THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI

C.A. 360 (PB) 2018
IN
Company Petition No. (IB)-131(PB)/2017

In the matter of:

Parveen Bansal Applicant/Resolution Professional

AND

In the matter of:

Amit Spinning Industries Limited
........Corporate Debtor

Under Section 31 of the Insolvency and Bankruptcy Code, 2016
for approval of Resolution Plan

Judgment delivered on: ***31.07.2018***

Coram:
CHIEF JUSTICE (RTD.) M.M.KUMAR
Hon'ble President

S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

For Applicant Company: Mr. Yatin Sachdeva &
Mr. Sudhir Rastogi, Advocates

ORDER

S. K. Mohapatra, Member

1. This is an application filed by the Resolution Professional under Section 30 (6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") read with Regulation 39(4) of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 seeking approval of the Resolution Plan. The Resolution Plan duly approved by the Committee of Creditors (CoC) has been placed on record.

2. The facts in brief that are necessary for disposal of the present application are as follows: -

3. The corporate debtor, M/s Amit Spinning Industries Limited had filed a reference before BIFR in October 2011. On 17 July 2011 the company was declared sick in terms of Section 2 (1) (o) of SICA. Business operations of the corporate debtor have remained suspended since August 2015 and the unit has been closed with effect from 1st July 2017. Subsequently M/s Amit Spinning Industries Limited

filed an application under Section 10 of the Code read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process in respect of the corporate debtor itself. The said application was admitted by this Bench vide order dated 01.08.2017 passed in CP (IB) No.131 (PB)/2017 wherein moratorium was issued and Mr. Parveen Bansal bearing Registration. No. IBBI/IPA-001/IP-P00175/2017-18/10344 was appointed as Interim Resolution Professional.

4. Thereafter, public announcement in Form A as prescribed under Regulation 6 of the Regulations in Jan Satta, Financial Express and Free Press Journal on 03.08.2017 and in Maharashtra Times on 04.08.2017 were made by Interim Resolution Professional for intimation of commencement of corporate Insolvency Resolution Process of the Corporate Debtor and for calling the creditors to submit their claims along with the proof in the prescribed format.

5. The First Meeting of COC was held on 07-09-2017 wherein the members of CoC unanimously confirmed that Mr. Parveen Bansal interim resolution professional will continue as Resolution Professional in accordance with the provisions of Section 22(3) (a) of the Code. Subsequently, an advertisement to invite expression of interest was published in the newspapers 'Financial Express' Delhi edition and 'Free Press Journal' Mumbai on 27.09.2017.

6. It is submitted that the Resolution Professional had engaged two registered valuers under Regulation 27 of the Regulation, to determine of liquidation value of the corporate debtor in accordance with regulation 35. The Copy of valuation reports submitted by valuer has been placed on record. The Average liquidation value of fixed assets of corporate debtors has been determined at Rs. 25.96 crores.

7. The 2nd meeting of CoC was held on 26-10-2017, wherein a resolution plan was submitted on behalf of corporate debtor and Shri Gopal Ramesh Kumar Sales Private Limited with a proposal to invest Rs. 16 Crores. However, the CoC requested them to come up with an

improved offer in the next meeting of CoC. Copy of the minutes dated 26.10.2017 has been placed on record. In the meantime, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 was promulgated on 23.11.2017 incorporating Section 29A, under which the corporate debtor became ineligible to submit any resolution plan.

8. The 3rd meeting of CoC was held on 13.12.2017, in which no resolution plan was received by CoC. It was therefore decided that a fresh advertisement for invitation of expression of interest from eligible resolution applicants be issued. The copy of Minutes of 3rd meeting of CoC has been placed on record. Subsequently, advertisement to invite expression of interest was published in Free Press Journal, Mumbai on 27.12.2017 and in response to the advertisement, expression of interest was received from Tawade Patil and Associates on 01.01.2018. Another expression of interest was received from Bhavya Financial Services Private Limited.

