) of the CIRP Regulations.
- (w) The Resolution Plan provides for the management and control of the business of the corporate debtor during its term in accordance with Regulation 38(2)(b) of the CIRP Regulations. Further, the Resolution Plan provides for adequate means for supervising its implementation through appointing of an insolvency professional as a monitoring professional and the composition of the MCIRP (Section 15.4) in accordance with Regulation 38(2)(c) of the CIRP Regulations.



- (x) It is submitted that the Resolution Plan, in accordance with Regulation 38(2)(b) of the CIRP Regulations, demonstrates that it (a) addresses the cause of default; (b) it is feasible and viable; (c) it has provisions for its effective implementation ; (d) it has provisions for approvals required and the timeline for the same; and (e) the resolution applicant has the capacity to implement the Resolution Plan.
- (y) It is submitted that the COC has passed a unanimous resolution with 100% of the voting share approving the resolution in the 10th meeting of the COC and as such, hence the requirements of Section 30(4) have been complied with.
- (z) It is submitted that the period of completion of the CIRP of the Corporate Debtor has not expired and as such the present Application is filed within time. Further, all requirements under the Code and CIRP Regulations have been duly complied with, and that the Resolution Plan may be approved in accordance with law. Moreover, in accordance with Regulation 36B(4A) of the CIRP Regulations, the Resolution Applicant has furnished the performance security of Rs. 69,99,000 by way of a Bank Guarantee being 15% of the amount proposed to be paid to the financial and operational creditor under the Resolution Plan.
3. Heard Ms. Aishwarya Prasad, learned Counsel for the RP and carefully perused the pleadings on record.
4. The Corporate debtor herein, namely, M/s Mylari Agro Products Ltd was incorporated on 21.06.2016 and CIRP proceedings were initiated against the Corporate Debtor by this Adjudicating Authority, vide order dated 08.03.2021 passed in CP(IB) No. 02/BB/2020. The present application is filed for approval of the Resolution Plan submitted jointly by Mr. Sundar Padmanaban, Proprietor of SP Constructions and Mr. M. Bhaskar. The approval has been sought under the provision's of Section 31(1) of the Code.
5. Pursuant to the public announcement inviting claims from the creditors of the Corporate Debtor, the Resolution Professional has constituted the COC. The details of the financial creditors, the distribution of voting share among them and the position of voting for the Resolution Plan is as under (Para 5 of Form H) :-



Sl.No.	Name of Creditor	Voting Share	Voting for Resolution Plan
1	Canara bank	85.42	Voted for
2	Karnataka Bank	14.58	Voted for

6. The details of stakeholders and the amounts provided for them under the Resolution Plan given in Para No. 7 of revised Form H filed on 08.12.2022 are as under :-

(Rs in Lakhs)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NA	NA	NA
		(b) Other than (a) above: (i) who did not vote in favour of the Resolution Plan (ii) who voted in favour of the Resolution Plan	NA 607.94	NA 606.73	NA 459.93	NA 75.80%
		Total [(a) + (b)]	607.94	606.73	459.93	75.80%
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21 (Related Parties)	NIL	NA	NA	NA
		(b) Other than (a) above: (i) who did not vote in favour of the Resolution Plan (ii) who voted in favour of the Resolution Plan	NIL NIL	NA NA	NA NA	NA NA
		Total [(a) + (b)]	NIL	NA	NA	NA
3.	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NA	NA	NA
		(b) Other than (a) above: (i) Government (ii) Workmen (iii) Employees (iv) Others**	1.71 NIL NIL 868.12	1.71 NA NA 728.36	1.71 NA NA 0.07	100% NA NA 0.008%
		Total [(a) + (b)]	872.12	730.07	1.78	
		4.	Other debts and dues	Shareholders	9.00	5.00
Grand Total			1489.06	1341.80	461.71	34.41%



