

In the National Company Law Tribunal
Mumbai Bench.

MA 544/2017 in **CP No.1032/I&BC/MB/MAH/2017**

Application Under **Section 30(1) & (6)** and an **Order under section 31, under section 60(5)** of Insolvency & Bankruptcy Code 2016

In the matter of

Pratik Ramesh Chirania : Petitioner

V/s

Trinity Auto Components Ltd. : Respondent

Order delivered on: 22.01.2018

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Bhaskara Pantula Mohan (Judicial)

Present:

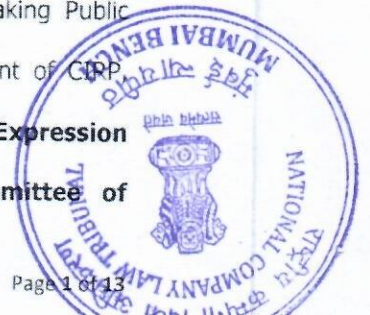
1. S.R. Jariwala, C.A. for Resolution Professional;
2. Laxman D. Pawar, Resolution Professional;
3. Ami Jain, Advocate for Resolution Applicant.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. On receiving the Petition under section 10 of The Code filed on 18.05.2017 an Order was passed on 25.05.2017 'admitting' the Petition by appointing IRP with an Order for commencement of "**Moratorium**" as well as "**Corporate Insolvency Resolution Process**" (**CIRP**). The Corporate Debtor itself had moved this Petition to commence the Insolvency Proceedings in respect of the Debts, i.e. (i) Financial Debt of Axis Bank of ₹3.838 crores (ii) Secured and Unsecured Creditors ₹16.58 Crores (iii) Operational Debt of ₹9.95 Crores.

2. The appointed IRP had followed the procedure laid down by making Public Announcement on 31.05.2017 in the Newspaper declaring commencement of CIRP. Publication of Advertisement in the Newspaper on 02nd June 2017 inviting "**Expression of Interest for submitting Resolution Plan**", constituting '**Committee of**



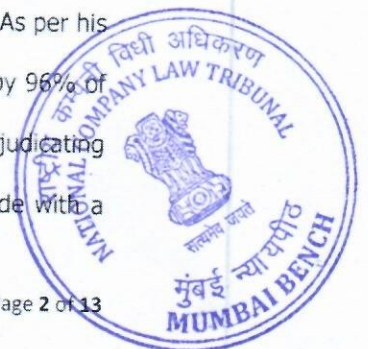
Creditors' (in short CoC) by holding Meeting on 24.06.2017, appointment of Valuers etc. The Committee of Creditors were informed about the particulars of the Corporate Debtor as prescribed under Regulation 36 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016. A second Meeting was held on 10.07.2017 attended by some Creditors.

3. Thereafter, in response to the Advertisement calling for "Expression of Interest", only one Resolution Plan was received, submitted by M/s. Tarini Steel through Mr. Santosh Agarwal, one of the Directors of the Corporate Debtor.

4. The Resolution Plan was considered in a Meeting of Committee of Creditors held on 05.10.2017 and stated to be approved by voting share of 96.54% in terms of section 30(4) of The Code, read with Regulations 39(3) of Regulation 2016. The Committee of Creditors envisaged restructuring of Unsecured Term Debt to be paid up to 15% to the Unsecured Creditors by fixing cut-off date as well. For the sake of completeness, we have noted that there was a reference of Old Scheme sanctioned by BIFR. The present plan submitted before CoC contains infusion of fresh funds, stated to be by the existing Promoters of the Petitioner/ Corporate Debtor.

5. In consonance with the I&B Code a Meeting of Committee of Creditors was held on dated 05.10.2017 and a Resolution Plan was placed for approval. In terms of section 30(4), the Committee of Creditors have approved the Resolution Plan by a vote of 96.45% of Voting Shares of the Financial Creditors.