9. The 4th meeting of CoC was held on 18.01.2018 where in the offers received from Tawade Patil and Associates and Bhavya Financial Services Private Limited were discussed by the members of CoC. Members of CoC decided that the offer which is proposed by the Resolution Applicants should be a binding offer and the Resolution Applicants should deposit a sum of Rs. 50 Lakh in escrow account. Copy of the minutes of 4th meeting of CoC has been placed on record.

10. It is stated that as per the provisions of section 12(1) of the Code, the Corporate Insolvency Resolution Process was due for completion on 28.01.2018 and there was no time left for the members of CoC to consider the Resolution Plan proposed by the two Resolution Applicants. Therefore, the Resolution professional filed an application before the Tribunal under section 12(2) of the Code, requesting for extension of time of 50 days which was allowed on 29.01.2018 by the Tribunal under Section 12(3) of the Code.

11. The 5th Meeting of CoC was held on 16.02.2018, wherein it was informed by the Resolution Professional that the Resolution Applicants who submitted their offers on the

last meeting of CoC were invited to attend the meeting. M/s Bhavya Financial Services Limited has not shown any interest to peruse the proposal and M/s Taywade Patil & Associates have shown their inability to attend the meeting. However, they confirmed that last proposed offer continue to remain valid. Thereafter the members of CoC approved the evaluation matrix for comparison of bids. It was also decided that Resolution Professional shall inform Resolution Applicants to submit their Resolution plan by 26.02.2018.

12. The 6th meeting of CoC was held on 14.03.2018. It was informed by the Resolution Professional that there was non-binding offer of Rs. 14 crores subject to due diligence was received from Tawade Patil & Associates. There was another offer of Rs. 15 Crores subject to due diligence received from Pacific Frozen Facility Private Limited. Both the Resolution Applicants were invited to attend the meeting. CoC discussed their offers and requested them to improve their offers to which they show their inability. Thereafter the CoC requested Resolution Applicants to review their offers and submit their binding resolution plans to resolution

professional along with demand draft of Rs. 50 lakhs by 16-03-2018.

13. Subsequent to the 6th meeting of committee of creditors, non-binding offer of Rs. 15.75 crores was received from Tawde Patil & Associates and of Rs. 17.00 crores from Pacific Frozen Facility Private Limited. The same was circulated to the members of committee creditors. Since these were non-binding offers and were not accompanied with demand draft of Rs. 50 lakhs, the next meeting of committee of creditors scheduled for 18.03.2018 was not held.

14. It is stated that on 19- 03-2018, 230 days of the period of corporate insolvency resolution process got completed and the resolution professional filed application for liquidation of the corporate debtor. However, between the date of filing and listing of the matter for hearing, the resolution professional received three resolution plans/ revised offers, including that of Resolution Applicant. Therefore, the Tribunal on 06-04-2018 ordered not to liquidate the company and granted extension of Corporate

Insolvency Resolution Period by another 40 days to explore the possibility of a successful resolution.

15. The 7th meeting of CoC was held on 10-04-2018 wherein the CoC revised the bid evaluation matrix, approved pricing and bidding process and agreement between resolution professional and resolution applicants. The committee also discussed the time lines to complete the process and the revised bid evaluation matrix, pricing and bidding process and agreement between resolution professional and resolution applicants were circulated to resolution applicants on 12-04-2018.

16. Subsequently, the Resolution professional requested to the resolution applicants to complete their due diligence and submit their unconditional and binding resolution plan without financial offer along with a demand draft of Rs. 50 lakhs by 16-04-2018. The Resolution plans without financial offer were received from all the resolution applicants and the same were circulated to members of committee of creditors on 17-04-2018. The resolution professional further requested to resolution applicants to submit their affidavits in compliance of section 29A of the

Insolvency and Bankruptcy Code, 2016 for Declaration, information for verification of eligibility, information to support qualitative parameters of evaluation matrix by 13.04.2018. It is stated that most of the information / documents were received from all resolution applicants.

17. Thereafter the 8th meeting of CoC was held on 18-04-2018. The Resolution Professional invited all the resolution applicants to attend the meeting for submission of their resolution plans with financial offer and participate in the bidding process.