7. The compliance of the Resolution Plan has been given in Para No. 9 of Form H are as follows:-

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	-	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?	-	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	-	Yes
Section 30(2)	Whether the Resolution Plan – (a) provides for the payment of insolvency resolution process costs?	Pg. No. 27, Point 10.A II)	Yes
	(b) provides for the payment to the operational creditors?	Pg No. 28, Point 10.A (iii)	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the Resolution Plan?	Pg No. 30, Point 10.C (i) and (ii)	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Pg No 28, Point 10.A (iv)	Yes
	(e) provides for the implementation and supervision of the Resolution Plan?	Pg. No 28, Point 10.A (v)	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	Pg. No. 28, Point 10.A (vi)	Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC?	-	Yes
	(b) has been approved by the CoC with 66% voting share?	-	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	-	Yes
Regulation 38(1)	Whether the amount due to the operational creditors under the Resolution Plan has been given priority in payment over financial creditors?	Pg No. 30 (points 10.C (i) and (ii))	Yes
Regulation 38(1A)	Whether the Resolution Plan includes a statement as to how it has dealt with the interests of all stakeholders?	Pg. No. 30, Point 10.C (iii)	Yes
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.	Pg No. 30, Point 10.C (IV)	Yes
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?		



Regulation 38(2)	Whether the Resolution Plan provides: (a) The term of the plan and its implementation schedule? (b) For the management and control of the business of the corporate debtor during its term (c) Adequate means for supervising its implementation?	Pg.No.30, Point 10.C (IV) Pg No.31, Point 10.C (VI) Pg. Nos 30, Point 10.C (v) & (vii)	Yes Yes Yes
38(3)	Whether the Resolution Plan demonstrates that– (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the Resolution Plan?	Pg 26, Point 9.2 (a) & (b) Pg. 31, Point 10.C (IX) Pg. 31, Point 10.C (x) Pg. 31, Point 10. C (XI) Pg. 32, Point 10. C (XII)	Yes Yes Yes Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	-	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of Regulation 36B.	Rs. 69,00,000/- BG No. 009GT022 2101006 from HDFC Bank Ltd	Yes

8. It is submitted by the Resolution Professional that the COC in its 10th meeting held on 25.03.2020 has approved the Resolution Plan with 100% voting share and therefore, the conditions provided for Section 30 (4) of the Code are satisfied.

9. At this juncture it is necessary to refer sec 30(2). The Provisions of Section 30(2) of the I&B Code, 2016 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 3 [payment] 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 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 purpose 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) *Conforms to such other requirements as may be specified by the Board.”*

10. The compliance of Section 30(2) of the Code is given in Para No.09 of Form-H (supra). The same is being further examined as under:

- a. **Section 30(2)(a):** The Resolution Plan in Point 10.A (ii) states that the CIRP Costs are to be paid in priority over payments to be made to any other creditors and the CIRP Costs shall, amongst other things, include the costs fees and charges incurred by the resolution professional, in running the operations of the company as a going concern. Any CIRP expenses incurred till the approval of the Resolution Plan by the AA shall form part of CIRP cost and shall be paid in full out of the cash infusion by the Resolution Applicant and any excess or shortage over projected CIRP expenses belongs to the COC of the Company, and no additional cost is attributable to the successful resolution applicant.



b. **Section 30(2)(b):** The Resolution Plan in Point 10.A(iii) states that 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.

The applicant has assumed that the Liquidation value of the Company is less than the Admitted Debt for financial creditors of INR 606.73 Lakhs. Accordingly the Liquidation value is not sufficient to cover the debt of the financial creditors of the company in full and resolution applicant assumes that the liquidation value for the operational creditors would be Nil. The payment to operational creditors have been dealt in subsequent paras and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, 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.

c. **Section 30(2)(c) :** The Resolution Plan Point 10A(IV) deals with management of the affairs of the corporate debtor after approval of the Resolution Plan it is submitted that after approval of the Resolution Plan , the Resolution Applicant shall be entitled to change members of Board of Directors. A new Board of Directors will be placed in position to manage the affairs of the Corporate Debtor.



