IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”

CA No.477/2018 & 339/2018
IN
CP (IB) No.102/Chd/Pb/2017

Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (CA No. 477/2018).
And
Under Sections 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 (CA No. 339/2018).

In the matter of:

Punjab National Bank. …Petitioner/Financial Creditor.
Vs.
M/s Rishi Ganga Power Corporation Ltd. …Respondent/Corporate Debtor

<u>CA No.477/2018</u>

And in the matter of:

Nipan Bansal, Resolution Professional,
R/o H.No.10-B, Udham Singh Nagar,
Ludhiana, District Ludhiana. …Resolution Professional

And in the matter of:

Rajit Mehra S/o Sh. Rakesh Mehra,
R/o 1099, Model Town,
Ludhiana, Punjab.
Ex-Director of M/s Rishi Ganga
Power Corporation Ltd., …Applicant.

<u>CA No. 339/2018</u>

And in the matter of:

Nipan Bansal, Resolution Professional,
R/o H.No.10-B, Udham Singh Nagar,
Ludhiana, District Ludhiana. …Applicant/Resolution Professional

Order delivered on:13.11.2018

Coram: Hon'ble Mr. Justice R.P. Nagrath, Member(Judicial).
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)

CA No.477/2018

For the ex-Director of suspended Board of Directors:	Mr. Anil Kumar Aggarwal, Advocate.

CA No. 339/2018

For the Financial Creditor:	1. Ms. Munisha Gandhi, Senior Advocate. 2. Ms. Salina Chalana, Advocate.
For the Resolution Professional:	1. Mr. Pulkit Goyal, Advocate. 2. Mr. Nipan Bansal, RP, in person.
For the Resolution Applicant:	1. Mr. Ashok Kumar Aggarwal, Senior Advocate. 2. Mr. Keshav Partap Singh, Advocate
For the ex-Director of suspended Board of Directors:	Mr. Anil Kumar Aggarwal, Advocate.

Per: Pradeep R. Sethi, Member(Technical)

ORDER

CA No.477/2018

CP(IB) No.102/Chd/Pb/2017 was filed by the Punjab National Bank, Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) for initiating the Corporate Insolvency Resolution Process (CIRP) in the case of M/s Rishi Ganga Power Corporation Ltd. (Corporate Debtor). The petition was admitted on 25.01.2018, moratorium was declared and the Interim Resolution Professional was appointed by order dated 30.01.2018. The resolution plan has been approved by the Committee of

Creditors (CoC). CA No.339/2018 for sanction of the plan has been filed by the resolution professional.

2. The CA No.477/2018 is filed by Shri Rajit Mehra, ex-Director of the corporate debtor under Section 60(5) and other applicable provisions of the Code for impleadment as respondent/objector in CA No.339/2018 filed by the Resolution Professional for approval of resolution plan (supra) and for placing on record the objections of the ex-Director to the resolution plan purportedly approved in the meeting of CoC held on 30.06.2018.

3. Learned counsel for the applicant has pleaded that he is entitled to attend the meeting of CoC and is a shareholder of the corporate debtor and therefore, his application for impleadment as respondent/objector be accepted.

4. We have carefully considered the submissions of the learned counsel for the applicant at the preliminary stage and have also perused the record. We find that as per Section 24 of the Code, the ex-Director is entitled to attend the meeting of CoC but has no right to vote in the decision of the CoC. The perusal of the minutes of the ten meetings of the CoC show that it was only in the second meeting held on 13.03.2018 that a representative of the suspended Board of Directors was present. The minutes of other meetings do not show any presence of the ex-Director in the meeting of the CoC. We may add that there is no averment that the notice of meetings was not received by the corporate debtor. It is pertinent to mention that the rival resolution applicants have not filed any objections before this Tribunal.

5. In view of this position, as also the corporate debtor having no right to vote in the meeting of the CoC and have right only to attend the meeting of CoC, the plea for impleadment as respondent/objector in the CA No.339/2018

(supra) is not accepted. However, in the interest of justice, learned counsel for the ex-Director is being heard with regard to the objections to the resolution plan and his objections are being considered while taking decision in CA No.339/2018 *(supra)*.

CA No.477/2018 is disposed of.

CA No.339/2018

The present application is filed by the Resolution Professional (RP) under section 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the Regulations) seeking sanction of resolution plan as approved in the meeting of Committee of Creditors (CoC) held on 30.06.2018.