6. A Certificate in consonance with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 certifying that the Resolution Plan shall meet the requirement of The Code and that the Resolution Plan is "Approved" by the Committee is furnished by the Resolution Professional Mr. L.D. Pawar. As per his Certificate, the Resolution Plan was approved by the Committee of Creditors by 96% of Voting Share. The Resolution Plan is therefore placed before this Bench/ Adjudicating Authority (in short AA) under the Provisions of **Section 30(1)** of The Code with a



Prayer that the said Resolution Plan as approved by the Committee of Creditors be sanctioned by this NCLT Bench under **section 31(1)** of The Code.

7. The highlights of the Resolution Plan as submitted for our consideration are as follows:-

"RESOLUTION PLAN SUBMITTED BY TARINI STEELS LTD THROUGH SHRI SANTOSH AGARWAL FOR THE RESOLUTION OF DEBTS OF TRINITY AUTO COMPONENTS LTD IN CP NO. 1032/I&BC/NCLT/MB/MAH/2017"

HISTORY / BACKGROUND OF TRINITY:

- 1.0 M/s Trinity Auto Components Ltd was incorporated on 31st October, 1985, in the state of Maharashtra for the manufacture of critical closed die forged parts for engines and chassis for heavy commercial vehicles. The said company has four forging units at 1419/2, Village Shikrapur, Pune Nagar Road, Taluka: Shirur Distt. Pune-412208, Maharashtra, with a capacity to produce 500 tonnes of forgings per Month. The company was taken over for its rehabilitation by Tarini Steels Ltd under the scheme sanctioned by BIFR by its order dated 7th November, 2014 as modified by the Hon'ble Delhi High Court dated 15.5.2015 & 27.5.2015 in which, clause 6.2(ii) stood modified and reinstated to the original clause contained in the DRS allowing the de-rating of shares by 60% and transfer of shares from the old promoters/shareholders to the new promoters at Rs.4/- per share post de-rating.

CAPITAL STRUCTURE AS WELL AS SHAREHOLDING PATTERN AS RECENT A DATE AS POSSIBLE

- 2.0 Share holding Pattern as on 30/06/17 was as under:
1. Promoters/Directors/Relatives - 73.32 %
 2. Others - 26.68% (old promoters not yet transferred)

MANAGEMENT STRUCTURE AND BRIEF DESCRIPTION OF THE BOARD OF DIRECTORS INDIVIDUALLY

- 3.0 Management structure of the company is as depicted hereunder:

Mr Abhishek Agarwal - Director
Mr Ramdas Dale - Plant Head
Mr Chandrakant Foud - DGM Quality
Mr Tapas Karmakar - DGM Production

Board of Directors

Mr Abhishek Agarwal - B.E. having 12 years experience in Steels productions.
Mr Pratik Chintia - MBA having 5 years experience in commercial activities.
Mrs Prachi Agarwal - B.E. having 10 years experience in Administration.
Mrs Radha Agarwal - M.A. having 15 years experience in commercial activities

DESCRIPTION OF BUSINESS UNDERTAKEN BY THE COMPANY, LOCATION OF FACTORIES, NUMBER OF WORKERS, ETC

- 4.0 Business - Steels Forgings
Location of Factory - Gat No 1419/2, Shikrapur, Shirur, Distt-Pune 412 208
No of Workers - 129 Nos

BORROWINGS FROM BANKS / PUBLIC FINANCIAL INSTITUTIONS AS ON 31st MARCH, 2017, OR ON AS RECENT A DATE AS POSSIBLE

- 5.0 Borrowing from Bank as on 30.06.17 (Axis Bank)
- | | |
|-------------------|----------------|
| Sanctioned Amount | Rs 368.00 Lacs |
| Exposure | Rs 340.84 Lacs |

FINANCIALS / AUDITED ACCOUNTS FOR THE LAST THREE YEARS

- 6.0 Copies for FY 2014-15, 2015-16 & 2016-17 attached as Annexures 1, 2 & 3 respectively.



