

Resolution Plan submitted by consortium of M/s V. Square and M/s Bombay Carrier (Resolution Applicant).

2. The facts leading to the Application are as under.
 - a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by an Order of this Bench dated 19.09.2019 upon admission of a Petition under Section 7 of the Code and the Applicant was appointed as the Interim Resolution Professional (IRP).
 - b. The IRP made a public announcement on 24.09.2019 inviting claims from the creditors of the Corporate Debtor. After receipt of the claims IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor on 22.10.2019.
 - c. IRP conducted the 1st meeting of CoC on 25.10.2019 wherein the CoC resolved to appoint the Applicant as the Resolution Professional (RP) and the same was confirmed by this Bench.
 - d. The CoC in its 5th meeting held on 05.03.2020 resolved to file an Application for extension of the CIRP Period. The Applicant filed an Application in IA No. 968 of 2020 for extension of CIRP period. The same was allowed by this Tribunal vide order dated 11.09.2020 by extending the period of CIRP by 60 days to end on 09.11.2020.
 - e. The Applicant had issued Form-G on 15.03.2020, inviting expression of interest (EOI) from prospective resolution applicants (PRAs). Thereupon consortium of M/s V. Square and M/s Bombay Carrier (both proprietorship concerns under sole proprietorship of Shree Vishwanath V. Jare) submitted the Resolution Plan on 30.09.2020.
3. The Applicant put forth the said Resolution Plan before the CoC in its 6th meeting held on 19.10.2020 and the CoC suggested some modifications / alterations / additions to the Resolution Plan.

4. After due verification of the eligibility of Resolution Applicant in terms of Section 29A of the Code, the CoC in its 8th meeting held on 29.10.2020 considered the revised Resolution Plan of the Resolution Applicant and decided to put the Resolution Plan for E-voting. The Applicant accordingly kept E-voting open from 10.00 am of 02.11.2020 till 23.59 hrs of 09.11.2020 which was later extended till 23.59 hrs of 16.11.2020. The Applicant declared the E-voting results on 18.11.2020 and the Resolution Plan was approved with 72.27% voting share. The details of Voting shares are as follows:

Sr. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	Punjab National Bank	42.24	Voted For
2	Asset Reconstruction Co. (India) Ltd.	2.02	Dissented
3	Edelweiss Asset Reconstruction Co. Ltd.	9.75	Voted For
4	The Karnataka Bank Ltd.	9.02	Voted For
5	Bank of Bahrain and Kuwait	4.03	Voted For
6	Cosmos Co-Op Bank Ltd.	3.95	Dissented
7	Apna Sahakari Bank	2.75	Abstained
8	State Bank of India	3.82	Voted for
9	Central Bank of India	1.71	Voted For
10	Saraswat Co-Operative Bank	1.17	Voted For
11	Dombivali Nagari Sahakari Bank Ltd.	1.01	Abstained
12	Bank of Baroda	0.53	Voted For
	Total	100	

5. **Salient features of the Resolution Plan:**

a. **SUCCESSFUL RESOLUTION APPLICANT (SRA):**

The SRA is a consortium of 2 members. Consortium member one viz., M/s V. Square has more than 20 years of experience in various businesses including dealing in distressed assets. The net worth of M/s V. Square was

₹.10,16,22,027/- as on 31.03.2020. Consortium member two viz., M/s Bombay Road Carriers is in the business of trading of material handling equipment. The net worth of M/s Bombay Road Carriers was ₹. 6,18,41,315/- as on 31.03.2019.

b. TERM OF RESOLUTION PLAN:

The term of Resolution Plan is of 250 days from the date of acceptance of the Resolution Plan by this Bench. The completion date would mean the 250th day.

c. FINANCIAL TERMS:

The total consideration proposed in the Plan is ₹. 5,42,75,000/-. Details of dues and settlement for all stakeholders is as follows:

Sr. No	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan
1	Payment towards CIRP Costs				24,00,000/-
2.	Secured Financial Creditors	(a) Creditors not having right to vote under sub-section (2) of Section 21	-	-	-
		(b) Other than (a) above:			
		(i) Who did not vote in favour of the Resolution Plan	243,12,96,563/-	215,03,36,834/-	1,03,85,155/-
		(ii) Who voted in favour of the Resolution Plan	145,79,61,716/-	145,79,61,716/-	70,41,296/-
		Total (a) + (b)	388,92,58,279/-	360,82,98,550/-	1,74,26,450/-