2. It has been submitted that the insolvency petition was filed by the financial creditor i.e. Punjab National Bank under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) in the case of M/s Rishi Ganga Power Corporation Ltd. (hereinafter referred to as Corporate Debtor) and the same was admitted vide order 25.01.2018 and the CIRP of the corporate debtor was initiated. It is submitted that the applicant was appointed as Interim Resolution Professional (IRP) vide order dated 30.01.2018 and within three days of the appointment order, the IRP issued a public announcement as per Regulation 6 of the Regulations read with Section 15 of the Code in Form A in two newspapers i.e. Rozana Spokesman, a Punjabi newspaper dated 02.02.2018 and Times of India, Chandigarh and Dehradun Editions on

03.02.2018 and Hindustan, a Hindi newspaper, Dehradun Edition on 03.02.2018 thereby inviting claims from the creditors of the corporate debtor as envisaged in the Code.

3. It is submitted that in pursuance of the public announcement, claims were received from the financial as well as operational creditors, which were verified and after collation, the IRP constituted the CoC as per the provisions of Section 21 of the Code. It is stated that initially, the CoC was constituted with two financial creditors i.e. Punjab National Bank having a voting share of 62.4% and Oriental Bank of Commerce having a voting share of 37.6% and later on, Kotak Mahindra Bank also filed their claim as one of the financial creditors which was approved by the RP, in view of unamended Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 29.06.2018 with 0.86% voting share and constitution of the Committee of Creditors and their voting share was amended accordingly and intimation in this regard was intimated to this Tribunal vide diary No.2703 dated 04.07.2018. After accepting the claims of Kotak Mahindra Bank the changed voting share of the financial creditors is Punjab National Bank 61.86%, Oriental Bank of Commerce 37.28% and Kotak Mahindra Bank having 0.86%. It is submitted that in addition to the financial creditors, only one claim was received from an operational creditor which is amounting to ₹4,71,59,695/-.

4. It is submitted that the applicant as IRP also appointed two valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations and the liquidation value as assessed on the basis of these two reports as per unamended Regulation 35 comes to ₹15.39 crores.

5. It is stated that in the first meeting of the CoC held on 05.03.2018, the CoC resolved to continue with the IRP and appointed him as RP. It is stated that the suspended Directors of the Board of Directors of the corporate debtor were not cooperating with the resolution process and it was only after the intervention of this Tribunal in proceedings initiated by the RP under Section 19(2) of the Code that account books and some other relevant material though incomplete were supplied by the suspended Directors to the RP and as such, the RP was able to complete the Information Memorandum as per Regulation 36 of the Regulations and made a public announcement for invitation of resolution plan in Form G as prescribed in Regulation 36 (A) of the Regulations by publishing the Form G in Economic times on 29.03.2018 and also e-mailed to Insolvency and Bankruptcy Board of India on 29.03.2018. It is stated that there was no website of the corporate debtor and as such Form G could not be published on the website of the corporate debtor. It is submitted that the evaluation matrix was approved by the CoC in their third meeting held on 05.04.2018.

6. It is submitted that after publication of Form G, four prospective resolution applicants came forward and invitation for expression of interest along with evaluation matrix was issued to the prospective resolution applicants for submitting resolution plans and the four entities gave their expression of interest within the stipulated time and the Information Memorandum was shared with the four entities.

7. It is stated that three entities out of the four aforesaid entities submitted their resolution plan within the stipulated time and the three entities

are M/s Kundan Care Products Ltd., M/s Ajanta Energy Pvt. Ltd. and M/s Agam Pulp and Papers Pvt. Ltd.

8. It is stated that the evaluation matrix was revised as per provisions of Regulation 36 (A) of the Regulations with the approval of CoC in their fifth meeting held on 04.05.2018 and the revised evaluation matrix was duly shared with the prospective resolution applicants as per Regulation 36 (A) of the Regulations.

9. It is submitted that all the resolution plans were opened in front of the CoC in the sixth meeting held on 14.05.2018 and it was resolved to defer the approval of resolution plan for further evaluation.