REASONS FOR NON-ACHIEVEMENT OF PROJECTIONS IN THE SANCTIONED SCHEME OF BIFR

- 7.0 The unit was unable to achieve the projections in the BIFR Sanctioned Scheme due to following reasons:
- The plan was sanctioned only on 31.07.2015 and only 20 months time was left for execution of the scheme.
 - Most of the old orders were terminated by the principals and part of the orders could only be reinstated after a long time.
 - The approval from new customers was difficult due to old manufacturing facilities and infrastructure and availability of machining facility.
 - Due to recession in the automobile industry, the order position was severely affected.
 - The company had to carry total workforce and minimum electricity charges although the production was very low.
- Further, the scheme sanctioned by BIFR envisaged settlement of unsecured creditors at 15% of outstanding principal with an option given to them not to accept the same and wait till the scheme is worked out. It is noticed that some unsecured creditors did not accept the settlement and as a result the said scheme is yet to work out.

RESOLUTION PLAN/STRATEGY

- 8.0 It is contemplated under the resolution plan, which is drawn up for the term up to 31.03.2023, that the following measures will have to be adopted for resolution of the debts of the company and, accordingly, the same have been factored in the said plan as under:
- Capital expenditure aggregating to Rs. 205.00 lacs over the resolution period for improving margins of profitability.
- TERM UNSECURED CREDITORS TO BE PAID 15% OF PRINCIPAL AMOUNT AS PER SCHEME SANCTIONED BY BIFR
- Term Unsecured debts restructured as per BIFR scheme, i.e. 15% to be paid to those unsecured creditors outstanding on cut-off date viz: 31.03.2011, and placed on repayment, in full and final settlement of their dues to be repaid within one year in three equal instalment of 5% each in every four months, from the date of approval of Resolution Plan by NCLT.
Since the liquidation value is in negative and operational creditors and there is no dissenting financial creditor, there is no payment to be provided in the resolution plan to be made within 30 days or payment to be made in preference to payment to consenting creditors, as the case may be.
 - The Principal amount of Fixed Deposit Holders to be repaid within one month from the date of approval of resolution plan by the NCLT after adjusting any outstanding amounts receivable from them, in full & final settlement.

PROMOTERS' CONTRIBUTION

- The resolution applicant to infuse additional Rs. 349.51 lacs for financing the resolution plan, as under:

	(in Rs.lacs)
Capital Expenditure	205.00 lacs
Creditors' payment	65.25 lacs
Fixed Deposit Holder	72.00 lacs
Resolution Cost	7.26 lacs
TOTAL	349.51 lacs

AXIS BANK LTD

- Axis Bank to agree to provide further credit facility of Rs.400 lacs for working capital along with existing working capital limit of Rs 368 Lacs, i.e. total working capital finance from Axis Bank to be availed for Rs. 768 Lacs @ 12% p.a.. Out of the total Rs 768 lacs working capital finance, Rs. 568 lacs to be provided as working capital term loan (WCTL) which will be repayable in 5 years with 6-month moratorium period from the date of sanction of the resolution plan.
- MINISTRY OF CORPORATE AFFAIRS, GOVERNMENT OF INDIA / ROCTo exempt the company/s providing financial assistance / corporate guarantee to the corporate debtor under the resolution plan from applicability of section 185 of the Companies Act, 2013.
- Exemption from the applicability of Sections 73 & 74 of the Companies Act and other means for raising funds as specified under the resolution plan.



- ii) Exemption to M/s Tarni Steel Company Ltd and M/s Madhur Engineers Pvt Ltd from the provisions of Sections 186 & Section 188 of the Companies Act, for the fresh fund into TAFL.
- i) The provisions of this Plan shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

CONTINGENT LIABILITIES

- i) If any contingent liability develops on the company with respect to statutory OR unsecured creditors in future for the past transactions prior to 31.03.2011, the same will be settled at 15% of its crystallised principal amount as per the scheme sanctioned by BIFR.

ii) Subject to the provisions of this Resolution Plan, all unimplemented provisions towards other relief / concessions approved under the sanctioned scheme of BIFR like Income Tax, Sales Tax, EPFO, Excise, MSE/DCL etc. to be continued to be applicable.