18. It has been stated that resolution applicants were invited to participate in the meeting of committee of creditors one by one. Resolution applicants were requested to present their business profile and their financial offer. Resolution applicants were also informed that resolution plans will be required to be modified to make it unconditional and acceptable to the committee of creditors. Committee of creditors assigned scores for qualitative parameters based on the inputs of resolution applicants and available documents.

19. It is submitted that resolution applicants were again invited to attend the meeting and were explained about the process for bidding process for value maximisation. To ensure transparency, they were explained about quantitative and qualitative parameters of evolution matrix. It was informed that bidding will be conducted based on three quantitative parameters. Resolution applicants were also explained that bid amount of all resolution applicants will be disclosed and bidders are free to improve their offers on three parameters and that bid will continue until bidders inform to the chairman that it is their final bid.

20. The bidding started at 7 pm and continued till 1 am for 11 rounds. Summary of bid amounts is a follows:

Resolution applicant/ Parameter	**First Bid**	**Final Bid**
Pacific Frozen Facility Private Limited		
Upfront recovery	Rs. 7.00 crores	Rs. 14.00 crores
Future Recovery	Rs. 12.25 crores	Rs. 15.00 crores
Term of Resolution Plan	12 months	4 months
Mr. Harshwardhan Patial		
Upfront recovery	Rs. 6.00 crores	Rs. 6.00 crores
Future Recovery	Rs. 18 crores	Rs. 18.00 crores
Term of Resolution Plan	4 months	4 months

Mr. Deepak Changanlal Choudhri and Mr. Jitendra Goutamchand Chopra		
Upfront recovery	Rs. 8.00 crores	Rs. 13.50 crores
Future Recovery	Rs. 16.00 crores	Rs. 15.50 crores
Term of Resolution Plan	4 months	4 months

21. The combined score based on quantitative parameters and qualitative parameters was declared as follows:

Name of Resolution Applicant	**Quantitative Score**	**Qualitative Score**	**Combined Score**	**Ranking**
Weight	**80%**	**20%**		
Pacific Frozen Facility Private Limited	76.67	6.38	81.04	H2
Mr. Harshwardhan Patil	61.71	10.74	72.45	H3
Mr. Deepak Choudhri and Mr. Jitendra Goutamchand Chopra	74.41	11.55	85.96	H1

22. Finally, Mr Deepak Chaganlal Choudhri and Mr Jitendra Kumar Goutamchand Chopra were declared H1 bidders and were requested to submit their revised resolution plan based on final bid amount. The Copies of minutes of 8th meeting, Revised Evaluation Matrix with assigned scores and bidding sheet have been placed on record.

23. Thereafter, the 9th meeting of CoC was held on 26-04-2018. Committee of creditors allocated the offered amount as follows:

Sl No.	Head of Account	Allocated Amount (Rs. Crores)
1.	CIRP Cost	0.80
2.	Due to Operational Creditors (Workers)	6.16
3.	Due to dissenting creditors	NIL
4.	Secured Financial Creditor	22.04
		29.00

24. The CoC decided for distribution among Axis Bank and JMF Assets Reconstruction Company Limited to allocate amount available for secured financial creditors in the ratio of 72.5% and 27.5% respectively.

25. Mr Deepak Chaganlal Choudhri and Mr Jitendra Goutamchand Chopra submitted their binding resolution plan to the committee of creditors, which was approved by Committee of creditors unanimously and the following resolution was passed:

"RESOLVED THAT the Final Resolution Plan submitted to Resolution Professional by Mr. Deepak Chaganlal Choudhri and Mr Jitendra Kumar Chopra and presented to the committee of creditors by resolution

professional confirming to the conditions referred in section 30(2) of Insolvency and Bankruptcy Code, 2016 and assessed by committee of creditors for creditability of resolution applicant and for feasibility and viability of resolution plan be and is hereby approved by the Committee, of Creditors.

i. Upfront Payment within 30 days of Receipt of the NCLT Order.

ii. Balance Payment within 4 Months of the Receipt of the NCLT Order.

In addition, Resolution Applicants have proposed to invest Rs. 12 crores for up gradation of plant and machinery and working capital requirement.

d.

