IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising the powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

CA No. 509/2018
IN
CP (IB) No. 09/Chd/Pb/2018

Under Section 30(6) of the Insolvency and Bankruptcy Code, 2016.

In the matter of :

Ambey Constructech Private Limited. …Corporate Debtor.

And in the matter of:

Sumat Kumar Gupta,
Resolution Professional of
Ambey Constructech Private Limited,
R/o 69-F, Rishi Nagar,
Ludhiana-141013. …Applicant/Resolution Professional.

Order delivered on : 20.02.2019

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

For the Applicant (in CA No.509/2018)	:	(1) Dr. Rajansh Thukral, Advocate (2) Mr. Sumat Kumar Gupta, Resolution Professional.
For the Resolution Applicant.		(3) Mr. Krishan Vrind Jain, Practising Chartered Accountant
For the Punjab National Bank (Financial Creditor)	:	(1) Mr. Pulkit Goyal, Advocate. (2) Mr. Harsh Garg, Advocate.

Per: <u>Pradeep R. Sethi, Member (Technical)</u>

ORDER

CA No. 509/2018

The present application is filed by the Resolution Professional under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as Code) read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as Regulations) for approval of resolution plan.

2. Petition was filed by M/s Ambey Constructech Private Litmited (hereinafter referred to as Corporate Debtor) under Section 10 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) in the case of the Corporate Debtor. The petition was admitted by order dated 13.02.2018 and moratorium under Section 14 of the Code was declared. Order dated 15.02.2018 was passed appointing Shri Ajay Kumar Jain, as Interim Resolution Professional (IRP). The Committee of Creditors (CoC) is stated to be constituted by the Interim Resolution Professional (IRP) comprising of sole secured Financial Creditor namely Punjab National Bank. The first meeting of the CoC was held on 14.03.2018 in which it was resolved that the IRP be replaced with Resolution Professional (RP) Shri Sumat Kumar Gupta. Vide order 24.04.2018, Shri Sumat Kumar Gupta was appointed as RP. The CIRP period was up to 12.08.2018. Consequent to the decision of CoC in the meeting held on 24.07.2018, order dated 07.08.2018 was passed extending the time for completion of the resolution process by a period of 90 days.

3. It is stated that during the course of the CIRP process, the Valuers were appointed on 23.05.2018; Expression of Interest was issued on 01.06.2018; Information Memorandum was prepared and circulated on 20.06.2018; Resolution Plan was prepared and submitted by two suspended Directors of Board of Directors namely Shri Puneet Garg and Shri Harvinder Pal Singla and that the resolution applicant also submitted an affidavit dated 11.07.2018 in respect of his eligibility to act as resolution applicant. It is submitted that in the 10th meeting of CoC the revised resolution plan submitted by the resolution applicant (Shri Puneet Garg and Shri Harvinder Pal Singla, Directors of the Corporate Debtor) on 22.10.2018 (originally submitted on 24.07.2018) was approved with 100% voting share.

4. It is submitted that the resolution plan is in compliance of Section 30(2) of the Code and that the compliance of Section 30 of the Code is also reflected in the compliance certificate given by the RP in prescribed Form H at Annexure A-22 of the application. It is prayed that an order for approval for the resolution plan in the manner laid down in the Code read with the Regulations be passed.

5. Vide order dated 13.11.2018, notice was directed to be issued to Punjab National Bank, sole member of the CoC, as well as the resolution applicant. On 17.12.2018, the authorized representative for the resolution applicant submitted that he would be filing the certificate from the Industries Department for showing that the resolution applicant is a Micro, Small and Medium Enterprise (MSME). The learned counsel for the only Financial Creditor i.e. Punjab National Bank on instructions submitted that the Financial

Creditor has no objection to the resolution plan. The RP was directed to file fresh Form H giving the necessary particulars in narrative form for each column, especially compliance of Regulation 39 (2) for which only NA is written. The RP filed fresh Form H vide Diary No.106 dated 09.01.2019 and the resolution applicant also filed the compliance affidavit with MSME certificate vide Diary No.147 dated 11.01.2019. The order was reserved on 16.01.2019. However, the matter was listed for rehearing on 24.01.2019 as to whether the nature of business being carried out by the resolution applicant falls within the provisions of sub section (1) of Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act 2006) (refer Explanation to Section 240A of the Code).

