IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

CA No. 237/2019

IN

CP.NO(IB) 213/ALD/2018

(under Section 30 (6) of Insolvency and Bankruptcy Code, 2016) (r/w Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016)

IN THE MATTER OF:

M/s Kumar Casting Pvt. Ltd.

.... Financial Creditor

Vs.

M/s Jagdamba Loha Udyog Pvt. Ltd.

.... Corporate Debtor

AND IN THE MATTER OF:

Mr. Sumit Sukhla
(Resolution Professional)

.... Applicant

ORDER DELIVERED ON: 20.07.2020

CORAM:
Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Resolution Professional: Mr. Sumit Shukla , Advocate

ORDER

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

1. The instant application is filed under Section 30 (6) read with Section 60(5)(b) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Regulation 39 (4) of the Insolvency and Bankruptcy Code, 2016 and read with Regulation 39 of IBBI(CIRP) Regulations 2016 and also read with Rule 15 read with Rule 11 of NCLT Rules, 2016 for seeking approval of Adjudicating Authority, under Section 31 of the IBC, along with the exclusion of 120 days in total out of which 30 days were excluded through CA No. 132/2019 vide order dated 11.06.2020.

2. The Corporate Insolvency Resolution Process ("CIR Process") of the corporate debtor was initiated vide order of this tribunal dated 31.07.2018 upon admission of

an application filed by the Corporate Debtor under Section 9 of the Code and Mr. Sumit Shukla was appointed as the Interim Resolution Professional (herein referred to as IRP) who was later confirm as Resolution Professional (herein referred to as RP) during 1st COC meeting.

3. In response to Form G, the RP received emails from 3 prospective resolution applicants (herein referred to as PRA) seeking expression of interest namely; Prudent ARC Ltd, JFC Finance India Ltd. and Sh. Sushil Agarwal out of which Prudent ARC Ltd. Failed to remove the defects in Expression of Interest Document. Therefore, RFRP Information Memorandum and Evaluation Matrix were sent to the remaining two PRAs i.e. JFC Finance India Ltd. and Sh. Sushil Agarwal.
4. Further, on 27/12/2018, the RP received only one Resolution Plan form the Ex-Promoter/Director of the Corporate Debtor namely; Sushil Agarwal (RA) which was not commercially viable nor met the compliance requirement as per the Code. Thereafter, on 22.01.2019, during the 8th CoC Meeting, the CoC member, in order to maximize the value of assets of Corporate Debtor as a going concern, granted another opportunity to the RA to revise the Resolution Plan and remove all the defects. CoC also authorized RP to file an application for extension of CIRP by another 90 days.
5. Further, on 20.02.2019, this Tribunal had extended (till 27.04.2019) the CIRP period by 90 days upon the application of the Resolution Professional vide CA No. 47/2019 as there were discussions going on between the CoC members and the Resolution Applicant on the Resolution Plan.
6. On 08.04.2019, in 10th CoC Meeting, once again CoC asked the Resolution Applicant to review his Plan and remove all the defects and deferred the decision to the next CoC Meeting and furthermore to 11th CoC Meeting in which the CoC appointed RP as the Liquidator for further proceedings.
7. Subsequently, on 22.04.2019 the Resolution Applicant revised the amount offered in the Resolution Plan form Rs.5 Crores to Rs.5.6 Crores and considering these developments RP convened another meeting with CoC members on 25.04.2019 to review the decision of liquidation of Company taken in 11th CoC Meeting. As a result

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of which, CoC during 12th CoC meeting, reversed it decision to liquidate the Company and accepted the amount offered in the Resolution Plan together with all the modifications therein based upon the revised offer submitted by the Resolution Applicant vide its letter dated 22.04.2019 and further directed the Resolution Applicant to remove the defects within 7 days. Also, in order to keep the Company a going concern, the CoC members approved the resolution to exempt 30 days in the CIR proceedings as on account of the delays on part of Resolution Applicant in submission of revised offer, on account of that resolution, RP filed an application before this Tribunal to seek exclusion of 30 days from CIR Process.