10. It is stated that in seventh meeting of CoC held on 05.06.2018 an agenda was put forward for adoption of Swiss Challenge Method for maximisation of the value of CIRP process and in the eighth meeting of CoC held on 12.06.2018, CoC resolved to decline the Swiss Challenge Method but in the ninth meeting of CoC held on 25.06.2018, they reconsidered their earlier decision and all members of the CoC resolved to adopt the Swiss Challenge Method for maximisation of the CIRP value and also resolved that in accordance with the Swiss Challenge Method, the H2 and H3 bidders would be given one final opportunity to make a revised/final/binding bid in their resolution plans by 27.06.2018 and if this revised/final/binding bid so received exceeded the financial bid of H1 bidder, H1 bidder would be given one final opportunity to make a revised/final/binding bid latest by 29.06.2018 for maximisation of CIRP value and such revised/final/binding bid so received will be placed before the CoC in subsequent meeting for finalisation.

11. It is submitted that after the adoption of the Swiss Challenge Method, M/s Ajanta Energy Pvt. Ltd., H3 bidder with bid of ₹35.00 crores revised its offer to ₹45.11 crore and that H2 bidder did not choose to enhance the bid. It is stated that opportunity was given to H1 bidder M/s Kundan Care Products Ltd. to match the offer of M/s Ajanta Energy Pvt. Ltd. and the H1 bidder enhanced its bid to ₹45.12 crore and no further opportunity was given to the other resolution applicants as it was already decided by the CoC that the revised bid would be final. It is stated that the H1 bidder M/s Kundan Care Products Ltd. was adjudged as successful resolution applicant for the resolution of the corporate debtor and this decision of the CoC was not merely on the basis of the financial bid given by the successful resolution applicant but also on the basis that the H1 bidder was getting maximum marks as per the evaluation matrix and to the mind of the CoC, it is the most suitable applicant to ensure the maximisation of the value of the assets of the corporate debtor.

12. It is submitted that the CoC while accepting the bid had taken care of all the provisions of the Code and the Regulations. It is prayed that the application may be allowed and the resolution as approved by the CoC in the CIRP of the corporate debtor be approved.

13. During the course of hearing on 29.08.2018, it was noted that the financial creditors who are members of the CoC be heard on the resolution plan and that the authorized representatives of all the three financial creditors stated that the banks have approved the plan and no objections are to be filed. Further during the course of the hearing, the learned counsel representing the ex-Directors of the suspended Board of Directors submitted that notice may also be issued to them for being heard on the resolution plan. The copy of the application

was supplied to the learned counsel for ex-Directors of the suspended Board of Directors. However, it was directed on 29.08.2018 that there are no grounds to issue notice to the ex-Directors of the suspended Board of Directors and in case they want to represent themselves, an application for intervention may be filed which shall be disposed of on its own merits. Notice of the application was, however, directed to be issued to the resolution applicant and the RP was also required to file certificate to the effect that the contents of the resolution plan fulfil all the requirements of the Code and the Regulations and that the Resolution Plan stands duly approved by the CoC. The RP was also directed to file compliance certificate in Form H.

14. Vide diary No.3415 dated 10.09.2018, the copy of certificate/undertaking that the contents of the resolution plan fulfil all the requirements of the Code and Regulations and that the resolution plan stands duly approved by the CoC was filed as Annexure A-2 and copy of the Form H was filed as Annexure A-3. During the course of hearing on 11.09.2018, the compliance affidavit was taken on record and the application was directed to be listed on 15.10.2018.

15. CA No.399 of 2018 was filed by the financial creditor Punjab National Bank for preponing the date of 15.10.2018 on the ground that the period of time after the rainy season is very much crucial for the resolution applicant to install the required infrastructure to make the project workable as during the winter season, it will be very hard to complete the project. Vide order dated 26.09.2018, the hearing of CA No.339/2018 was preponed to 04.10.2018 and notice was also directed to be given to the learned counsel representing the suspended Board

of directors in CA No.81/2018. On 04.10.2018 the matter was listed for final hearing on 15.10.2018 and was further adjourned to 24.10.2018.

16. On 24.10.2018, the learned Senior Counsel for the resolution applicant referred to the Swiss Challenge Method and stated that H2 bidder and H3 bidder were first given an opportunity to increase their bid whereupon the bidder H3 revised its bid to ₹45.11 crore and H1 bidder was thereupon given the opportunity and increased its bid to ₹45.12 crore. It is pleaded that the revised bid was accepted by the CoC in its tenth meeting held on 30.06.2018.

