

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT – III**

**IA/5826/2023 In C.P.(IB)/566(MB)/C-III/2022**

*(Under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.)*

**Ramchandra Dallaram Choudhary, Resolution Professional for M/s. Adico Forge Private Limited**

**.....Applicant**

*In the matter of*

**M/s. Sunflag Iron & Steel Company Limited**

**.....Financial Creditor**

**Vs**

**M/s. Adico Forge Private Limited**

**.....Corporate Debtor**

**Order delivered on: 02.05.2024**

**CORAM:**

**SHRI CHARANJEET SINGH GULATI**

**HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG**

**HON'BLE MEMBER (J)**

*Appearances:*

For the Resolution Professional : Adv. Kunal Kanungo i/b Adv. Dipti Mundra

For the Resolution Applicant : Adv. Shyam Kapadia a/w Rohan Agarwal

**ORDER*****Per- Charanjeet Singh Gulati, Member Technical***

1. It is an application filed by the Resolution Professional of the Corporate Debtor (**“RP/Applicant”**) under Section 30(6) and Section 31 of the Insolvency & Bankruptcy Code, 2016 (**“the Code”**) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process Corporate Persons) Regulations, 2016 for approval of the Resolution Plan by Adjudicating Authority based on the approval already given by the Committee of Creditors (**“CoC”**) in its 9<sup>th</sup> Meeting with majority of 92.87% under section 30(4) of the Code.
2. An application under section 9 of IB Code, 2016 was filed against the Corporate Debtor i.e., Adico Forge Private Limited by the Operational Creditor M/s. Sunflag Iron & Steel Company Limited and the said application was admitted by this Bench, vide Order dated 23.06.2022 in CP(IB) No. 566/MB/ 2022. By the said order Mr. Valkati Balasubramanyam Reddy was appointed as Interim Resolution Professional (**“IRP”**).
3. Public Announcement in Form A was published inviting claims from all the creditors on or before 29.07.2023.
4. The 1<sup>st</sup> CoC meeting was held on 17.08.2023, wherein the sole member of CoC unanimously resolved to appoint applicant as RP. Further, this bench vide order dated 08.11.2023 approved the replacement of the IRP and appointed the Applicant as RP of the Corporate Debtor.
5. The 2<sup>nd</sup> CoC meeting was held on 18.09.2023, wherein the members of the CoC approved the invitation for Expression of Interest/ Form G, same was published in the newspaper viz. Financial Express- Pune Ed. (English Newspaper) and Navrashtra- Marathi Ed. (Marathi Newspaper) on 21.09.2023 for the purpose of invitation of Resolution Plans.

6. Pursuant to the Publication for Invitation of Expression of Interest, the RP had received EoI from the following six (6) prospective Resolution Applicants:
- i. M/s. Saverni Neutech
  - ii. Western India Forgings Pvt. Ltd.
  - iii. Trinity India Forgetech Pvt. Ltd.
  - iv. L K Sons Alloy Pvt. Ltd.
  - v. Yeshshree Press Comps Pvt. Ltd.
  - vi. Suresh Santoki (Suspended Board of Directors of the CD)
7. One of the PRA i.e. Yeshshree Press Coms Pvt. Ltd. withdrew from the process of submission of Resolution Plan. Further, on non-receipt of any objection on the said list of eligible Prospective Resolution Applicants under Regulation 36A (11) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the RP issued the Request for Resolution Plan (**"RFRP"**), Information Memorandum and the Evaluation Matrix to all the five Prospective Resolution Applicants. Further, the last day for submission of Resolution Plan was extended from 13.11.2023 to 17.11.2023 due to festival holidays.
8. Pursuant to Section 30 of the Code read with Regulation 37 and 38 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Resolution Plans were received from two Prospective Resolution Applicants namely M/s. Trinity India Forgetech Private Limited and M/s. Saverni Neutech Private Limited. However, no resolution plan was received from the other Prospective Resolution Applicants.
9. In the 6<sup>th</sup> CoC meeting held on 28.11.2023, the CoC discussed about feasibility and viability of Resolution Plans and suggested certain modification to Resolution Plans submitted by both the PRAs. Both the PRAs submitted their revised Plans.

10. Further, in the 7<sup>th</sup> CoC meeting held on 02.12.2023, the CoC requested with both the PRAs to provide an enhanced revised offer.