3	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21	-	-	-
		(b) Other than (a) above:			
		(i) Who did not vote in favour of the Resolution Plan	82,87,05,321/-	82,84,03,821/-	40,00,816/-
		(ii) Who voted in favour of the Resolution Plan	630,44,68,834/-	630,44,68,834/-	3,04,47,734/-
		Total (a) + (b)	713,31,74,156/-	713,28,72,655/-	3,44,48,550/-
4	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-
		(b) Other than (a) above:			
		(i) Government (Statutory Dues)			
		(ii) Workmen (iii) Employees (iv) Suppliers			
		Total (a) +(b)	-	-	-
5	Other debts and dues		-	-	-
Grand Total			11,02,24,32,435/-	10,74,11,71,206/-	5,42,75,000/-

d. The above payments will be made towards the claims against the Corporate Debtor in the following manner:

Sr. No.	Particulars	Time period in days from handover of all assets	Amount (in ₹.)
1	Payments towards CIRP Costs	Within 20 days	24,00,000/-
2	Payment to Operational Creditors		
A	Payments to other Operational	Admitted claims within 25 days	NIL

	Creditors, pro-rate basis		
B	Regulatory Dues (Statutory Dues)	Admitted Claims within 60 days	NIL
C	Payment to workmen / employees	Admitted Claims within 60 days	NIL
D	Payment to Employees, PF & State Insurance, (As per Audited B/S 2017 given by Resolution Applicant)	Within 60 days	NIL
3	Payment to Financial Creditors		
A	Earnest money deposit shall be treated as Performance Guarantee	Shall be adjusted as the last instalment at the end of 250 days	77,25,000/-
B	First Instalment	Within 30 days	1,00,00,000/-
C	Second Instalment	Within 180 days	2,00,00,000/-
D	Last and third Instalment	Within 270 days	1,41,50,000/-
	Total		5,18,75,000/-
	The SRA submits that he will bring in money for Capital Expenditure and working capital.	As and when required	2,30,00,000/-
	TOTAL		7,72,75,000/-

e. MEANS OF FUNDS:

The SRA proposes to infuse the above fund in the following manner:

Sr. No.	Particulars	Amount
1	Amount available at bank account of SRA	2,42,75,000/-
2	Unsecured loan from Partners, friends and Relatives	2,00,00,000/-
3	Loans to be availed from financial Institutions	1,00,00,000/-

f. REDUCTION OF SHARE CAPITAL:

On the completion date, the paid up share capital of the Corporate Debtor shall stand extinguished and the SRA shall infuse an amount of ₹. 1,00,00,000/- as the paid up equity share capital comprising of 10,00,000 equity shares of ₹. 10 each.

g. PERFORMANCE SECURITY:

The SRA has provided performance bank guarantee of ₹. 1,30,00,000/- dated 22.12.2020 from 'The South Indian Bank Limited', Nigdi Branch as per Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the Regulations). Copy of said Bank Guarantee is submitted separately vide affidavit dated 02.06.2021. Besides the above the SRA has paid an amount of ₹. 87,25,000/- in two tranches of ₹. 10,00,000/- and ₹. 77,25,000/- respectively on 20.08.2020 and 13.10.2020. It is submitted by the Resolution Applicant in its Affidavit dated 02.06.2021 that the amount of ₹. 77,25,000/- is already mentioned / taken care of in the Resolution Plan and the amount of ₹. 10,00,000/- shall be utilised towards payment to the Financial Creditors.

h. MANAGEMENT OF THE CORPORATE DEBTOR:

Management and control of the business of the Corporate Debtor will be by the SRA and the managerial personnel to be appointed by the SRA.

i. SUPERVISION OF THE RESOLUTION PLAN:

The Supervision of the Resolution Plan as finally approved by the Adjudicating Authority is proposed to be done by the Applicant for the entire period of its implementation.

j. COMPLIANCE OF MANDATORY CONTENTS OF RESOLUTION PLAN UNDER THE CODE AND THE REGULATIONS:

It is submitted that the Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 and 39 of the Regulations and has submitted his Form H under Regulation 39(4). It is submitted that the Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not hit by the provisions of Section 29A of the Code. Accordingly, the Resolution Applicant has submitted an Affidavit dated 10.06.2021 confirming its eligibility to submit a Resolution Plan u/s 29A of the Code.