17. The learned counsel for Shri Rajit Mehra ex-Director of suspended Board of Directors of the corporate debtor referred to CA No.477/2018 filed by him and pleaded that the ex-Directors be impleaded in the present proceedings, since he is a stakeholder being a shareholder of the corporate debtor. The hearing of CA No.477/2018 was conducted at the preliminary stage and the orders were reserved. The said application has been rejected as per observations made in the earlier part of the order. However, in the interest of justice, the learned counsel for the ex-Director was heard on his objections to the approval of the resolution plan. The objections raised were primarily that the resolution plan was approved by CoC in exceptional haste with malafide and malicious intention to favour the resolution applicant M/s Kundan Care Products Ltd.; resolution applicants were not invited in the meetings of CoC; valuation of the assets of the corporate debtor done by the valuer is highly doubtful and suspicious; there is conflict of interest in respect of valuer M/s R.K. Associates who also acted as debris removal agency; bids were invited only in English newspaper Economic Times; RP has concealed material and significant fact that by virtue of order passed by the court of Assistant Collector (1st Class), Joshi

Math in the matter titled **State Govt. vs. Rishi Ganga Power Corporation Ltd.** a chunk of land on which the power plant of the corporate debtor is situated has been ordered to be vested with the State Government; no care has been taken for the dues of operational creditors and statutory dues.

18. During the course of the hearing, the learned Senior Counsel for the resolution applicant stated on instructions that the resolution applicant undertakes to abide by any of the directions/judgements/orders/interim orders or otherwise subject to right to challenge these orders in respect of the assets/properties of the corporate debtor unconditionally and the undertaking was taken on record. It was also submitted that a Writ Petition was pending in the Hon'ble High Court of Uttrakhand. It was submitted by the learned Senior Counsel for the resolution applicant that an amount of ₹50,00,000/- in addition to the revised bid amount of ₹45.12 crores shall be kept apart and deposited in a separate account in consultation with the monitoring agency within a period of seven days from the date of receipt of certified copy of the order that may be passed in this case.

19. The learned counsel for the RP submitted on instructions that no claim with regard to statutory dues and labour dues have been received. The learned counsel for the resolution professional submitted that as per Form H (Annexure A-3 of diary No.3415 dated 10.09.2018), all the provisions of the Code and the Regulations were complied with and that the approval of the resolution plan was made by 100% voting share of the financial creditors in the meeting of the CoC held on 30.06.2018 and therefore, the resolution plan submitted by M/s Kundan Care Products Ltd. may be approved.

20. We have carefully considered the submissions of the learned counsel for the RP and the learned Senior Counsel for the resolution applicant and have also perused the record. The objections raised by the learned counsel for Shri Rajit Mehra ex-Director of the Board of Directors of the corporate debtor will be considered in the discussion below.

21. The corporate debtor was incorporated for setting up an 8.25 MW Hydro Power Project on Rishi Ganga River and as discussed above, the CIRP proceedings were initiated by order delivered on 25.01.2018. The present application is filed for approval of the resolution plan submitted by Kundan Care Products Ltd. (resolution applicant). The approval has been sought under the provisions of Section 31 (1) of the Code.

22. We may first of all state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditors, the distribution of voting share among them and the position of voting for the resolution plan is as under (para no.5 of Form H – Annexure A-3 of diary no. 3415 dated 10.09.2018):-

Sl. No.	***Name of Creditor***	***Voting Share*** (%)	***Voting for Resolution Plan*** (***Voted for*** / ***Dissented*** / ***Abstained***)
1	*Punjab National Bank*	*61.86*	*Voted in favour of the Resolution plan submitted by the Successful Resolution Applicant, Kundan Care Products Limited*
2	*Oriental Bank of Commerce*	*37.28*	*Voted in favour of the Resolution plan submitted by the Successful Resolution Applicant, Kundan Care Products Limited*

3	*Kotak Mahindra Bank*	*0.86*	*Voted in favour of the Resolution plan submitted by the Successful Resolution Applicant, Kundan Care Products Limited*

23. The details of stakeholders under the resolution plan given in para 7 of Form H (Annexure A-3 of diary No.3415 dated 10.09.2018) is as follows:-

(*Amount in Rs*. Crs)