Figures in Rs. Crores				
Outstanding Dues in Order of Priority as Per section 53 of IBC, 2016	**Admitted Claims / Estimated Liability**	**Amount allocated**	**Waiver sought**	**Remarks**
Corporate Insolvency Resolution	0.80	0.80	NIL	CIRP Cost will be paid in priority to

Costs (includes interim finance) approved by committee of creditors (Estimated Cost)				any other creditor.
Secured financial creditors (admitted claims – 44.34 crores)	44.34	22.04	22.30	Balance amount is sought to be waived off

e. Resolution amount has been allocated by committee of creditors in their 8th / 9th meetings. Table showing admitted claims / estimated liability, amount allocated and waiver sought as per resolution plan is given below:

"RESOLVED FURTHER THAT the Resolution Professional is authorized to submit the application to NCLT, New Delhi Bench, for submission of resolution plan under section 30(6) of Insolvency and Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and Bankruptcy board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 for

approval of resolution plan by adjudicating authority as approved by committee of creditors to NCLT, New Delhi." Copy of minutes of 9th meeting has been placed on record.

26. The Salient features of resolution plan are as follows:

a. Production of the factory located at Kohlapur was suspended in 2015 and production facilities were closed with effect July 1, 2017. The objective of resolution applicants is to settle the liabilities and claims of corporate debtors and resume the production of yarn at the unit.

b. Resolution Applicants have proposed to acquire 90 % of ownership of the corporate debtor after restructuring of share capital / allotment of share. Balance 10% of share capital will continue to be held by public shareholders.

Resolution Applicants have sought exemption from the requirement of maintaining minimum shareholding for the period permitted by SEBI, waivers from seeking approvals for reduction in face value of equity shares and consolidation of equity shares.

c. Resolution applicants has offered resolution amount of Rs. 29 crores and has offered to pay in two installments:

d.

Workmen – Dues for 24 Months (estimated liability) (No proof of claim received)	12.39	6.16	6.23	Balance amount is sought to be waived off
Wages and any unpaid dues owed to employees other than workmen for the period of 12 months preceding the liquidation commencement date (estimated liability) (admitted claim – Rs. 1.43 lakhs)	1.17	NIL	1.17	100% waiver sought
Unsecured Financial Creditors (admitted claim – Rs. 41.61 crores	41.61	NIL	41.61	100% waiver sought.

Statutory Authorities (as per provisional balance sheet as on 01.08.2017) (No Proof of claim received)	0.53	NIL	0.53	100 % waiver sought
Other Operational Creditors (as per provisional balance sheet as on 01.08.2017 – (admitted claims Rs. 56.67 crores)	70.03	NIL	70.03	100 % waiver sought
Equity Shareholders	NIL	NIL	NIL	Seeks to transfer shares held by promoters and top 10 shareholders for transfer to Resolution Applicants
Total	170.87	29.00	141.87	

e. Resolution applicants have also sought waivers of liabilities that may arise from ongoing litigations pending before Indian courts including Supreme

Court, pending assessments and appeals before tax authorities like income tax, VAT, Sales tax, corporate guarantees.

f. Resolution applicants have also sought orders for income tax benefits permitted under section 79 for carry forward of losses, set off of unabsorbed depreciation and brought forward losses under MAT under section 115JB.

g. Resolution Applicants have proposed to appoint three directors out of which 1 will be Non-executive Director and 2 will be Executive Directors from the date of approval of resolution plan by Hon'ble National Company Law Tribunal. Mr Jitendra Kumar Goutamchand Chopra and Mr Deepak Chaganlal Choudhari has been proposed to be appointed as Managing Director and joint Managing Director respectively and Mrs Sharmila Devi J Chopra will be the Non-executive Director on the Board.

h. Term of the resolution plan will be 4 months. Resolution Applicants will be permitted to access the factory for repair of plant and machinery and re organize records and documents. Resolution Applicants will not have any right to sell or dispose of fixed assets and existing current assets of the company until completion of term of the resolution plan.

i. Monitoring Committee (MC) comprising of existing Resolution Professional and 1 representative each from Axis Bank Ltd and J M Financial Asset Reconstruction Company Ltd will be formed for supervision of implementation of the Resolution Plan. Cost of supervision will be paid by Corporate Debtor / Resolution Applicants.