**Exclusion/Extension granted by the Adjudicating Authority:**

11. On an Interlocutory Application No. 236/2024 by RP, this Bench by its order dated 25.04.2024, allowed exclusion of 31 days i.e. from the order of commencement of CIRP dated 23.06.2023 till the receipt of order i.e. 15.07.2023 (22 days) and from the order of replacement of IRP dated 08.11.2023 till receipt of order of replacement of IRP i.e. 17.11.2023 (9 days).

12. The IRP received some claims till 10.11.2023 which were pending for verification by IRP. Subsequently, the applicant verified all the pending claims and Re-constituted the CoC on 08.12.2023 and filed the report for reconstitution of CoC on 11.12.2023 and same was taken on record by this bench vide order dated 09.01.2023.

13. During 8<sup>th</sup> CoC meeting held on 12.12.2023, the CoC approved the Cost and expenses incurred by the applicant during the CIRP process. Further, on the request of the PRAs, the CoC granted an extension of time for submission of Resolution Plan with revised bid.

14. In 9<sup>th</sup> CoC meeting held on 15.12.2023, the applicant informed the members of CoC that only one PRA i.e. Trinity India Forgetech Pvt. Ltd. has provided the Resolution Plan along with addendum to the Resolution Plan with revised bid on 15.12.2023 and no revised Resolution Plan was submitted by M/s. Saveri Neutech Pvt. Ltd. Therefore, the members of CoC considered the Resolution Plan of M/s. Saverni Neutech Pvt. Ltd. which was submitted earlier.

15. Further, the members of the CoC discussed the feasibility and viability of the Resolution Plan submitted by both the PRAs and also discussed

on the appointment of Liquidator in case if any resolution plan is not approved by the Adjudicating Authority and Discuss on the regulation 39A, 39B, 39C & 39D and ratification of the CIRP Cost.

16. On 15.12.2023, the CoC resolved to approve the revised resolution plan along with the addendum submitted by the M/s. Trinity India Forgetech Pvt. Ltd. ("Resolution Applicant") with 92.87% of voting.

17. The list of Financial Creditors of the Corporate Debtor being members of the CoC and distribution of voting share among them is as under:

<b>Sr. No.</b>	<b>Name of Creditor</b>	<b>Voting Share %</b>	<b>Voting for Resolution Plan Voted for /Dissented/Abstained</b>
1.	HDFC Creditor	92.87%	Voted for (Assented)
2.	Prem Trading Company	2.48%	The CoC member being Co-Applicant with RA cannot vote due to conflict of interest
3.	Parulben Rakeshbhai Patel	4.65%	The CoC member being Co-Applicant with RA cannot vote due to conflict of interest
		100%	

18. The Resolution Applicant has provided Earnest Money Deposit of Rs. 2 Crore on 05.10.2023 and Rs. 5 Crore on 17.11.2023 The Applicant submits that the Resolution Plan submitted by M/s. Trinity India Forgetech Private Limited meets all the requirements prescribed under the IBC and the regulations thereunder.

19. The Resolution Applicant confirms that the Resolution Applicant is eligible under Section 29A of the IBC to submit the Resolution Plan and will continue to be compliant with the said Section 29A for the CIRP period until the Closure Date. Further, the Resolution Applicant confirms that

under the Regulation 38 (3)(e) of the CIRP Regulations, the Resolution Applicant has financial capability and creditworthiness to implement the resolution plan.

20. The Resolution Applicant has provided a consolidated amount of Rs. 26,86,00,000/- in the resolution plan payable within 15 days from the date of Approval of Resolution Plan and have left the distribution of the amount as per section 30 read with section 54 of the IBC, 2016 at the discretion of CoC and RP. Thereafter, the distribution is decided and approved by the CoC as under:

<b>Distribution u/s. 53 in Resolution Plan</b>	<b>Amt. Rs.</b>	<b>Amt. Rs.</b>
Liquidation Value		26,83,47,938
Resolution Plan Amount		26,86,00,000
Estimated CIRP Cost	85,00,000	
EPFO dues as per Books of Accounts	1,57,73,000	
Amount of PF claimed by workers to be treated separately	28,30,300	
<b>Total of PF dues</b>	<b>1,86,03,300</b>	
Secured Financial Creditor	15,54,88,958	
Workers	8,19,47,918	26,45,40,176
Balance Amount remaining to be distributed as per section 53 of IBC, 2016		40,59,824
Less: To be distributed to Employees		40,59,824
<b>Balance</b>		<b>NIL</b>