Sl. No.	*Category of Stakeholder**	*Amount Claimed*	*Amount Admitted*	*Amount Provided under the Plan#*	*Amount Provided to the Amount Claimed* (%)
1	*Dissenting Secured Financial Creditors*	*NIL*	*NIL*	*NIL*	*NIL*
2	*Other Secured Financial Creditors*				
(i)	*Punjab National Bank*	*98.76*	*98.76*	*27.48*	*27.83*
(ii)	*Oriental Bank of Commerce*	*59.51*	*59.51*	*16.56*	*27.83*
(iii)	*Kotak Mahindra Bank*	*1.37*	*1.37*	*0.38*	*27.73*
3	*Dissenting Unsecured Financial Creditors*	*NIL*	*NIL*	*NIL*	*NIL*
4	*Other Unsecured Financial Creditors*	*NIL*	*NIL*	*NIL*	*NIL*
5	*Operational Creditors (M/s*	*4.71*	*4.71*	*0*	*0*

	Mecamidi HPP India Private Limited)				
	Government	*NIL*	*NIL*	*NIL*	*NIL*
	Workmen	*NIL*	*NIL*	*NIL*	*NIL*
	Employees	*NIL*	*NIL*	*NIL*	*NIL*
	…..				
6	*Other Debts and Dues*	*NIL*	*NIL*	*NIL*	*NIL*
Total		*164.35*	*164.35*	*44.42*	*-*

24. The compliance of the resolution plan has been given in para No.9 of Form H (supra) 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?*	*Mentioned on Page 2 of the Resolution Plan*	*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?*	*Undertaking dated 19.06.2018*	*Yes*
Section 30(1)	*Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?*	*Undertaking dated 19.06.2018*	*Yes*
Section 30(2)	*Whether the Resolution Plan: (a) provides for the payment of insolvency*	*Mentioned in the Resolution Plan on Page 9, 10 and 11*	*Yes*

	resolution process costs? (*b*) *provides for the payment of the debts of operational creditors?* (*c*) *provides for the management of the affairs of the Corporate debtor?* (*d*) *provides for the implementation and supervision of the resolution plan?* (*e*) *contravenes any of the provisions of the law for the time being in force?*		
Section 30(*4*)	*Whether the Resolution Plan* (*a*) *is feasible and viable, according to the CoC?* (*b*) *has been approved by the CoC with 66% voting share?*	*Resolution Plan passed in the 10th COC Meeting held on 30.06.2018 by 100% Voting Share, Minutes of 10th COC Meeting already enclosed*	*Yes, except that the specific comment as to the feasibility and viability of the resolution plan is not specifically mentioned while passing the resolution plan, as the said amendment to I&B Code, 2016 came via ordinance dated 06.06.2018 and is applicable to cases commencing on or after 06.06.2018*
Section 31(*1*)	*Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?*	*Mentioned in the Resolution Plan on Page 11*	*Yes*
Regulation 35A	Where the resolution profesional *made a determination if the corporate debtor has*	*Please refer Minutes of 10th COC Meeting held on*	*Yes*

	been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66,before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	*30.06.2018, Page 472 of the paper book and undertaking is on page 338.*	
Regulation 38 (1)	*Whether the Resolution Plan identifies specific sources of funds that will be used to pay the -* *(a) insolvency resolution process costs?* *(b) liquidation value due to operational creditors?* *(c) liquidation value due to dissenting financial creditors?*	*Undertaking dated 06.06.2018*	*Yes*
Regulation 38(1A)	*Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?*	*Mentioned in the Resolution Plan on Page 242 of paper book.*	*Yes*
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?*	*Mentioned in the Resolution Plan on Page 244 of paper book.*	*Yes*
38(*3*)	*Whether the resolution plan demonstrates that –*	*Mentioned in the Resolution Plan on Page 244 of paper book.*	*Yes*

	(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?*		
39(2)	*Whether the RP has filed applications in respect of transactions observed, found or determined by him?*	*Not yet filed*	*No*

25. The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading as follows:-

> *"If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan."*

26. As regards Section 30(4) of the Code, the committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent of voting share of the financial creditors. Therefore, the conditions provided for in Section 31(1) of the Code for approval of resolution plan are:-

> *"(a) Resolution Plan is approved by the CoC under Section 30(4) of the Code;*
>
> *(b) The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*

(c) The Resolution Plan has provisions for its effective implementation."