27. The Resolution Plan approved unanimously by the CoC with 100% voting in favour of the resolutions together with the accompanying documents have been attached with the application.

28. The certificate of the Resolution Professional dated 26.04.2018 has also been placed on record, which is reproduced below for ready reference:

" ***Resolution Professional Certificate***

I, the undersigned, Parveen Bansal, duly registered Insolvency Professional, registered with IBBI vide Reg. no.-IBBI/IPA-001/IP-00175/2017-18/10344, do hereby certify to the best of my knowledge and belief that:

1. *Resolution Applicants — **Mr Deepak Chaganlal Chotalhari** resident of CNP No.114 I, 272/1, Subhash Road, 9th Lane, Jaysingpur — 416101, Maharashtra having the experience and expertise in managing and operating the textile mills, which are in spinning, weaving and processing etc. since 2010 and Mr. Jitendra Kumar Chopra residents of C-2, Swapnil Apartment, Awade Nagar, Ichalkaranji, Kolhapur — 416115, Maharashtra are in the business of yarn*

manufacturing and fabric processing business since 2009.

2. *I have examined the resolution plan received from Resolution Applicants to confirm and verify that the resolution plan provides for and is compliant to sub-clauses (a) to (I) of section 30(2) or The Insolvency and Bankruptcy Code, 2016.*
3. *I have examined the resolution plan of Resolution Applicants to confirm and verify that the resolution provides for all mandatory contents and provide for and comply to sub-regulations (a) to (c) of regulation 38 of The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*
4. *1 have verified that the resolution plan presented by Resolution Applicants include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors, operational creditors of the corporate debtor as provided in regulation*

38(1A) of The IBI3I (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

5. *I have verified that the resolution plan provides the detail of resolution applicant and other connected persons sufficient enough to enable the committee to assess the credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval as provided in regulation 38(3) of The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*
6. *I have verified that the resolution plan provides for term of the plan, its implementation schedule, the management and control of the business of the corporate debtor during the term of plan and adequate means for supervising its implementation.*

7. I have also verified that Resolution Applicants and the persons in management and control of the company and the other 'Connected Persons' are eligible to submit resolution plan and does not fall under any of the category as mentioned in Section 29A as inserted by The Insolvency and Bankruptcy Code (Amendment) Act, 2017.
8. The resolution plan & the resolution applicant comply with the requirement of the Insolvency and Bankruptcy Code, 2016, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
9. The resolution plan has been approved by the committee of creditors in 9th meeting held on 26 -04-2018.
10. The resolution plan has provided for 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 in compliance to Regulation 38(1)(a) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The source of payment of CIRP Cost has been identified and the payment would be made in priority to any other payment which would be made under the Resolution Plan. The CIRP cost would be paid by resolution applicant in priority to any other creditor and the source of funds would be contribution by a resolution applicant.

11. The claims of all the Operational creditors whether received or not during the period of corporate insolvency resolution period is envisaged to be waived off.

12. That the resolution plan has provided for:

a. The term of the plan and its implementation schedule;

b. The management and control of the business of the corporate debtor during the term of resolution plan shall lie with *the resolution applicant and the persons nominated by it for running day to day operations of the Corporate Debtor.*

c. *adequate means for supervising its implementation during the resolution plan.*

13. *The resolution plan does not contravene any provisions of the law for the time being in force.*

14. *We have relied on financial information including statements and reports furnished to us after taking a confirmation from the management of the corporate debtor.*

15. *Any factual information provided herein appears to be accurate, complete and up to date.*

16. *I have submitted to the committee the resolution plans which comply with the requirements of the Code and the regulations made there under.*

17. The corporate debtor has insignificant operations during the last two years and the transactions in the bank accounts were also minimal and were fully explained by the key managerial personnel of the corporate debtor. We have overviewed the books of account and other relevant records to observe find and determine following types of transactions: -

a. preferential transactions under section 43 of IBC, 2016.

b. undervalued transactions under section 45 of IBC, 2016.

c. extortionate credit transactions under section 50 of IBC, 2016.

d. fraudulent transactions under section 66 of IBC, 2016.