- d. **Section 30(2)(d):** The Resolution Plan Point 10A (v) deals with implementation and supervision of the Resolution Plan. The resolution applicant has provided for the mechanism to monitor the progress of implementation of the Resolution Plan. Resolution applicant will engage monitoring professional for implementation and supervision of the Resolution Plan. Alternatively, the COC may decide on the composition of the monitoring committee, for implementation and supervision of the Resolution Plan.
- e. **Section 30 (2)(e):** Resolution Plan Point 10.A(vi). The Resolution Plan does not contravene any of the provisions of the law for the time being in force.
- f. **Section 30 (2)(f):** Resolution Plan Point 10.A(vii). The Insolvency and Bankruptcy Board of India has notified the requirements under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency resolution process for corporate persons) Regulations, 2016. It is submitted that Resolution Plan complied with all the regulation provided under the Code. The compliance thereof is stated in subsequent paragraphs:
- i) **Regulation 37:** as per Regulation 37 of the insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a Resolution Plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following : Transfer of all or part of the assets of the corporate debtor to one or more persons; sale of all or part of the assets whether subject to any security interest or not; the substantial acquisition of shares of the corporate debtor with one or more persons; Cancellation or delisting of any shares of the corporate debtor; satisfaction or modification of any security interest etc.,
 - ii) **Regulation 38 (1)(a):** the regulation provides that the amount due to the operational creditors under the Resolution Plan shall be given priority in payment over financial creditors. The Resolution Plan provides that on approval of the Resolution



- Plan by the AA, payment to operational creditors will be paid in priority over the financial creditors.
- iii) **Regulation 38(2)(a):** the term of the plan will be 1 (one) year and will commence from the Effective Date.
 - iv) **Regulation 38(3)(a):** it is submitted that the resolution applicant will run the operations of the Corporate Debtor as a going concern. The resolution applicant is fully aware of the reasons due to which the corporate debtor faced distressed/situation and defaulted. In order to properly address the cause of default of the corporate debtor, will take all necessary steps as required.
 - v) **Regulation 38(3)(b):** The promoters of resolution applicant and resolution applicant have demonstrated their ability of running their business successfully for a period close two decades and run profitable business enterprise, in last one and half decade plus of existence. The promoters have capability of turned around sick/close down business with the help of business acumen and professional skills. In addition to turn around potentiality, there has been no NPA or restructuring. The applicant proposes to restart the manufacturing activity, in the immediate season, post approval of the Plan. The projections drawn for the project indicates profitability of operations and positive cash flows.
 - vi) **Regulation 38(3)(c):** the resolution applicant has provided for the mechanism to monitor the progress for implementation, which includes engagement of monitoring professional for effective implementation of the Resolution Plan.
 - vii) **Regulation 38 (3)(d):** the implementation of this Resolution Plan does require specific approval/renewals for continuing of business and operations. The timelines for this approval will be 12 months.
 - viii) **Regulation 38(3)(e) :** Resolution applicant, precisely the partners of consortium, are in the business of construction



and fabrication business and have been running their business successfully for almost two decades. Its management has vast experience of running their respective business and would like to venture into Agri Products manufacturing, which is closure their family vocation mainly agriculture. Now, they are venturing into turning around of closed/sick industries of business of smaller in size. The promoters of the Applicant currently run their respective business in Bangalore City, in the same geographical area of the Corporate Debtor. The requirement of professional experts and additional staff required to turn around the company will be reviewed from time to time and the experts will be hired and deployed as and when required.

- ix) **Regulation 39(1)(c):** The resolution applicant states that every information and record provided in connection with or in the Resolution Plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the CIRP, forfeit any refundable deposit and attract penal action under the Code.

11. It is observed that in Para 4 of Form H, the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (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. Further, the resolution applicant Sundar Padmanaban, Proprietor of M/s S.P Constructions along with Mr. M. Bhaskar 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 content of the said affidavit are in order. The affidavits are attached as Annexure V and W to the application. It is further certified that the Resolution Plan has been approved by the COC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering



its feasibility and viability and other requirements specified by the CIRP Regulations.