8. Subsequent to this, on 21.06.2019, 13th CoC Meeting was held to review another revised Resolution plan submitted on 02.05.2019 and 29.05.2019, which was again detected with several defects, and hence another opportunity was granted to remove defects by 28.06.2019. At last, on 13.07.2019, Resolution Applicant submitted the final revised plan which was reviewed by the RP and accordingly RP submitted his report dated 29.07.2019 to the CoC Members which gained approval of CoC members with **100% voting share** in the 14th CoC Meeting held on 05.08.2019.

9. It is stated that, during the process of submission of Expression of Interest, the Resolution Applicant had paid the earnest money of Rs. 10 Lakh in form of Fixed Deposit and performance security of Rs. 50 Lakh in form of Fixed Deposit.

10. It is further stated that the initial resolution plan submitted by RA was for Rs. 2 Crores and after subsequent revisions, the final proposed resolution value is for Rs. 5.76 Crores during the course of negotiations/ discussions held between CoC, RP and Resolution Applicant during various CoC Meetings.

11. Accordingly, the Resolution Professional has filed the present application seeking approval of the Resolution Plan in terms of Section 31(1) of the Code.

12. Heard the Ld. Counsel for the Applicant and perused the record available.

13. The Resolution Professional has examined the Resolution Plan and has found it to comply with Section 30 (2) of the IBC read with Regulation 38 of the CIRP

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Regulations. In accordance with Regulation 39 (4) of the CIRP Regulations, the RP vide his Affidavit certified that:

a) The contents of the Resolution Plan submitted by ***" Sushil Agarwal"*** meet all the requirements of the IBC and the Regulations thereunder; and

b) The Resolution Plan submitted by ***"Sushil Agarwal"*** has been approved by the Committee of Creditors by 100% voting share under Section 30 (4) of the IBC in its meeting.

c) Further, Resolution Professional has submitted compliance certificate in Form-H as required under Regulation 39(4) of the CIRP regulations, *inter alia*, certifying eligibility of Resolution Applicant under Section 29 A of the Code and feasibility & viability of the Resolution Plan.

14. Sub-section 2 of Section 30 of the Code reads as under;

"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 repayment 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 requirement as may be specified by the Board."

Further, Regulation 38 & 39 of CIRP Regulations specify certain mandatory contents of the resolution plan.

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15. The resolution plan approved by the Committee of Creditors meets the requirements laid down in various Clauses of Section 29 A and Sec 30 as per the compliance table below:

Section	Requirement	Compliance
Section 29 A	The resolution applicant is eligible to submit resolution plan as per final list of resolution professional or order, if ,any , of the Adjudicating Authority	Resolution Applicant has submitted an affidavit dated 02.07.2019 confirming his eligibility for submission of Resolution Plan. RP also obtained an independent due diligence report as per the directions of CoC.
Section 30	(1)The resolution Applicant has submitted an affidavit stating that he is eligible	Resolution Applicant has submitted an affidavit dated 02.07.2019 confirming his eligibility for submission of Resolution Plan. Resolution Applicant has submitted that the Corporate Debtor being an MSME Unit and therefore he is eligible to submit the Resolution Plan. Resolution Professional submits that the acknowledgement dated 16.05.2013 issued by the District Industries Centre, Muzaffarnagar indicating the Corporate Debtor as small enterprise having enterprise memorandum no. 090021206887 PART II/ 2013. **RP** further submits that as per the information received from the Financial Creditor that the RA (along with his family members) are the guarantor for the Corporate Debtor as the promoter and guarantor in aforesaid undertaking wherein the RC has been issued by Hon'ble DRT Dehradun The same required to be submitted for other proposed Directors/Shareholders. However, the CoC

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		members has not declared RA as a willful defaulter.
	(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan only one resolution plan received in the Insolvency resolution process of the CD)	
a)	Provides for payment of IRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	The revised Resolution Plan dated 02.07.2019 provides for Rs. 6 Lakh (approx.) for CIRP Cost. The Resolution Applicant has further proposed to pay this amount in priority to the other creditors. The Resolution Applicant has also proposed to pay any additional cost above to Rs. 6 Lakh.
b)	Provides for repayment of debts of operational creditors (OCs) in such manner as may be specified by the Board, which shall not be less than the amount payable to them in the event of liquidation u/s 53.	Revised Resolution Plan dated 02.07.2019 provides for Rs. 10.51 Lakh to Operational Creditors i.e. 40.11% of the Claim Value. The revised resolution Plan dated 02.07.2019 also provides for .46 Lakh (100%) towards admitted liability payable to workmen though no claims received by RP. The revised Resolution Plan dated 02.07.2019 provide for .65 Lakh towards ESIC payable and Rs. 2.21 Lakh towards PF payable being admitted deductible liabilities though no claims received by the RP. The revised Resolution Plan dated 02.07.2019 provides for Rs. 65 Lakh towards ESIC payable and Rs. 2.21 Lakh towards PF payable being admitted