COST OF THE SCHEME

9.0 The capital outlay of resolution plan is estimated at Rs.349.51 lacs as per brake up given hereunder:

	Rs/ Lacs
COST OF THE SCHEME	
Resolution Cost	7.26
Machining & press shop	205.00
Unsecured creditors - old	65.25
Fixed deposit holders	72.00
Dissenting creditors at financial creditors' meeting	--
TOTAL	349.51

The incremental working capital is proposed to be financed out of internal cash accruals. The total investment in fixed / plant & machinery will be around Rs. 205.00 lacs. A note on modernisation / diversification / up-gradation / refurbishing / expansion / balancing equipment necessary for higher volume of business to facilitate servicing of the envisaged dues in the resolution plan is attached herewith as Annexure - 4

MEANS OF FINANCE

10.0 The capital outlay of Rs. 349.51 lacs is proposed to be met through

	(R s i n l a k h s)	
MEANS OF FINANCING		
Promoters' Funding & External Borrowings	349.51	
TOTAL:	349.51	



**PROFITABILITY PROJECTIONS FOR COMPANY ON A STAND-ALONE BASIS, WORK SHEETS
FOR VARIOUS ITEMS OF EXPENDITURE AND SALES FORECAST**

11.0 The management proposes to revive the financial status by (1) modernising the equipment, adding machining facilities so that the company will have increased margin, greater production, greater customer acceptability, resulting into higher revenue. The financial projections are given in Annexure-5 appended herewith.

The key financial ratios are given hereunder:

PARTICULARS	2018	2019	2020	2021	2022
(i) Asset Coverage Ratio	0.67	0.68	0.73	0.81	1.02
(ii) Gross Working Capital	1,552.65	1,786.25	1,964.37	2,058.53	2,161.56
(iii) Net Working Capital	1,055.15	1,210.89	1,327.88	1,448.33	1,520.84
(iv) Incremental Working Capital		155.74	116.98	120.45	72.51
(v) Working Capital Margin		155.74	116.98	120.45	72.51
(vi) Capital Gearing Ratio	-32%	-31%	-26%	-18%	3%
(vii) Debt-Equity Ratio	-3.08	-3.26	-3.90	-5.59	29.65
(viii) Rate Of Return On Investment	-8%	3%	7%	10%	13%
(ix) Payback Period	NA				
(x) Debt Service Coverage Ratio	2.81	1.73	1.46	1.53	1.21
(xi) Capital Employed	1,413.93	1,450.53	1,556.78	1,698.49	1,802.03

The plan is expected to work itself out in 2018-19 when the corporate debtor's liabilities are to get repaid except promoters' loans & the deployed working capital which remains in the system, as at the end of the said year.

WHETHER REDUCTION IN SHARE CAPITAL IS NECESSARY AND, IF SO, TO WHAT EXTENT

12.0 No

**WHAT WILL BE THE PROMOTERS' CONTRIBUTION AND IN WHAT FORM FOR FINANCING
THE RESOLUTION PLAN**

PROMOTERS' CONTRIBUTION

13.0 The promoters propose to invest another amount of Rs 349.51 lacs by way of interest-bearing deposit @ 12% repayable by 2023. The promoters will ensure the regular payment of instalments and interest to the bank before payment of interest to the promoter on proposed investment of Rs 349.51 lacs.

**WHAT CHANGES ARE PROPOSED IN MANAGEMENT STRUCTURE FOR CARRYING ON
OPERATIONS ON A GOING CONCERN BASIS**

14.0 The company will continue to be managed by professionals under the supervision and guidance of its Board of Directors. The company has already inducted Mrs Shirati Agarwal, BE, MBA, as Vice president (Sales & Administration) to boost up the sales of the company. Mr Ramdas Dale, who has vast experience in steel forgings, has also been recruited as plant head to take care of production activities. It is envisaged that on approval of the resolution plan by NCLT, the directors, who remained suspended from the date of admission of the application u/s section 10, shall stand reinstated.