6. The Applicant submits that the Resolution Plan meets the requirement of Section 30(2) of the Code in the following manner:
- A. Plan provides for the payment of CIRP cost in full and in priority from the fund to be infused by the SRA [Section 30(2)(a)].
 - B. Since there are no Operational Creditors the applicability of Section 30(2)(b) does not arise, which provides that the Operational Creditors will be paid in priority over Financial Creditors.
 - C. The Management of the affairs of the Corporate Debtor after approval of the Resolution Plan would be with the Resolution Applicant [Section 30(2)(c)].
 - D. The Plan also provides for implementation and supervision of the Resolution Plan as stated above [Section 30(2)(d)].
 - E. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force [Section 30(2)(e)].
7. The Resolution Plan is in compliance of Regulation 38 of the Regulations in terms of Section 30(2)(f) of the Code as under:
- a) Since there are no Operational Creditors the applicability of Regulation 38(1)(a) of the Regulations does not arise, which provides that the Operational Creditors will be paid in priority over Financial Creditors.
 - b) Provides for payment due to the dissenting Financial Creditors in priority over assenting Financial Creditors (Regulation 38(1)(b) of the Regulations).
 - c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A) of the Regulations).
 - d) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of its related party has either failed or contributed to

the failure of the implementation of any other approved Resolution Plan (Regulation 38(1B) of the Regulations).

- e) The Plan also provides for term and implementation schedule, management and control of the Corporate Debtor and adequate means for supervising its implementation (Regulation 38(2) of the Regulations).
- f) The Resolution Plan also addresses the cause of default, feasibility and viability, as required under Regulation 38(3) of the Regulations.

- 8. The SRA has sought certain reliefs, concessions and waivers at clause XIV (Prayers) of the Resolution Plan.
- 9. During the hearing learned counsel for the Applicant submitted that there are certain encroachments on the land of the Corporate Debtor, and accordingly sought for Police help to remove the encroachments, however, we cannot presently give any directions in that regard. The Police authorities however may act in accordance with law, if and when such request is made.
- 10. It is beneficial to refer to the observation of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC OnLine SC 1478* as under:

“67.

A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.”

11. In view of the above ruling of the Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. As already indicated the Resolution Plan has been approved by the CoC through E-voting with 72.27% votes.
12. In *K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan with requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is '*no more and no less*'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "*as approved*" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
13. In **CoC of Essar Steel** (*supra*) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra)."

14. In view of the discussions and the law thus settled, we are satisfied that the Resolution Plan as approved by the CoC under Section 30(4) of the Code meets the requirements of Section 30(2) of the Code and Regulations 37 and 38 of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved as provided under Section 31 of the Code. Hence ordered.

ORDER

The Application be and the same is allowed. The Resolution Plan submitted by Consortium of M/s V. Square and M/s Bombay Carrier annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

- a. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- b. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- c. As far as the permits held by the Corporate Debtor and the rights and benefits accrued therein, the Corporate Debtor (under the new Management) needs to approach the authorities concerned for renewal and that the same may have to be considered by them favourably, subject to relevant Law and Rules, so that the implementation of Plan becomes smooth.

- d. With regard to the reliefs and concessions sought by the Resolution Applicant in respect of the Corporate Debtor, the Monitoring Committee or the new Management, as the case maybe may approach the respective authorities and departments for such reliefs. The authorities concerned may favourably consider such applications as deemed proper under law, keeping in view the object of resolution of the Corporate Debtor as envisaged in the Code and various pronouncements of the Hon'ble Apex Court.
- e. Henceforth, no erstwhile creditors of the Corporate Debtor can claim anything other than the liabilities taken over by the Resolution Applicant.
- f. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- g. The Applicant shall supervise the implementation of the Resolution Plan and shall file Status Report of its implementation before this Authority from time to time, preferably every quarter. His fees for the purpose is fixed at ₹. 50,000 (Rupees Fifty Thousand only) to be borne by the resolution Applicant herein.
- h. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- i. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant for necessary compliance. The certified copy so granted shall include the Resolution Plan approved herein.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Janab Mohammed Ajmal
Member (Judicial)