NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

CP (IB) No. 194(ND)/2017

In the matter of

Sanjay Gupta

Regn No. IBBI.IPA-001/IP-P00117/2017-18/10252

AAA Insolvency Professionals LLP

E-10, Kailash Colony, New Delhi

... Resolution Professional

State Bank of India

Stressed Asset Management Branch,

Sector-17, Chandigarh

......Financial Creditor

V/s

Garg Inox Ltd.

(Undergoing Corporate Insolvency Resolution Process)

35, Jhandewalan Road, Motia Khan, New Delhi.

.........Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on 04.12.2018

Present:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SMT. DEEPA KRISHAN, HON'BLE MEMBER (T)

Present: Mr. Kinshuk Chatterjee, Mr. Akshay Goel and Ms. Sanjana Saxena, Advocates for RP
Ms. Pooja Mahajan and Ms. Mahima Singh, Advocates for Resolution Applicant
Mr. Sanjeev Singh, Mr. Prashant Tripathi for Aditya Birla Finance Ltd.

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

1. The present application has been filed under Section 30(6) read with Regulation 39(4) of the Insolvency and Bankruptcy Code by the Resolution Professional praying for approval of the Resolution Plan for a possible turnaround of the Corporate Debtor which had been incurring losses and had mounted liabilities over the last few years. The Corporate Insolvency Resolution Process had been initiated by the Financial Creditor viz The State Bank of India. This petition was admitted vide order dated 25.07.2017 and Mr. Sanjay Gupta, was appointed as the Interim Resolution Professional. Pursuant to his appointment, the IRP undertook steps in accordance with the statutory requirements by effecting publication, convening meetings of the COC from time to time, and collating all claims. Mr. Sanjay Gupta was also confirmed as the RP on a resolution approved by the CoC.

2. The claims collated by the RP from the books of accounts of the Corporate Debtor are broadly detailed as below:

Sr. No.		INR (In Lakhs)
a	State Bank of India	18733.94
b	SIDBI (Claim filed/admitted in IM Rs. Nil)	236.03
c	Employees Dues-12 months preceding CIRP	-
D	Financial Debt owed to unsecured Financial creditors	
i)	Due to related Parties	3.95
ii)	Aditya Birla Finance Ltd. (Claim Filed/admitted Rs. 994.35 Lakhs)	994.35
E	Statutory Dues	
	Statutory dues (State & Central duties and taxes)-within 24 months	1.48
	Other Statutory Dues	
	E.S.I.C Payable	0.27

	Labour Welfare Fund Payable	1.12
	Provident Fund Payable	56.99
	Other Debts & Dues	
(i)	Operational Creditors- Claim Filed/Admitted (Annexure-B(i)	406.31
(ii)	Operational Creditors- Claim not filed (Annexure B(II)	1,940.45
(iii)	Operational Creditors- under litigation and also Claim filed (Annexure-B-iii)	668.11
(iv)	Advance from Customers (Annexure-B-iv)	76.87

3. Valuation of the Assets of the Corporate Debtor were duly made by appointing valuers viz. Mr. P.S. Dahaiya and Mr. B.D. Sahani to determine liquidation value of the Land and Building, and Mr. Gurmeet Singh and Mr. Krishan Kumar Goel for determining liquidation value of

Plant & Machinery. As per their reports the following valuations have been given:

		In lakhs					
S. No.	Registered Valuers(Valuation of land & Building Structure and Plant Machinery & Sock Valuation)	Current Market Value (In lacs)		Current Realizable Value		Liquidation Value	
		Bahadurgarh Plant	Pune Plant	Bahadurgarh Plant	Pune Plant	Bahadurgarh Plant	Pune Plant
1	Average Valuation Report by Krishan Kumar Goel and Gurmeet Singh of Plant & Machinery of the Corporate Debtor	830.385	443.035	705.825	861.705	611.485	683.935
2.	Average Valuation Report by B.D. Sahni and P.S. Dahiya of the Corporate Debtor	2772.355	2357	2478.935	2121.5	2356.40	1886
3	Satya Prakash(Stock Valuation)	303.99	36.65			227.992	27.487