During the course of our verification, we could not observe, find or determined any such transactions. However, we have sought detailed verification by way of Forensic Audit which has been assigned to M/s T R.

Chaddha & Co LLP with approval of Committee of Creditors. Forensic auditor will submit their audit report after completion of their audit procedures.

18.I have also not obtained any order from adjudicating authority in the case of Corporate Debtor in respect of transactions as defined under Section 43, 45, 50 and 66 of IBC, 2016.

19.In preparing the Information memorandum, we have not undertaken an audit of the information provided to us by the key managerial personnel, although where practical, we have endeavored to satisfy us for the accuracy of such information."

29. The resolution professional has submitted the Resolution Plan unanimously approved by the CoC under Section 30(6) of the Code and has prayed for its approval.

30. Section 31 deals with the approval or rejection of the resolution plan as approved by the CoC, by the Adjudicating Authority. Approval of the resolution Plan is

accorded under Section 31(1) of the Code. Section 31 of the Code deals as follows:

> " *31.* **Approval of Resolution Plan**- *(1) 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.*
>
> *Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.*
>
> *(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.*

(3) After the order of approval under sub-section (1),—

(a) the moratorium order passed by the Adjudicating Authority under section 14 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.

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section(1) or within such period as provided for in such law, whichever is later." (Emphasis given)

31. Therefore, before approving the Resolution Plan, the Code mandates the Adjudicating Authority to ensure that,

(1) the Resolution Plan meets the requirements of Section 30(2) of the Code and

(2) the resolution plan has provisions for its effective implementation.

32. In respect of compliance of point (1) above, it is necessary to refer to sub-section (2) of Section 30 of the Code which reads as follows:

*"**30. Submission of resolution plan.** -(1) ....*

***(2)** 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 payment of other debts of the corporate debtor;

(b) provides for the payment 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.

Explanation.- For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

(3) ...."

33. Sub-section 2 of Section 30 casts duty on the Resolution Professional to examine the resolution Plan received by him to confirm that such Resolution Plan provides for the payment of insolvency resolution process costs, provides for the payment of the debts of the operational creditors in such manner as may be specified, provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan; the implementation and supervision of the Resolution Plan, that the Resolution Plan does not contravene any of the provisions of the law, and that the Resolution Plan conforms to such other requirements as may be specified by the Board. The Resolution Professional has certified in detail that he has examined and verified the Resolution Plan approved by the CoC, in the light of the requirements of the Code and Regulations and that it is compliant to the relevant provisions of the Code and Regulations. The Resolution Professional has placed the Resolution Plan for our approval.

34. It is pertinent to record here that no one has come forward to object the Resolution Plan. However, in terms of Section 31(1) of the Code, Adjudicating Authority has also to examine whether the requirements of sub-section (2) of Section 30 have been complied with or not.

35. Firstly, the resolution plan approved by the CoC must provide for the payment of insolvency resolution process cost in a manner specified by the Board in priority to the payment of other debts of the corporate debtor. A perusal of the resolution plan reveals that an amount of Rs. 80 Lakhs has been allocated to meet payment of Corporate Insolvency Resolution Process Cost, which will be paid in priority to any other creditor. The Resolution professional additionally has certified that the resolution plan has provided for 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 in compliance to Regulation 38(1)(a) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The source of payment of CIRP Cost has been identified and the payment would be made in priority to

any other payment which would be made under the Resolution Plan. The CIRP cost would be paid by resolution applicant in priority to any other creditor and the source of funds would be contribution by a resolution applicant. Therefore clause (a) of sub-section (2) of Section 30 read with Regulation 38(1)(a) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 stands satisfied.

36. Secondly as per clause (b) of Section 30 (2) of the Code, the Resolution Plan must provide for the payment 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. There is no liquidation value due to operational creditors as per the waterfall and priorities in terms of Section 53 of the Code. However, in the Resolution Plan workers have been classified as Operational Creditors. Proof of claim has not been received from any worker. Considering the estimated liability due to workers for last 24 months from insolvency commencement date, CoC has allocated Rs.