**THE CLASSIFICATION OF LIABILITIES INTO FINANCIAL CREDITORS AND OPERATIONAL
CREDITORS**

15.0 The classification of the creditors into financial and operational is given in Annexure-6 appended hereto.

DETAILS OF ANY SURPLUS/UNPRODUCTIVE ASSETS TO BE DISCARDED/SOLD

16.0 1) The obsolete, scrap & non-usable machines to be sold.
2) The old vehicles to be sold.

The proceeds will be paid to the bank for repayment of their loan.

MARKETING STRATEGY

17.0 A note on:

A) Marketing (Annexure-7)



- B) List of customers (Annexure-8)
 C) Orders on hand (Annexure-9)
 D) Sales forecast, pricing policy, distribution network and any other marketing strategy for facing cut-throat competition (Annexure-10)

WHETHER IT IS PROPOSED TO MERGE THE COMPANY WITH ANY OTHER ELIGIBLE ENTITY AS A PART OF STRATEGY FOR RESOLUTION OF DEBT

18.0 No

MANAGEMENT AND CONTROL OF THE CORPORATE DEBTOR DURING THE SAID TERM

- 19.0 The management and control of the business of the corporate debtors during the said term will be by its Board of Directors to be constituted by the resolution applicant.

It is proposed that a Committee of Directors will be constituted to supervise and monitor the due and timely implementation of the resolution plan.

COMPUTATION OF LIQUIDATION VALUE OF THE ASSETS OF THE COMPANY

20.0 The computation of the liquidation value of the assets is as under:

Value of fixed assets / properties as per valuation report (Rs in Crores)

Realisable	Fair Market Value		Distress Sale Value
	Value	Value	Value
1. M & M Associates (16.6.17)	15.68	12.54	14.11
2. Krishnakant A. Pandat (12.6.17)	16.22	12.98	14.60
Average Value		15.95	14.15

Stocks Value (Rs in Crores)

	Present Value	Liquidation Value
1. M & M Associates (16.6.17)	6.04	1.81
2. Krishnakant A. Pandat (12.6.17)	6.08	1.83
Average Value	6.06	1.82

For the purpose of calculation of liquidation value payable to operational creditors, the distress value is considered as in case of liquidation funds are required to be raised expeditiously and in a time-bound manner.

ASSETS AVAILABLE FOR REALISATION

	RS/LACS
DISTRESS VALUE OF FIXED ASSETS	1276.00
Less: 25% towards the cost of sale, capital gain tax, stamp duty, GST etc	319.00
REALIZABLE VALUE OF CURRENT ASSETS:-	182,57,843.27
INVENTORY	89.55
RECEIVABLES	9.00
LOANS & ADVANCES RECOVERABLE	0.25
CASH & BANK BALANCES	
INVESTMENT	
TOTAL VALUE AVAILABLE FOR DISTRIBUTION U/S 53 OF IBC	2081.64

DISTRIBUTION OF ASSETS VALUE

TOTAL ASSETS VALUE LESS:		
1. The insolvency resolution process costs and the liquidation costs paid in full		7
2. (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date, and (ii) debts owed to a secured creditor		151
3. wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date		436
4. financial debts owed to unsecured creditors		1816



5. (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date; and (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest	11
BALANCE ASSET VALUE AVAILABLE TO OPERATIONAL & REMAINING DEBTS / DUES-BEING LIQUIDATION VALUE	339.36