4. Vide interim reports, the RP has kept this Bench apprised of the various steps taken periodically. A one-time settlement of Rs. 1.5 crores

was proposed by the personal guarantors of the Corporate Debtor to be paid in a lump sum to State Bank of India in full discharge of their liability due as guarantors for the loan availed by the Corporate Debtor. The same was accepted by SBI in discharging the guarantors of their obligations. To maximize the returns and reduce the operational costs the plant & machinery installed at Pune was shifted to be reinstalled at the Bahadurgarh Plant. Settlement was made with employees who were reluctant to shift their base to Bahadurgarh, while those willing to resettle have been retained and absorbed.

5. During the process of resolution, the business of the Corporate Debtor was kept as an on-going process and the cost of the resolution process as well as the salaries of the employees were paid from the business proceeds of the Corporate Debtor during this period.

6. In accordance with the decision taken by the CoC, publications were effected twice in the Delhi NCR and Pune editions of the daily newspaper the "Business Standard", inviting Resolution Applications. Through a detailed process of shortlisting on the basis of eligibility, background, negotiations and finalization of offers, the bid proposed by M/s. Bansal High Carbons Pvt. Ltd. has been duly approved by the CoC. Due diligence of the background of the successful Resolution Applicant was made. They are engaged in carrying out business similar to that of

the Corporate Debtor i.e. in the business of manufacture and trade of steel wires, high carbon steel wire rods etc. The financial background has been duly verified. The Company is rated BBB+by CRISIL. The net worth of the Company is Rs. 26.65 crores, while that of the group companies is worth Rs. 145 crores. The annual turnover of the applicant is Rs. 644 crores and the group's turnover is Rs. 2400 crores. The Company's EBIDTA is reported to be Rs. 66 crores.

7. The resolution plan was found compliant with the requirements of Section 30(2) of the Code read with Regulation 38 of the IBBI(CIRP) Regulations 2016, and the Resolution Applicant does not fall in any of the categories under Section 29A and was found to be fully eligible.

8. The Resolution Plan offered by Bansal High Carbons Pvt. Ltd. after a series of negotiations was finalized at Rs. 72 crores in addition to an input of another Rs. 10 crores. The total Financial cost to the Resolution applicant is given as under:

Particulars	Amount (INR)
Amount offered to be paid by Resolution Applicant to be allocated in order of priority as per Section 53 of IBC, 2016	7200

Capital Expenses to be incurred on manufacturing Facility to upgrade Plant & Machinery/due repairs, Installation of Machines shifted from Pune Plant etc.	500
Amount to be invested to meet Projected Margin for working capital Requirements (Including Working Capital limits, which may be obtained, if so required)	500
Total Financial cost of Resolution Plan for the Resolution Applicant	8200

9. The major Financial claimants constituting the COC were State Bank of India as the Secured Creditor and Aditya Birla Financial Ltd. (ABFL) as an Unsecured Creditor. SIDBI did not file any claim. Financial Claims of related parties were rejected. While allocating the proceeds under the plan, the provisions of Section 53 of the Code were kept in view.

10. In terms of the aforenoted proposal the sum of Rs. 72 crores is to be paid to SBI, the only secured creditor in a phased manner upon approval of the Resolution Plan by this Adjudicating Authority. On payment of the same, the 8051427 equity shares of face value Rs. 10/- shall be transferred to the Resolution applicant or to its duly appointed nominees in consideration of acquiring and taking over 100% management of the Corporate Debtor.

11. The Resolution Plan has been accepted by SBI, whose voting rights form 94.96% in value of the financial claims. While SIDBI never put forth any claim, ABFL, the unsecured creditor had refrained from voting on the resolution plan. However, it was agreed that they would retain the lien to appropriate the fixed deposit of Rs. 1 crore held with them in discharge of the amount due to them.