6. The learned counsel for RP and the authorised representative of the resolution applicant argued that vide Diary No.147 dated 11.01.2019, certificate of the General Manager, District Industries Centre, Bhatinda was filed for its registration under Small Scale Unit. Reference was also made to the provisional balance sheet of the Corporate Debtor as on 13.02.2018 showing value of investment in plant and machinery satisfying the criteria of Micro, Small and Medium Enterprises in terms of Section 7 of the MSMED Act, 2006 attached as Annexure A-1 of the application. It was argued that the company is covered by Section 7(1)(b) of the MSMED Act, 2006 being engaged in providing or rendering of services. Reference in this regard was made to the Services Sectoral Classification list enclosed with D.O.No.2(3)/1/2017-MSME POL dated 16.11.2007 of the Ministry of Micro, Small and Medium Enterprises, Government of India. It was argued that the company is engaged as contractor

in road construction work and other related activities and is covered by Part III of the Services Sectoral Classification list. The learned counsel for the RP argued that as per the amended Form H, the due compliance of the provisions of the Code has been made.

7. We have carefully considered the submissions of the learned counsel for the RP and have also perused the records. As per Information Memorandum (Annexure A-6 of the application), the Corporate Debtor is stated to be engaged as contractor in road construction work and other related activities. The resolution plan approved by the CoC under Section 30(4) of the Code is presently under consideration for approval by the Adjudicating Authority under Section 31(1) of the Code. The resolution plan was submitted by Shri Puneet Garg and Shri Harvinder Pal Singla, Directors of suspended Board of Directors of the Corporate Debtor. The resolution plan was approved by the members of the CoC with 100% voting share (agenda item No.7 of 10th meeting of COC held on 22.10.2018) (Annexure A-19 of the application). The relevant agenda item No.6 relating to the discussion on resolution plan is reproduced as under:-

> ***"To discuss and deliberate upon the Amended Resolution Plan received from the Resolution Applicant Mr. Puneet Garg and Mr. Harvinder Pal Singla Director of Corporate Debtor.***
>
> *Mr. Sumat Kumar Gupta, RP mentioned that Resolution Plan from Resolution Applicant was originally received on 24th July, 2018 and discussed in the 6th CoC meeting and subsequent CoC meetings. In the 9 th CoC meeting, it was pointed out by the members of CoC that the*

amount offered in the Resolution Plan is low and needs to be improved to Rs.6.50 Cr.

Mr. Sumat Kumar Gupta, RP mentioned that revised resolution plan was received by Resolution Professional and copy of the same is provided to all members of CoC and also enclosed with these minutes of the meeting (as Annexure-1). The Resolution Plan is in consonance with the provisions of IBC,2016 and CIRP Regulations, 2016.

The salient features of the Resolution Plan are summed as under;

1. *Resolution Applicant will raise total funds of Rs. 650 Lacs by way of debt towards payment of Financial Creditors (Rs.645 Lacs) and CIRP costs (Rs.5 Lacs).*
2. *In case Insolvency Resolution Process Costs exceeds Rs.5.00 Lacs, resolution applicant undertakes to bring further funds to meet such excess.*
3. *Payment to financial creditors:-*

S.No.	*Period*	*Payment Amount (in lacs)*	*Comments*
1	*July 18*	*27.30*	*Upfront as EMD (Already Paid)*
2	*T*	*172.00*	*Within two weeks from approval by COC*
3	*T+90*	*172.00*	
4	*T+155*	*200.00*	
5	*T+240*	*73.70*	
	Total	***645.00***	

4. *There is no claim filed by any operational creditor. Therefore nothing is proposed to be paid to them.*
5. *There is no claim filed by any Government Authority for*

Statutory Dues. Therefore nothing is proposed to be paid to them. However there is a contingent liability of Income Tax Department amounting to Rs.8.39 crs for which appeal is pending with appropriate authorities. Therefore, Resolution applicant prayed for waiver of liability from any taxation dues for the previous periods which may arise in future.

6. ***Waiver sought from the financial creditors:*** *The waiver to be sought from PNB as per Resolution Plan is narrated as under :*

S.No.	Name of Creditor	Principal Default Amount	Claim amount admitted	Proposed amount offered	Waiver/ write off of balance
			Rs In Lacs		
1	Punjab National Bank	1067.54	1920.04	645.00	1275.04
	Total	**1067.54**	**1920.04**	**645.00**	**1275.04**

Further all the personal guarantees, mortgaged properties of the Guarantors and all hypothecated assets of the corporate debtor shall be released by PNB on receipt of entire resolution plan amount. PNB shall issue No Due Certificate on receipt of entire settlement of amount as per Resolution Plan and shall satisfy all the outstanding charges.

7. Implementation Schedule: *Payment terms have taken as twelve months from the date of resolution of the resolution plan i.e. 24 th July 2018. The exit date after the approval of the revised resolution plan is 19 th*

June 2019 (i.e. 240 Days from the date of Approval of the Resolution Plan).