Assumption:-

- A. New Promoters deposits to the extent of Rs. 2.00 crores to be allowed to be converted into equity shares by FY 2022-23.
- B. Total Capital Reserve balance of Rs. 1306.78 includes Rs. 42.48 Lacs for Special Capital Incentive received from Govt. & Rs. 1264.29 the amount paid by Trinity India Ltd to bank against Bank Guarantee issued in favour of the Company and subsequently waived. The Bank Guarantee was given for the purpose of Loan obtained against working capital finance and capital investment. The same is proposed to be adjusted against accumulated losses.
- C. Exemption from Section 185 of Companies Act, 2013 is envisaged to promoter companies for issuing corporate guarantee for availing finance from financial institution.
- D. Subject to the provisions of this Resolution Plan, all unimplemented provisions towards relief / concessions approved under the sanctioned scheme of BIFR towards Income Tax, Sales Tax, EPFO, Excise, MSEDCL etc. to be continued to be applicable.
- E. Presently there is no outstanding statutory liability however, if any contingent liability arises or crystallised in near future with respect to past debts, then the same is to be settled at 15% of its crystallised principal amount.

CONCLUSION:

- 21.0 It will be observed from the financial projections that the company will be able to resolve and pay up all its dues / debts other than dues / debts payable to its promoters and revolving trade creditors. Thus, the resolution plan is workable and worthy of support.
- Further it is certified that the contents of the Resolution Plan meet all the requirements of the law as also the regulations and nothing contained therein contravenes the same and the Resolution Plan has been approved by the committee of creditors.

- 22.0 A STATEMENT SHOWING AS TO HOW RESOLUTION PLAN HAS DEALT WITH THE INTEREST OF ALL STAKEHOLDERS, INCLUDING FINANCIAL CREDITORS AND OPERATIONAL CREDITORS, OF THE CORPORATE DEBTOR, IN CONSONANCE WITH REGULATION 38(1) OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (SECOND AMENDMENT) REGULATIONS, 2017

The resolution plan provides for dispensation qua Axis Bank as per mutually agreed terms by and between the corporate debtor and Axis Bank, as under:-

I. AXIS BANK LTD

i) Axis Bank to agree to provide further credit facility of Rs.400 lacs for working capital along with existing working capital limit of Rs 368 Lacs, i.e. total Working Capital finance from Axis Bank to be availed for Rs. 768 Lacs. Out of the total Rs. 768 Lacs working capital finance, Rs. 568 Lacs to be provided as working capital term loan which will be repayable in 5 years with 6 month moratorium period from the date of sanction of the resolution plan.

ii) Axis Bank to charge rate of interest @ 12.00% from the date of admission of petition by NCLT (25.05.2017) and rate of interest should be based on MCLR of the Bank.

II. FIXED DEPOSIT HOLDERS

The Fixed Deposit Holders are to be repaid within thirty days from the date of approval of resolution plan by the NCLT after adjusting any outstanding amounts receivable from them.

III. TERM UNSECURED CREDITORS (PLACED ON REPAYMENT) UNDER BIFR SCHEME

Term Unsecured debts restructured as per BIFR scheme, i.e. 15% to be paid to those unsecured creditors outstanding on cut-off date viz 31.03.2011, and placed on repayment in full and final settlement of their dues to be repaid within one year in three equal instalment of 5% each in every four months, from the date of approval of Resolution Plan by NCLT. The said settlement being proposed is not less than the liquidated value of assets determined in accordance with Regulation 35 of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in full and final settlement of their dues:

IV. WORKING CAPITAL LIABILITY

Working capital creditors are in nature of revolving creditors and shall be maintained on the basis of past actuals. The trade creditors are initially considered on the basis of 115 days of purchases which will gradually be reduced to 100 days in future for taking benefit of competitive prices.

V. PROMOTERS' LOANS

The fresh unsecured loans of Rs.350 lacs to be infused by the promoters under the resolution plan shall be repayable during 2021-23.

VI. SALES TAX DEFERRAL

The residual balance of Rs.11 lacs only of sales tax deferred by the Government of Maharashtra is proposed for repayment during 2017-18."