6.16 crores for payments to workers. The Plan provides that the payment shall be made before the expiry of 30 days after the approval of the Resolution Plan after payment of CIRP cost. While allocating the offer amount the minute of the CoC further states that "*In case there is a variance in the CIRP cost or dues to workmen, the same will get distributed to/recovered from secured creditors*". There is thus clear allocation of fund and protection, and therefore this condition stands satisfied.

37. The third requirement in terms of Section 30(2)(c) provides for management of affairs of the corporate debtor after approval of the Resolution Plan. The term of Plan and its implementation schedule as per Regulation 38(2)(a) has been provided at para (d) of Part G of the Resolution Plan. Resolution Applicant has proposed to acquire 90 % of ownership of the corporate debtor after restructuring of share capital / allotment of share. Balance 10% of share capital will continue to be held by public shareholders as detailed in the Plan. Resolution Applicant has also proposed to appoint three directors out of which 1 will be Non-executive Director and 2 will be Executive Directors

from the date of approval of resolution plan. Mr Jitendra Kumar Goutamchand Chopra and Mr Deepak Chaganlal Choudhari has been proposed to be appointed as Managing Director and joint Managing Director respectively and Mrs Sharmila Devi J Chopra will be the Non-executive Director on the Board. It has been stated that the objective of resolution applicant is to settle the liabilities and claims of corporate debtors and to resume the production of yarn at the unit. Therefore, we find that the third requirement has also been fulfilled.

38. The fourth condition envisaged by Section 32(2)(d) is that it must provide for the implementation and supervision of the resolution plan. As per the Resolution Plan, the term of the resolution plan will be 4 months and there is provision for a Monitoring Committee (MC) comprising of existing Resolution Professional and 1 representative each from Axis Bank Ltd and J M Financial Asset Reconstruction Company Ltd, for supervision of implementation of the Resolution Plan. Cost of supervision will be paid by Corporate Debtor / Resolution Applicants. The Resolution Professional has certified that the

Resolution Plan provides for term of the plan, its implementation schedule, the management and control of the business of the corporate debtor during the term of plan and adequate means for supervising its implementation.

39. The fifth and sixth conditions in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code provide to ensure that the Resolution Plan does not contravene any of the provisions of the law and conforms to such other requirements as may be specified by the Board.

40. In this regard Resolution Professional has certified that the resolution plan does not contravene any provisions of the law for the time being in force. He further certifies that he has submitted to the committee of creditors the resolution plan, which comply with the requirements of the Code and the regulations made there under. Resolution Professional further confirms that the resolution plan and the resolution applicant comply with the requirement of the Insolvency and Bankruptcy Code, 2016, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

41. It is pertinent to state here that Section 29A of the Code prescribes certain eligibility criteria and disqualifications for persons who submit a resolution plan. Resolution applicants have given adequate declaration and undertaking on their eligibility to submit the Resolution Plan. Resolution Professional has also certified that he has verified that the Resolution Applicants and the persons in management and control of the company and the other 'Connected Persons' are eligible to submit resolution plan and does not fall under any of the category as mentioned in Section 29A as inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2017. He has further certified that it has dealt with the interests of all stake holders. Neither any one objected to the plan nor any infirmity have been brought out upon screening of the Resolution Plan.

42. In view of the above we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force has been contravened.

43. The second aspect as to whether the resolution plan has provisions for its effective implementation is required to be ensured by the Adjudicating Authority in terms of the proviso to sub-section (1) of Section 31 of the Code.