21. **Final Settlement of Claims along with Time Line:**

<b>Particulars</b>	<b>Claim Admitted</b>	<b>Proposed Amt</b>	<b>Timeline</b>
Estimated CIRP Cost		85,00,000 (Taken on estimated basis and actual cost must be taken at the time of distribution)	15 days from plan approval by this Authority
Secured Financial Creditor	15,54,88,957.46	15,54,88,957.46	
Unsecured Financial Creditor			
• Not having a right to vote	1,13,08,998	NIL	
• Not voted in favour of Resolution Plan	1,19,44,000	NIL	
Operational Creditors			
• Govt. Dues	2,60,89,788	NIL	
• Workmen	8,19,47,918	8,19,47,918	
• Employees	2,18,29,035	40,59,824	
• Operational Creditors (other than above dues)	9,54,85,539	NIL	
Provident Fund (As per the books)	1,86,03,300	1,86,03,300	
Shareholders	NIL	-	
<b>TOTAL</b>		<b>26,86,00,000</b>	

22. The Resolution Applicant proposes Rs. 26,86,00,000/- (Rupees Eighteen Crores only) towards settlement of Insolvency Resolution Cost and all claims of Financial Creditors, Operational Creditors, Workmen & Employees and any other Claimants, under this Resolution Plan. The manner in which the interests of all the stakeholders is being considered in this resolution plan out of the said total consideration as contained in Resolution Plan. Detail of distribution are as follows:

- i. In terms of the provisions of the Code the **CIRP cost** would be paid in priority out of the total consideration.

- ii. **Secured Financial Creditors:** Total admitted claim of Financial creditors is amounting to Rs. 15,54,88,957/-, same is to be paid in full.

iii. **EPFO Dues:**

EPFO dues as per Books of Accounts	1,57,73,000
Amount of PF claimed by workers to be treated separately	28,30,300
<b>Total of PF dues</b>	<b>1,86,03,300</b>

EPFO Dues is to be paid in full.

- iv. **Government Dues:** The Resolution professional has admitted the Government dues to the tune of Rs. 2,60,89,788/-. In relation to this, the resolution plan states that other than the amount proposed for settlement as stated in the chapter below, the liquidation value of such claims of departments is assumed as zero and their dues shall stand extinguished.
- v. Operational Creditors other than Government, workmen and employee dues are getting nil.
- vi. **Workmen and Employees:** Workmen are getting 100% of their claims and employees are getting 18.59% of their admitted claim.

23. The Resolution Applicant shall pay the entire amount proposed under this Resolution Plan within a period of 15 (fifteen) days from the date of approval of this Resolution Plan by the Adjudicating Authority.

24. The company shall continue as a going concern and operate in its normal course of business only upon implementation of this resolution Plan. The management of affairs of the Company after approval of the plan would be done by monitoring committee.

25. Monitoring Committee shall comprise of three persons i.e. one nominee of Secured Financial Creditors, one nominee of RA and one Insolvency



Professional nominated by secured financial creditors. The Insolvency Professional shall act as monitoring Agent.

26. The role of Monitoring Committee will start immediately after approval date and shall have the following powers:

- i. A monitoring committee shall supervise implementation of the Resolution Plan by Resolution Applicant during implementation period;
- ii. The monitoring Committee shall hand over all control, passwords, bank account, cheques, documents/ERP system access etc. to the Resolution Applicant on full payment under the Resolution Plan;
- iii. The monitoring committee through Monitoring Agent, shall supervise the day to day operations of the Corporate Debtor, to keep it as a going concern during implementation period.

27. It is proposed that the Company shall be a Board managed company. On full payment, Resolution Applicant will reconstitute the Board of Directors by appointing his nominees in the Board. The new Board shall be responsible to manage day to day operations of the Company and shall be bound as per applicable law to protect and preserve the value in the Company.

28. From the approval date and till full payment is made, day to day affairs shall be managed by monitoring agent under the overall supervision of monitoring committee and from the date of full payment, corporate debtor will be managed by newly constituted Board of Directors.

29. After the implementation of resolution plan, tenure of monitoring committee shall end and Board of Directors shall independently manage affairs of the Company.