8. Appearing on behalf of the Insolvency Professional, Learned Representative Ms. Ami Jain has explained that there are several justifications for proposing the Resolution Plan and one of them is that the Liquidation Value, if at all to be considered, is not matching with the outstanding Debts in question. It is informed that the Valuers have been appointed and as per their Valuation the Liquidation Value ascertained is as under :-

"Liquidation value ascertained by Valuers :-

1. M and M Associates –

- A. Fair Market Value of Land & Building Rs.12,32,31,945/-
B. Plant & Machinery total Valuation Rs.15,68,04,316/-

Fair Market Value	=	Rs.15,68,04,316/-
Distress Sales Value	=	Rs.12,54,43,452/-
Realizable Value	=	Rs.14,11,23,884/-

2. Krishnakant A. Pandat –

- A. Land = Rs.10,87,16,500/-
B. Building/Construction = Rs.1,35,37,000/-
C. Plant & Machinery = Rs.4,00,00,000/-

Total = Rs.16,22,53,500/-

Prevailing Market Value	=	Rs.16,22,54,000/-
Realizable/ Forced Sale Value	=	Rs.14,60,28,600/-
Distressed Sale Value	=	Rs.12,98,03,200/-



9. Our attention has been drawn on a Notification dated 07.11.2017 through which certain Regulations have been formulated. The said Regulations are called "IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations 2017" wherein it is prescribed that a Resolution Plan shall contain **details** of the "Resolution Applicant" to enable the Committee to judge the credibility of such Applicant. The term "**details**" have been specified in the said Regulation which includes Identity, Details of the credibility, Declaration whether a wilful defaulter, Declaration whether any Order of debarment, etc. As informed by the Learned Representative, all these aspects have been considered by the Committee of Creditors and thereafter approved the Plan.
10. **OBSERVATION BEFORE APPROVAL :-** On careful reading of the Resolution Plan this Bench is of the view that a modification is required. However, before directing to modify the Resolution Plan, we have to examine a legal aspect that whether AA has authority to incorporate any suggestion in a Resolution Plan, already approved by the Committee of Creditors? To answer this question we have examined the language of section 31 of The Code, which reads as under :-

*"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.*

(2)

*(3)" *(emphasis supplied)*

11. The Procedure as prescribed under The Code is that a Resolution Plan is required to be submitted by a **Resolution Application U/s 30 of The Code**. On approval, the Resolution Professional is to submit U/s 30(6) the Resolution Plan, as approved by the Committee of Creditors, to the AA. Thereafter, u/s 31, as reproduced *supra*, AA is to examine the contents of the Resolution Plan. The mandate of this section is that if the AA is "**satisfied**" that the Resolution Plan as approved by the Committee



of Creditors meets the requirement as referred to in section 30(2), shall by an Order, approve the Resolution Plan. So the prerequisite is that recording of **"satisfaction"** by AA is a condition precedent. A "satisfaction" is to be recorded in writing in the Judgment approving the Resolution Plan. "Satisfaction" is required to be based upon a conscious decision on examination of the terms of the Resolution Plan. In our humble opinion a thorough study of a Resolution Plan is required before recording a **"satisfaction"** in writing by AA. The **'satisfaction'** as mandated in the statute can either objective or subjective or both, but it is a condition precedent. Naturally this is to be recorded after proper application of mind. The **pros and cons** of the scheme is required to be studied before recording subjective satisfaction. If the CoC has submitted the scheme of Resolution after visualising the advantage and disadvantage then such proposal can be termed as just and equitable fit for according satisfaction. An **'objective satisfaction'** revolves around the object of enactment of the Code as enshrined in the Preamble of the I & B Code i.e. to revive the financially stressed corporate body. And the **'subjective satisfaction'** depends upon logical analysis of the Financial Data supplied so as to match with the business model of the Corporate Debtor. A methodical scrutiny of Financial Statement is expected before concurring with approval of the CoC. Per contra, absence of recording of subjective satisfaction may lead to situation that being sanctioned without judicial analysis thus may not be sustainable in the eyes of law. There are no two views, and must not be, that this I & B Code provides greater accountability both on the Insolvency Professional as also on CoC, mainly comprise of lender Banks. Their approval of a Resolution Plan ought to be judged with due diligence. To sum up, in our humble interpretation the recording of an analytical 'satisfaction' is a condition precedent before granting of approval.