12. It is further observed that in accordance with regulation 36B(4A), the resolution applicant has furnished the performance security of Rs. 69,00,000/- by way of a Bank Guarantee being 15% of the amount proposed to be paid to the financial and operational creditor under the Resolution Plan and the Bank Guarantee in this regard is along produced along with the application as Annexure AA. The Resolution Applicant has enclosed along with the Resolution Plan, Cheque of INR 5,00,000/- (Indian Rupees Five Lakhs only) from a scheduled Bank, in favour of “Maylari Agro Products Limited”, payable at Bangalore.
13. It is noted from the plan that the RA shall continue as a going concern and operate in its normal course of business upon implementation of the Resolution Plan. With effect from Cut-off Date, the management of affairs of the Company would be done through the reconstituted Board in its new structure.
14. In respect of reliefs and concessions at Para 19 of the Plan, it is declared that whatever relief and concessions entitled by the Resolution Applicant by virtue of the approval of the plan, are entitled to it in accordance with Law. In respect of the remaining, it is not possible for us to issue any direction except to say that the Resolution Applicant may take appropriate steps in accordance with Law in respect of the said reliefs and concessions and the public authorities / government authorities / any other party would duly consider the said requests / applications of the Resolution Applicant in accordance with Law.
15. This tribunal vide order dated 24.08.2022 directed the applicant to file correct Form -H as prescribed by IBBI. The compliance of the above direction was made vide diary no. 4291 dated 11.10.2022. On 14.11.2022, the applicant was directed to furnish affidavit clarifying the treatment of government dues, in view of the Supreme Court judgment in the case of Rainbow Paper Ltd, affidavit with regard to the manner of disposal of Avoidance application pending and distribution of proceeds thereof. The above directions were compiled vide dy no. 5327 filed on 08.12.2022, wherein revised Form H and an affidavit by the Successful Resolution



Applicant undertaking to make payment of 100% of the amounts due under the category 'Statutory Dues', claimed by the Commercial Tax officer, (Audit)- 1.11, DGSTO-1 Bangalore for a sum of Rs. 1,71,071/-, in compliance to the Hon'ble Supreme Court judgment mentioned above. It was explained that this payment shall be made in addition to, and over and above the amounts mentioned in the Resolution Plan. Accordingly the total amount provided in the revised Form-H filed on 08.12.2022 has become Rs 461.71 Lakhs, instead of Rs. 460 Lakhs originally mentioned in the Resolution Plan. It is undertaken that the resolution applicant will make this payment immediately upon approval of the Resolution Plan by this Tribunal. Further it was stated in the affidavit that, applications under Sections 43,45,49,50 and 66 of IBC 2016 are pending before this tribunal and any amounts directed to be paid pursuant to orders on the aforesaid applications shall be distributed as per Clause 11.15.2 of the Resolution Plan. Clause 11.15.2 reiterates that "*any amount realized on account of the Application pursuant to Section 43,45,49,50 and 66, after meeting the litigation cost shall be first utilized towards payment of outstanding due of financial creditors and thereafter distributed in the manner laid out in section 53 of IBC, 2016*". Vide dy No.5702 dated 27.12.2022, it was submitted that since the amount realisable under the Resolution Plan dated 10.03.2022 read together with Corrigendum dated 24.03.2022 and Affidavit dated 05.12.2022 is not higher than the liquidation value of the assets of the Corporate Debtor, no payment is required to be made to the Board as a regulatory fee, in accordance with Regulation 31A of the IBBI (CIRP) Regulations.

16. In the circumstance and for the aforesaid reasons, the instant IA bearing I.A. No.162 of 2022 is **allowed** and accordingly, the Resolution Plan dated 10.03.2022 ('Resolution Plan') submitted by Mr. Sundar Padmanaban jointly with Mr. M Bhaskar (annexed to the Application as Annexure-S) is hereby approved. 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. Under the provisions of section 31(3) of the Code, we also direct as under:

- a. The Bank Guarantee referred in Para 12, shall be continued till the complete implementation of the Resolution Plan.
- b. The moratorium imposed vide order dated 08.03.2021 in the main CP shall cease to have effect from the date of communication of this order.
- c. The resolution professional is directed to handover the management, control and all the assets, documents/records in physical and/or digital form to the Resolution Applicant immediately and the resolution professional will cease to be resolution professional.
- d. The resolution professional shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Board to be recorded on its database.

-Sd-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd-

**(T. KRISHNAVALLI)
MEMBER (JUDICIAL)**