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		deductible liabilities though no claims received by the RP.
c)	Provides for management of the affair of the CD after approval of the resolution plan.	Para 9.1, Page 19 of the revised Resolution Plan dated 02.07.2019 provides for management of affairs post its approval by the Adjudicating Authority
d)	Implementation and Supervision of resolution plan	Para 9.3, Page 20 of the revised Resolution Plan dated 02.07.2019 provides for management of affairs post its approval by the Adjudicating Authority.
e)	Plan does not contravene any of the provisions of the law for the time being in force.	Vide Para 1.5, Page 26 of the revised Resolution Plan dated 02.07.2019, the Resolution Applicant confirms that the plan complies with the provisions of this code.
f)	Confirms to such other requirements as may be specified by the Board.	Vide Para 1.6, Page 26 of the revised Resolution Plan dated 02.07.2019, the Resolution Applicant confirms that the plan complies with the provisions of this code.

16. The following table shows that the requirements of Regulation 38 & Regulation 39(2) CIRP Regulation are met by the approved plan:

Reference of relevant Regulations	**Requirement**	**Compliance**
38(1)	The resolution plan identifies specific sources of funds that will be used to pay the insolvency Resolution process	Yes
38 (1A)	Plan shall include a statement as to how it has dealt with the interests of all stakeholders, including	Para 4 and Para 5 of the revised Resolution Plan provides for the proposal made for various stakeholders including the proposed haircuts.

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	financial creditors and operational creditors, of Corporate Debtor.	The RA is submitted the revised Resolution Plan in order to keep the entity as a going concern. The RA has also indicated his plan to provide direct and indirect earning and employment opportunities to around 25 families.
38(2) (a)	Plan shall provide the term of the Plan and its implementation schedule.	RA ha duly informed the CoC members about the transactions opined and observed by him during RP has also filed an application before the Adjudicating Authority vide CA No. 24/2019 which is pending for adjudication.
38 (2) (b)	Plan shall provide for the management and control of the business of CD during its term.	RA ha duly informed the CoC members about the transactions opined and observed by him during RP has also filed an application before the Adjudicating Authority vide CA No. 24/2019 which is pending for adjudication.
38 (2) (c)	Plan shall provide for adequate means for supervising its implementation.	RA ha duly informed the CoC members about the transactions opined and observed by him during RP has also filed an application before the Adjudicating Authority vide CA No. 24/2019 which is pending for adjudication.
38 (3)	A resolution plan shall demonstrate that (a) The term of the plan and its implementation schedule (b) It is feasible and viable (c) It has provisions for its effective implementation (d) It has provisions for approval	The revised Resolution Plan dated 02.07.2019 indicates the following: 1. Working Capital management was considered to be the key issue that caused default, financial projects has been provided in support. 2. Resolution Plan provides for a payment term of 12 months. 3. Resolution Plan provides for timeline of the payments. 4. Resolution Applicant is well experienced to run the business of Corporate Debtor.

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	required and the timelines for the same (e) The resolution applicant has the capability to implement the resolution plan	RP further submits that the RA has proposed to bring funds from his friends and relatives (proposing as shareholders) and has submitted their ITRs towards their earnings. On 10.07.2019, RP had proposed the CoC to seek evidence from all the persons who have been indicated as proposed shareholders.
39(2)	The RP has filed applications in respect of transaction observed, found or determined by him	Yes