12. Keeping this settled principle in mind, we have noted that upon calling for **"expression of interest"** only one Applicant came forward and submitted the Resolution Plan. The Resolution Plan for our consideration is received from **Resolution Applicant viz. M/s. Tarini Steel Limited.** The Plan envisages infusion of fresh Funds by the existing Promoters. Through a Statement an



Undertaking is annexed that interest of all stakeholders, including Financial Creditors and Operational Creditors shall be dealt with.

12.1 In our view in this Plan there is inconsistency that under the Heading "Assumption" as per Clause "A", it is noted that, quote "***New Promoters Deposit to the extent of ₹2 crores to be allowed to be converted into Equity Shares by Financial Year 2022-23.***" However, under the Head "Conclusion" as per Clause V under the Head "Promoters' Loan" it is proposed, quote "***the fresh Unsecured Loans of ₹350 lakhs to be infused by the Promoters under the Resolution Plan shall be repayable during 2021-23.***" In addition to these two observations, interestingly and in contrast, an observation is at para 13 under the Head "What will be the Promoters' contribution" the proposal is that quote "***The promoters propose to invest another amount of ₹349.51 lacs by way of interest-bearing deposit @ 12% repayable by 2023. The promoters will ensure the regular payment of instalments and interest to the bank before payment of interest to the promoter on proposed investment of Rs.349.51 lacs.***" Indeed, it is a strange situation that at three places three different Plans have been proposed in respect of the contribution of the Promoters. We are not in agreement of the two propositions and accept only one. We are of the view that considering the financially stressed position of the Debtor Company the **fresh Unsecured Loans infused by the Promoters is required to be converted into Equity** so that the burden of repayment must be deferred instead dividend can be distributed.

13. One more suggestion is necessary to be incorporated is that under the Head "Contingency Liabilities" it is proposed that, quote "j) (i) *If any contingent liability devolves on the company with respect to statutory OR unsecured credits in future for the past transactions prior to 31.03.2011, the same will be settled at 15% of its crystalized principal amount as per the scheme sanctioned by BIFR.*" In respect of the Government Dues it is inappropriate to settle up to 15% of the crystalized liability hence the condition of settlement **up to 15% shall not apply on the Government dues.**



14. Before we conclude, it is worth to place on record that this Resolution Plan is proposed by the Promoters by infusing additional Capital as per *supra*, therefore, the Resolution Plan submitted by the Promoters is to be accepted because a Certificate is on record that the Promoters are not "wilful defaulter" hence their proposal is acceptable as per the latest Amendment [The I & B Code (Amendment) Act, 2017 (No. 8 of 2018)] dated 18th January, 2018 wherein S. 29-A is inserted and prescribed that, a person shall not be eligible to submit a Resolution Plan if such person is a "wilful defaulter". In this regard an Affidavit-cum-Declaration submitted by the Resolution Applicant declaring therein that the Declarant had not been identified as a "wilful defaulter". As a consequence, the provisions of S. 29-A are not applicable in this Case.
15. To conclude, the Resolution Plan is approved subject to the modifications suggested hereinabove which is binding on the Corporate Debtor and other stakeholders involved in this Resolution Plan so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 shall cease to have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

Sd/-

BHASKARA PANTULA MOHAN

Member (Judicial)

Date : 22.01.2018

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Sd/-

M.K. SHRAWAT

Member(Judicial)

Certified True Copy
Copy Issued "free of cost"
On 31/01/2018

[Signature]

Deputy Director
National Company Law Tribunal, Mumbai Bench