12. As the disbursement of the amount under the Resolution Plan is made in line with the provisions of Section 53 of the Code, SBI, being the only secured creditor is the sole beneficiary. There is no disbursement to the Operational Creditors whose total claim received by the Resolution Professional was 10.7442 Crores. Government Dues of Rs. 59.89 Lakhs as well as Trade Payables of Rs. 76.87 Lakhs and other debts and dues amounting to Rs. 21.8502 Crores will not be liquidated or reduced. In terms of the plan, the Resolution Applicant shall pay Rs. 72 crores in a phased manner as under:

Payment Plan

- Upfront payment of Rs. 100.00 Lakhs as EMD, has already been made vide demand draft No. 139146 dated 31.03.2018 drawn on the J & K Bank Ltd, Sadar Bazar Branch, Delhi.

- Second Installment of Rs. 500.00 Lakhs to be paid upon receiving approval of the Resolution Plan by CoC.
- Third installment of Rs. 1400.00 lakhs to be paid within 30 days from the date of receipt of order of approval from Adjudicating Authority as well as handing over of Physical possession of Bahadurgarh Unit and other aspects as factored under Sl. No. 6 of the bid dated 31st March, 2018.
- Balance amount of Rs. 5200.00 Lakhs to be paid in 22 quarterly installments in following manner:

Particulars of instalment proposed	Time Frame	Total Amount
Ist quarterly Instalment of Rs. 200.00 Lakhs	Payable after 6 months from the date of approval from Adjudicating Authority.	200
Next three Instalments of Rs. 200.00 Lakhs each	After interval of 3 Months from previous due	600
Next four instalments of Rs. 225.00 Lakhs each	After interval of 3 Months from previous due	900
Next fourteen instalments of Rs. 250.00 Lakhs each	After interval of 3 Months from previous due	3500
Total		5200

i. No interest to be charged for the period up to 6 months from the date of receipt of order of approval from Adjudicating Authority.

ii. Interest for the period after 6 months from the date of receipt of order of approval from Adjudicating Authority to be levied on outstanding balance (Reducing balance method) at applicable marginal cost of fund based on 6 months lending rate (MCLR) of State Bank of India and the same shall be paid over & above the quarterly installments as mentioned herein as & when charged by the bank.

iii. Further the Resolution applicant seek approval for pre-payment of any amount during the implementation period mentioned above, which may be arranged out personal resources of the applicant or out of sale of any un-utilized or spare land & Building and in such case no prepayment penalty/charges to be levied and the remaining quarterly installments shall be re-scheduled with proportionate reduction in remaining due quarterly installments.

iv. In case of any pre-payment out of the sale of un-utilized or spare land/Building of the Corporate Debtor at any price equal to or higher than pre-reserve price mentioned herein, the CoC/Secured Financial Creditor shall release the security, without any objections, whatsoever other than ensuring deposit of reserve price.

13. The entire process of payment is staggered over 72 months. A monitoring Agency has been provided for in the plan. The reins of management of the affairs of the Corporate Debtor for its business operations shall be in the hands of the new Board of Directors to be appointed as Nominees of the Resolution Applicant. The Directors are competent to look after this business, being already engaged in the similar business.

14. The Resolution applicant has been found to be eligible and has submitted an affidavit to that extent that they do not suffer any disability under Section 29(A) of the Code. The Resolution professional in his report has submitted that the entire payment towards the Insolvency Resolution Process costs has been met from the business proceeds during the CIR process and the plan does not contravene any provision of Law. The said Resolution plan has been found to be viable and has been duly approved by more than 94.96% voting share by the COC.

15. The relevant extract of the resolution plan as accepted by the COC and put forth for our consideration is reproduced as under. It is stated to be in line with the provisions of Section 53 of the Code.