44. It is stated in the Plan that the objective of resolution applicant is to settle the liabilities and claims of corporate debtors to the extent mentioned in the Resolution Plan and to resume the production of yarn at the unit. Resolution Applicant have proposed to appoint three directors out of which 1 will be Non-executive Director and 2 will be Executive Directors from the date of approval of resolution plan. Mr Jitendra Kumar Goutamchand Chopra and Mr Deepak Chaganlal Choudhari has been proposed to be appointed as Managing Director and joint Managing Director respectively and Mrs Sharmila Devi J Chopra will be the Non-executive Director on the Board. Resolution Applicant has also proposed to acquire 90 % of ownership of the corporate debtor after restructuring of share capital / allotment of share. Balance 10% of share capital will continue to be held by public shareholders as mentioned in detail in the plan. It is relevant to note here that

'Explanation' in sub-section (2) of Section 30 provides *deemed approval of shareholders* for implementations of actions under the Resolution Plan, making it clear that it shall not be a contravention of law. Though Resolution applicant shall manage the affairs of the company, but the Plan restrain the resolution applicant to sell or dispose of fixed assets and existing current assets of the company until completion of the term of the Resolution Plan.

45. There is also a provision for a Monitoring Committee (MC) comprising of existing Resolution Professional and 1 representative each from Axis Bank Ltd and J M Financial Asset Reconstruction Company Ltd, for supervision of implementation of the Resolution Plan.

46. In respect of reliefs and concession sought for in the Plan which lies with the jurisdiction of some other authorities, it is clarified that the monitoring committee along with the Resolution Applicant can make such claim before the authorities which shall be considered in accordance with law.

47. Besides under sub-section (4) of Section 31 the resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section(1) or within such period as provided for in such law, whichever is later.

48. As regard implementation of the Plan the Resolution Professional has certified that the resolution plan has provided for:

a. *The term of the plan and its implementation schedule;*

b. *The management and control of the business of the corporate debtor during the term of resolution plan shall lie with the resolution applicant and the persons nominated by it for running day to day operations of the Corporate Debtor.*

c. adequate means for supervising its implementation during the resolution plan.

49. It is accordingly submitted that the Resolution Plan provides for term of the plan, its implementation schedule, the management and control of the business of the corporate debtor during the term of plan and adequate means for supervising its implementation.

50. In the facts, it is seen that the Resolution Plan meets the requirements of Section 30 (2) of the Code and that the resolution plan has provisions for its effective implementation.

51. We also grant Liberty to the monitoring committee to apply to the Tribunal for any further direction in order to ensure effective implementation of the plan, if such a necessity arises.

52. As a sequel to the above discussion we are satisfied that the requirements as per the Code and regulations have been complied with.

53. Moreover, the Resolution Plan has been unanimously approved by the CoC and has been submitted in compliance of Section 30 of the Code for approval. Resolution Professional has confirmed that the Resolution Plan is compliant to sub-section (a) to (f) of Section 30(2) of the Code and also comply Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. He has further certified that it has dealt with the interests of all stake holders.

54. Besides there is no objection from any stake holders in respect of approval of the resolution Plan.

55. In absence of any discrimination or perverse decision it is not open to the Adjudicating Authority to modify the Plan. As per the provisions of the Code, the CoC with the requisite super majority is the competent authority to decide on the rights of various stake holders by approving a resolution Plan. Adjudicating Authority is not expected to substitute its view with the unanimous commercial wisdom of the CoC nor should deal with technical complexity and merits of Resolution Plan unless it is found

contrary to the express Provisions of law and goes against the public interest. Admittedly the revival of the corporate debtor company would certainly enhance the interest of all the stake holders and is in the line to achieve the object of the Code.

56. In view of the finding that the resolution plan, as unanimously approved by the CoC, is in accordance with the sub-section 2 of Section 30 read with Section 31 of the Code and as the Resolution Applicant is not disqualified under Section 29A of the Code and as no infirmity seems to have brought out upon screening of the Resolution Plan; we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.

57. It is hereby declared that the Resolution Plan is binding on the corporate debtor, members, employees of the corporate debtor, creditors of the corporate debtor and other stakeholders involved in the Resolution Plan.

58. It is also declared that the moratorium order passed by this bench under Section 14 of the Code shall cease to have effect.

59. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its data base.

60. C.A. 360 (PB) 2018 along with CP No. (IB) 131 (PB) / 2017 are disposed of accordingly.

Let the copy of the order be served to the parties.

Sd/-

(CHIEF JUSTICE M.M.KUMAR)

PRESIDENT

Sd/-

(S.K. MOHAPATRA)

MEMBER (TECHNICAL)

Deepak Kumar