30. The Applicant has filed Form – H in accordance with the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016

along with this Application. Form-H states that average Fair Value of the Corporate Debtor is INR 33,36,52,258 and the Liquidation Value is INR 26,83,47,938. It is also observed that admitted claims against the Corporate Debtor is more than the liquidation value of the company.

31. Further it can be seen from the Form-H that the no Application under PUFEE transactions is filed or pending.
32. As per the provision of the Code, the Bench is duty bound to examine the Resolution Plan as to whether it satisfies the conditions as laid down in Section 30(2) of the Code. A comparison of the mandatory compliance under the Code *vis-à-vis* the same made under the Resolution Plan is tabulated hereunder;

<b>MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS</b>	<b>COMPLIANCE UNDER RESOLUTION PLAN</b>
<b>S.30(1)</b> - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	Yes, Affidavit/Undertaking is filed by Resolution Applicant about its eligibility under section 29A.
<b>S. 30(2)(a)</b> -Payment of Insolvency and Resolution cost in the manner specified by the Board	Yes, Chapter 6 and 7 of the Resolution Plan provides for payment of CIRP cost.
<b>S. 30(2)(b)</b> - Payment of 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 Sec. 53	Yes, Chapter 6 and 7 of the Resolution Plan provides for payment of CIRP cost.
<b>Reg. 38(1A)</b> - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and	Clause 23.7 enumerates how the interest of all the stakeholders including operational and financial creditors has been dealt with under the Resolution Plan.

operational creditors of the Corporate Debtor	
<b>S.30(2)(d)</b> - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan	Yes, Clause 8.3 of the Resolution Plan.
<b>S.30(2)(e)</b> -Implementation and Supervision of the Resolution Plan <b>and</b> <b>Reg. 38(2)</b> – Resolution Plan shall provide: a) term of plan and its implementation schedule b) management and control of the business of the Corporate Debtor during its term; c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same; and e) the Resolution applicant has the capability to implement the Resolution Plan.	Yes, clause 8.3.1 and 8.3.13 of the Resolution Plan.
<b>S. 30(2)(f)</b> - Does not contravene any of the provisions of the law for the time being in force.	The Resolution Professional in Form H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law. Clause 11 of the Resolution plan.
<b>S. 30(4)</b> - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board.	The CoC, in its 9 <sup>th</sup> meeting held on 15.12.2023, approved the Resolution Plan by 92.87% voting.

33. In ***K Sashidhar v. Indian Overseas Bank &Others (2019) 12 SCC 150***, the Hon'ble Apex Court held that if CoC had approved the resolution plan with requisite percentage of voting share then the Adjudicating

Authority is required to satisfy the resolution plan as approved by CoC meets the requirements specified in section 30(2). The role of Adjudicating Authority is 'no more and no less'. Even the grounds on which the Adjudicating Authority can reject the plan is in reference to matters specified in section 30(2) only when the plan does not conform to the stated requirements.

34. In view of the law laid down by Hon'ble Apex Court, the commercial wisdom of the CoC is to be given paramount importance for approval/rejection of the resolution plan. As the resolution plan meets the requirements under the Code and the Regulations, the same needs to be approved.

**35. Reliefs and Concessions:**

- i. Approval of the Resolution Plan shall not be a ground for termination of any existing consents, approvals, licenses, concessions, authorizations, permits or the like that has been granted to the Corporate debtor or for which the Corporate Debtor has made an application for renewal, grant permissions, sanctions, consents, approvals, allowances, exemptions etc.
- ii. Any Exemption as sought for in relation to the payment of **registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted** but the Resolution Applicant is at liberty to approach Competent Authorities for the exemptions if permitted under the law.
- iii. With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is

hereby clarified that such exemptions shall be construed as not granted.

- iv. For past non-compliances of the Corporate debtor under applicable laws the Resolution Applicant shall not be liable for any liabilities and offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016.
- v. It is hereby clarified that in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim which is not a part of the Resolution Plan. In above terms, this plan is hereby **approved**.
36. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise further line of action required for starting of the operations. Accordingly, the Resolution Plan in **IA/5826/2023** is hereby **allowed and approved**.

Sd/-

**CHARANJEET SINGH GULATI**  
**MEMBER (TECHNICAL)**

Sd/-

**LAKSHMI GURUNG**  
**MEMBER (JUDICIAL)**