27. The satisfaction of the conditions is discussed below. It is submitted by the RP that the resolution plan has been approved by a vote of 100% of voting share of the financial creditors and that the specific comment as to the feasibility and viability of the resolution plan is not specifically mentioned while passing the resolution plan, as the said amendment to the Code 2016 came via Ordinance dated 06.06.2018 and is applicable to cases commencing on or after 06.06.2018 (para No.13 of Form H Annexure-3 of diary No.3415 dated 10.09.2018). Without going into the question whether the provisions were applicable, we find that in para No.18 of the application, CA No.339/2018, it is stated that M/s Kundan Care Products Ltd. was adjudged as successful resolution applicant of the corporate debtor and this decision of the CoC was not merely on the basis of the financial bid given by the successful resolution applicant but also on the basis that the applicant was getting maximum marks as per the evaluation matrix and to the mind of the CoC is the most suitable applicant to ensure the maximisation of the value of the assets of the corporate debtor. The scoring table of resolution applicant for evaluating their resolution plan as per the evaluation matrix is in item No.5 of the minutes of the tenth meeting of the CoC held on 30.06.2018 as under:-

S.No.	***Basis of Scoring***	***Maximum Points***	***Scores Earned***		
			Kundan Care Products Limited	***Ajanta Energy Private Limited***	***Agam Pulp & Paper Private Limited***
1.	*Payment basis*	*90*	*90*	*90*	*90*
2.	***Financial Strength***				

	I.	*Time for completion and making the Project Operational*	*6*	*6(12 Months)*	*3(24 Months)*	*5(16 Months)*
	II.	*Means Available for Acquisition & Operating*	*4*	*3*	*4*	*3*
			10	*9*	*7*	*8*
		Total	*100*	*99*	*97*	*98*

28. The score and the criteria adopted in the evaluation matrix as well as the other discussions in the CoC meeting would show that the feasibility and viability were taken into consideration.

29. The objections raised by the learned counsel for the ex-Director are considered. The contention that the Swiss Challenge Method is not applicable in the present case cannot be accepted because it is only after due deliberations spread over a number of meetings that the CoC finally decided to adopt the method for maximisation of the CIRP value and the method ultimately resulted in a substantial increase in the bid value. The approval by the CoC cannot be said to be in exceptional haste since sufficient time was given to H2 and H3 bidders to revise their financial bid and also to H1 bidder to make a revised/final/binding bid. It has been stated that no further opportunity was given to H2 and H3 bidders since it was held by the CoC that the revised bid would be final and thus, finality of the bid process was sought to be achieved. The objection that the resolution plan was approved with malafide and malicious intention to favour the resolution applicant M/s Kundan Care Products Ltd. cannot be accepted. The contention regarding resolution applicants not being

invited in the meeting of CoC is not shown to have prejudiced the proceedings before the CoC leading to the determination of the resolution applicant whose plan is most suited for approval. Moreover, no objections have been raised by H2 and H3 bidders. The plea that the bids for the resolution plan were not adequately and sufficiently publicised since the bid was made in only English newspaper Economic Times is not shown to have prejudiced the process of approval of the resolution plan by the CoC and there is no claim from any third party that they desired to participate in the resolution plan process but could not do so because of inadequate publicity.

30. The provisions of Section 30(2) of the Code are as follows:-

The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) provides for the 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) conforms to such other requirements as may be specified by the Board …..

31. The compliance of Section 30(2) of the Code is given in para No.9 of Form H (*supra*). The same is being further examined as under:-

Section 30(2)(a): The resolution plan (page 242 of the application) states that after paying cost of resolution process costs, the balance amount shall be distributed amongst the creditors;

Section 30(2)(b): It is stated in Form H that the liquidation value is ₹15.38 crores. In view of the debts of the secured financial creditors being ₹159.64 crores, the liquidation value available for the operational creditor would be NIL. The resolution plan however, provides for payment of ₹50,00,000/- to operational creditors on the ground that many operational creditors did not file their claims to the RP in time but being the local area operational creditors, they are in a position to create hurdles for project work and it is impossible to fight with them and make the unit operational and therefore, to ensure start of the work at site, ₹50,00,000/- has been provided to settle local area operational creditors issues to the discretion of the resolution applicant and with the consent of the resolution professional (page 243 of the application). It was stated in the resolution plan (page 241 of the application) that the payment of ₹50,00,000/- to the operational creditors is in addition to the consideration of ₹37.25 crores to buy out the unit/100% shareholding of the corporate debtor to the secured financial creditors. The bid amount is subsequently increase to ₹45.12 crores. Further, as noted in the order dated 24.10.2018, the learned Senior Counsel submitted that an amount of ₹50,00,000/- in addition to the revised bid amount of ₹45.12 crores shall be kept apart and deposited in a separate account in consultation with the monitoring agency within a period of seven days from the date of receipt of certified copy of the order that may be passed in this case. The amount of ₹50,00,000/- is stated during the course of the hearing to be for the purpose of payment to operational creditors as explained at page 9 of the resolution plan and in case any amount remains after this utilisation, the amount will be paid on pro rata basis to the operational creditor whose claim was verified and admitted.