17. The said payment of the amounts payable under resolution plan to various creditors shall be made as follows:

i) The amount of Rs. 10.51 Lakh shall be paid to the Operational Creditors to resolve of the Operational Creditor within 7 days of receipt of the order passed by this Tribunal granting approval of Resolution Plan by the Resolution Applicant (i.e. within 7 days from the effective date);

ii) Rs. 0.65 Lakh and Rs. 2.21 Lakh respectively towards ESIC payable and Provident Fund payable shall be paid within 7 days of receipt of the order passed by this Tribunal granting approval of the Resolution Plan by the Resolution Applicant (i.e. within 7 days from the effective date);

iii) Rs. 0.46 Lakh shall be paid towards the salary payable within 7 days of receipt of the order passed by this Tribunal granting approval of Resolution Plan by the Resolution Applicant (i.e. within 7 days from the effective date);

iv) An amount of R. 25 Lakh shall be deposited by Resolution Applicant for the resolution of secured financial creditor within 7 days of receipt of the order passed by this Tribunal granting approval of Resolution Plan by the Resolution Applicant (i.e. within 7 days from the effective date);

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v) An amount of Rs. 75 Lakh shall be deposited by the Resolution Applicant for the Resolution of the debts of the secured financial creditor in three instalments as described below:

- An amount of INR 152 Lakh within next three months from the deposit of instalment of INR 75 Lakh as mentioned above (i.e. within 4 months from the effective date);
- Further, amount of INR 152 Lakh within next 4 months (i.e. within 8 months from the effective date);
- Balance amount of INR 152 Lakh within next 4 months (i.e. within 12 months from the effective date).

vi) Further, in compliance with the provisions of Section 30(2)(a) and Regulation 38(1), such payments (as proposed towards the secured financial creditor) shall be made post making payments of CIRP Costs and to the Operational Creditors, in the manner as contained in the Resolution Plan.

18. The RP as required under regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 certified that the contents of the resolution plan meets with the requirements of the IBC and the regulations thereto and that the resolution plan has been approved by the CoC in the manner prescribed under the IBC.

19. This bench directs the RP to act as the Monitoring Agency and thus appointed RP as "Monitoring Agency" to monitor and supervise the implementation of the Resolution plan and the remuneration of the monitoring agency shall be on Rs. 1,50,000/- plus taxes and out of pocket expenses at actual.

20. The Resolution Applicant is allowed to remove and/or substitute the Monitoring Agency with prior approval of this Adjudicating Authority if the Monitoring Agency is unable to satisfactorily perform its responsibilities or breaches terms of its appointment.

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21. It is directed that the resolution plan so approved shall be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. With the approval of the resolution plan, the moratorium order passed by this Tribunal under Section 14 of the Code shall ceases to have effect. The Resolution Professional is directed to forward all the record relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.

22. The Resolution applicant has to adhere to all the applicable law for the time being in force. The Resolution Applicant can seek clarifications, if any, from this Tribunal.

23. In view of the above discussion, the Resolution Plan submitted by ***"Sushil Agarwal"*** is found in conformity of Section 30 (2) of the Code and the same is approved.

24. Also, in view of the above said factual situation, this Authority is of the considered view that the circumstances justify the exclusion of 90 days from the CIRP period as prayed by the applicant which was delayed on account of Resolution Applicant in submission of revised offer and also enable him to remove defects in the Resolution Plan.

25. Accordingly, the Resolution Plan is hereby **approved** and CA 237/2019 is **disposed of,** excluding 90 days in the CIRP period.

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JUSTICE RAJESH DAYAL KHARE
MEMBER (JUDICIAL)

Date: 20.07.2020

Shefali Vats
(LRA)

NATIONAL COMPANY LAW TRIBUNAL **ITEM NO :6**
ALLAHABAD BENCH

ATTENDENCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 20.07.2020 at 12:20 PM THROUGH VIDEO CONFERENCING.

NAME OF THE COMPANY : KUMAR CASTING PVT. LTD. V/S JAGDAMBA LOHA UDHOG PVT. LTD.

SECTION 31 IBC

PRESENT :HON'BLE MR. JUSTICE (RETD.) RAJESH DAYAL KHARE, MEMBER (J)

COUNSEL FOR RP : SH. SUMIT SHUKLA, ADVOCATE

COUNSEL FOR THE RESPONDENT : SH. LAXMI NARAYAN MISHRA, ADVOCATE

CA NO. 237/2019 IN CP NO. (IB) 213/ALD/2018

Order pronounced through video conferencing.

Resolution Plan approved vide separate order sheet.
Application disposed of.

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Dated : 20.07.2020 **JUSTICE RAJESH DAYAL KHARE**
(MEMBER JUDICIAL)

Typed by :
KUMUD NARAYAN
(PS)