S. No	Outstanding Dues in order of Priority as per Section 53 of IBC, 2016	Outstanding Liability as per Books of CD on 30-06-2017 (CIRP Date)	Total Amount offered	Remark (All waivers/hair-cut subject to the approval of CoC/Adjudicating Authority.
A	Insolvency Resolution Process (CIRP Cost)			The CIRP Cost is met out of the regular cash out of the regular cash flows of CD during CIRP period. However, CIRP Cost if any, remains outstanding, to be paid out of the Amount of Rs. 7200.00 Lakhs offered by the Resolution Applicant.
B (i)	Workmen's Dues - 24 months preceding CIRP			No such dues reported
(ii)	Debts due to Secured Financial Creditors			
a.	State Bank of India	18733.94	7200	Offer amount of Rs. 7200 Lakhs proposed to be paid in order of Priority as per Section 53 of IBC. We assume no outstanding CIRP cost, however the amount to be paid to State Bank of India shall be reduced by the amount of CIRP cost, if any paid/payable and consequently the amount of waiver sought will increase by same amount.
	(Claimed Filed/admitted in IM Rs. 18733.94 Lakhs)			
b.	SIDBI			
	(Claimed Filed/admitted in IM Rs. Nil)	236.03	0	No Claim filed by SIDBI.

C	Employees Dues- 12 months preceding CIRP	-	-	
D	Financial Debt owed to unsecured Financial Creditors			
(i)	Due to related Parties	3.95	- 0	100% waiver sought
(ii)	Aditya Birla Finance Limited	994.35	0	100% waiver sought, However, in case ABFL claims or otherwise any amount becomes due to ABFL being proved to be secured creditor, in such case proportionate amount offered by resolution applicant may be appropriated towards ABFL. However, in any case ABFL to write-off the amount outstanding as claimed/admitted.
E	Statutory Dues			we have assumed the amount payable as at CIRP date have already been paid during CIRP Period, being regular outstanding/payables. However, amount, if any, remains outstanding 100% waiver is sought by the Resolution Applicant.
	Statutory dues (States & Central duties and taxes) - within 24 months	1.48	0	
	Other statutory Dues			
	E.S.I.C payable	0.27	0	
	Labour Welfare Fund Payable	1.12	0	
	Provident Fund Payable	56.99	0	
F	Other Debts & Dues			
(i)	Operational Creditors - claim not filed/admitted (Annexure-B(i)	406.31	0	100% waiver south for all Operational creditors outstanding as on date.
(ii)	Operational Creditors - Claim not Filed (Annexure-B(ii)	1,940.45	0	100% Waiver sought for all Operational creditors outstanding as on date.

(iii)	Operational Creditors - under litigation and also Claim failed (Annexure-B(iii)	668.11	0	100% waiver sought for all Operational creditors outstanding as on date
(iv)	Advance from Customers (Annexure - B-iv)	76.87	0	100% waiver sought for advance from customers received and remains outstanding as on date.
(ii)	Expenses Payable			
	Bonus Payable			100% Waiver sought for all other debts & dues, if any outstanding as on date, including amount payable for Employee, retirement benefits.
	Salary Payable			
	Wages Payable			
	Provision for Employee Benefit			
	Other Provisions			
G	Preference Shareholder	-	-	No Payment proposed
H	Equity Shareholder	-	-	No Payment proposed
	Total	23128.42	7200	

16. While the aforesaid plan provides for writing off the dues towards Operational Debtors and seeks waiver of any statutory dues, no specific waiver is being granted by this Bench, other than what is statutorily provided for and is legally permissible under the Code, more specifically applicable to Government dues and taxes to which the applicant is entitled to under laws enacted for facilitating Resolution of Insolvent Corporates.

17. As per the requirement of Section 31(1), the Resolution Plan has provisions for effective implementation and supervision. During scrutiny,

the Resolution Professional did not find any transactions which were voidable in terms of Section 43, 45, 50 or 66 of the Code.

18. The Resolution Plan has been presented within time and duly annexed with the compliance certificate and affidavit of the Resolution Professional.

In view of the foregoing, this adjudicating authority accepts the Resolution Plan which has been duly approved by the COC, subject to grant of waivers only in respect of those which are statutorily permissible.

Petition disposed off in terms of the above.

Sd/-
(Deepa Krishna)
Member (T)

Sd/-
(Ina Malhotra)
Member (J)