It may be added that during the course of hearing on 24.10.2018, the RP has stated that no claim with regard to statutory dues and labour dues have been received. The resolution plan therefore, does not provide for any amount for statutory dues and labour dues. We may add that in case there are any statutory dues, the same would be dealt with by the respective Government Department.

The learned counsel for the ex-Director has made reference to order dated 30.11.2017 of the Assistant Collector Joshimath in the matter titled State Government vs. Rishi Ganga Power Corporation Limited and has claimed that a chunk of land in which the power plant of the corporate debtor is situated has been ordered to be vested with the Central Government. During the course of the hearing on 24.10.2018, the learned counsel, the learned Senior Counsel for the Resolution Applicant has stated that the Resolution Applicant undertakes to abide by any of the directions, judgements, orders, interim orders or otherwise subject to the right to challenge these orders in respect of the assets/properties of the corporate debtor unconditionally and the undertaking has been taken on record.

The learned Senior Counsel for the ex-Director has disputed the valuation of the assets of the corporate debtor on the ground that the liquidation value is ₹15.39 crores, whereas the financial bids of ₹45.11 crores, ₹45.12 crores are three times higher. We find that in para 2 of Form H *(supra),* the fair value is stated to be ₹25.90 crores (average of both the valuation reports). Moreover, the quantum of the financial bids shows that the bidding process conducted achieved good results. As regards the plea of conflict of interest between valuer and debris removal agency, we find that the valuer is R.K. Associates Valuers and Techno Engineering Consultants Private Limited and debris removal agency is R.K. Associates (refer Item No.4 of 10th meeting of CoC at Annexure A-14 of the petition).

Section 30(2)(c) & (d): At page 10 of the resolution plan (page 244 of the application), it is stated that the proposal is for outright purchase of the unit by way of 100% takeover of shareholding and that the consideration amount shall be paid in one go immediately upon acceptance of the plan. It is stated that a period of 12 months would be required to make the project operational and during the period from June, 2018 to October, 2018, a team of professionals headed by Project Manager (details at Annexure-I) will be assembled and a Technical Consultant appointed to coordinate and provide detailed drawing and designs for completion of work and thereafter construction agencies will be appointed and accommodation at Tapovan acquired for the team and site office for monitoring of construction activities started. It is stated that the period from June, 2018 is a period of heavy rains and therefore, full scale activities shall be taken up from November, 2018 to complete the project within one year by May, 2019. The activity-wise details are stated to be enclosed as Annexure-II of the resolution plan.

It is stated that during the construction period, the project shall be managed by the team of professionals and the management and control of the business of the corporate debtor will be with a management committee headed by a Director and the operations team will be supervised by the management committee and technical consultant. It is stated that a tie up has been made with Dr. Hutarew and Partners (India) Ltd. a very experienced and high profile project implementation company who will manage, guide and supervise the project implementation. A detailed profile of Dr. Hutarew and Partners (India) Ltd. is stated to be enclosed as Annexure-III of the resolution plan.

Section 30(2) (e) & (f) : In Form H *(supra)* (para No.4), the RP has certified that the resolution plan complies with the provisions of the Code and Regulations and does not contravene any of the provisions of law for the time being in force, except that the compliance of provisions of Section 38 (3) has been provided in the old format vide undertaking dated 06.06.2018 i.e. in the format in place before amendment made to the Code on 03.07.2018 and the compliance required under the amended Regulation 38(3) of the Code is not in place as the said Regulation applies to CIRP cases commencing on or after 04.07.2018. Without examining the issue of applicability, we find from the contents of the application CA No.339/2018 and the Resolution Plan that the conditions provided for in Regulation 30(3) of the Regulations have been by and large taken into consideration by the CoC while approving the Resolution Plan and largely form part of compliance desired under other Regulations and Sections of the Code. We may add that the time frame proposed for obtaining relevant approvals is given in para 11 of Form H *(supra)*

32. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan states that the proposal is for outright purchase of the unit and as per page 246 of the application, the maximum net worth as on 31.03.2018 of M/s Kundan Care Products Ld. is stated to be more than ₹95.00 crores and revenues ₹21970 crores, EBITDA ₹86.30 crores (provisional) for the financial year 2017-18. Page 250 of the application is a

solvency certificate issued by M/s ANV & Company, Chartered Accountants certifying that M/s Kundan Care Products Ltd. is solvent to the extent of ₹95.00 crores as disclosed by the information and records (provisional balance sheet as on 31.03.2018) which are supplied and available to them. General profile as well as financial profile of Kundan Care Products Ltd. Is stated to be page 314 of the application. As per undertaking dated 06.06.2018 (page 329 of the application, sources of funds of payment of Insolvency resolution costs and payment to financial creditors and any other creditors is stated to be 100% out of reserves. The estimated amount to be spent for making the project operational is given at page 6 of the Resolution Plan (page 240 of the application) at ₹53.00 crores. As regards the technical aspect, we have already discussed above that the proposal is to make the project operational in a period of 12 months and to appoint a team of professionals headed by Project Manager and appoint technical consultant during the period from June, 2018 to October, 2018 and to complete the project within one year by May, 2019. The organisational chart of team of professionals proposed to be appointed has been enclosed as Annexure-I of the resolution plan. The management and control of the business of the corporate debtor is stated to be supervised by a management committee headed by a Director and the operations team will be supervised by management committee and technical consultant. It is further stated that there is a tie up with Dr. Hutarew and Partner (India) Ltd. a very experienced and high profile implementation company for managing, guiding and supervising the project implementation and details of team of professionals and the details of the project consultant are stated to be enclosed at Annexure-III of the Resolution Plan.

33. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No.3 of Form H (*supra*) the resolution plan has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force except to the extent already discussed above. The Resolution Professional has also certified that the resolution applicant Kundan Care Products Ltd. has submitted affidavit dated 29.06.2018 pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The resolution professional has submitted that the resolution plan has been approved by the CoC with 100% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations. The final consideration payable by the resolution applicant M/s Kundan Care Products Ltd. is up front payment of ₹45.12 crores towards insolvency resolution process costs and secured financial creditors and ₹50,00,000/- for the operational creditors within a period and for the purpose discussed above. The members of the CoC were given an opportunity of being heard and have stated that all the three financial creditors have approved the plan and no objections are to be filed. We have already pointed out above that the consideration of ₹45.12 crores plus ₹50,00,000/- is more than that of the fair value of ₹25.90 crores and liquidation value of ₹15.38 crores (para 2 of Form H) (*supra*). We have discussed above that CA No.477/2018 was filed by the ex-Director of the suspended Board of Directors Shri Rajit Mehra and his plea for impleadment was not accepted but in the interest of justice, the objections raised by the learned

counsel have been considered above. We may add here that an application (CA No.442/2018) under Sections 43, 44, 66 and 67 read with Section 69 of the Code has been filed by the resolution professional in respect of preferential transactions and fraudulent trading and those matters are still pending.

34. In view of the above discussion, the resolution plan submitted by M/s Kundan Care Products Ltd. as approved by the CoC under Section 30 (4) of the Code is approved and the same shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan, with the following further directions to the Resolution Applicant:-

(i) that the Resolution Applicant shall be bound by the directions, judgements, orders, interim orders or otherwise, subject to the right to challenge these orders in respect of the assets/properties of the corporate debtor.

(ii) that the Resolution Applicant shall deposit an additional amount of ₹50,00,000 (Rupees fifty lacs only) over and above the bid amount of ₹ 45.12 crores within seven days of the receipt of copy of this order in a separate account in consultation with the monitoring agency for payment to operational creditors as explained at page 9 of the resolution plan and in case the amount is still unutilized, the same would be disbursed to operational creditors on pro rata basis.

35. Under the provisions of Section 31 (3) of the Code, we also direct as under:-

a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 25.01.2018 shall cease to have effect; and

b) The resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

CA No.339/2018 is disposed of.

Sd/- Sd/-

(Justice R.P. Nagrath) (Pradeep R. Sethi)
Member (Judicial) Member(Technical)

November 13, 2018
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