8. Management and control of the business of the Corporate Debtor during its term: *Resolution Applicant shall take over the management and control of the Corporate Debtor during the term of the Resolution Plan. The resolution applicants will introduce the required amount from their sources as long term funds to revive the company. The fixed assets available with the company will be utilized for reviving the new construction contracts to be bid by the company.*

9. Implementation of the Resolution Plan: *Resolution Plan will be implemented and supervised by the existing resolution professional at a fee mutually agreed between the proposed Resolution applicant and the existing Resolution Professional at a fee mutually agreed between them. The management of the company shall also report to him. Extinguishment of liability and release of Company's Assets/ Charge will take place once Full & Final Payment is made to the Financial Creditor and after this complete ownership of 100% will be transferred to the Resolution applicant.*

The remuneration was discussed and it is fixed on Rs.75000/- per month commencing from 12.11.2018 till the implementation of the complete resolution plan.

10. Supervision, Management and Control of the business of the Corporate Debtor during its term: *It* *is proposed that the Resolution Applicant shall take over the management and control of the Corporate Debtor during the term of the Resolution Plan.*

Mr. Sumat Kumar Gupta, further mentioned that eligibility of the Resolution Applicant was examined under Section 29A of IBC,2016 and Resolution Applicants found eligible to give the resolution plan.

It is also discussed with CoC that the amount received from the Resolution Applicant pending approval of the said resolution plan by the Adjudicating Authority will be kept in a separate account and will be adjusted against their dues only after receipt of approval of the said resolution plan by the Adjudicating Authority."

8. It is seen from the minutes of the 10th meeting extracted above that the resolution plan was originally received on 24.07.2018 and discussed in the 6th COC meeting and subsequent CoC meetings and in the 9th CoC meeting, it was pointed out by the members of the CoC that the amount offered in the resolution plan is low and needs to be improved to ₹6.50 crores and that revised resolution plan was received. The revised resolution plan was approved with salient features as discussed in the agenda item No.6 (*supra*). It is seen from clause 6 of agenda item No.6 that waiver was sought from Punjab National Bank as per resolution plan of ₹1274.04 lacs against proposed offered amount of ₹645.00 lacs. It is further noted that all the personal guarantees, mortgaged properties of the guarantors and all hypothecated assets of the Corporate Debtor shall be released on receipt of entire resolution plan amount.

9. We may note here that as per details in revised Form H (Diary No.106 dated 09.1.2019), the only Financial Creditor and member of the CoC is Punjab National Bank with admitted claim of ₹1920.04 lacs. It is also noted in para 2 of revised Form H (*supra*) that the fair value is ₹29.64 lacs and the liquidation value is ₹23.24 lacs. There is a discussion in the resolution plan (Annexure A-7 of the application) that the figure of ₹650 lacs has been arrived at as under:-

*Our Estimated Realisable value of Fixed/Current Assets of ACPL : :Rs. 20 lacs (Approx.)

*Our Estimated Market value of land/properties mortgaged to the PNB for securing the loans in ACPL from all the personal guarantors viz :Rs. 530 lacs (Approx.)

i. One Double storey commercial Building Booth No.-139, 140, and 141 situated opposite Hazi Rattan Gate, Grain Market, Bathinda Punjab in name of Sh. Narinder Mittal and Sh. Rajinder Mittal.

ii. Vacant Plot measuring 550 sq. yards situated at street no-3, Bibi wala Road, Bathinda, Punjab in name of Smt Jaswinder kaur and Sh. Paramjeet Singh.

iii. Residential House constructed on the plot measuring 1503.00 sq. yards as per Deed, comprising in khasra No 5964/2879 min 28888 situated at street no. Bhagu Road Backside Mahnikhera Property advisor registered vide RTD NO 8076 in the name of Shri

Harvinder Singla.

(All the personal guarantees, mortgaged properties of the Guarantors and all hypothecated assets of the corporate debtor shall be released by PNB on receipt of entire settlement amount. PNB shall issue No Due Certificate on receipt of entire settlement of amount as per Resolution Plan and shall satisfy all the outstanding charges).

10. As regards the fair value and liquidation value of the Corporate Debtor, two Valuers reports are filed at Annexure A-5 of the petition. However, no such Valuers reports are filed in respect of the land/properties mortgaged to Punjab National Bank by the personal guarantors for securing the loans of the Corporate Debtor. Taking into consideration this position and also the extent of the amount received by the Financial Creditor in recovery of the loan, an opportunity was given to Punjab National Bank by order dated 13.11.2018. On 17.12.2018, the learned counsel for Punjab National Bank, on instructions, submitted that the Financial Creditor has no objection to the resolution plan. It has been held in para 42 of K. Sashidhar Vs. Indian Overseas Bank & Ors.(Civil Appeal No.10673 of 2018 dated 05.02.2019) by the Hon'ble Supreme Court *inter alia* that no corresponding provision has been envisaged by the legislature to empower the resolution professional, the Adjudicating Authority (NCLT) or for that matter the appellate authority (NCLAT), to reverse the "commercial decision" of the CoC. It was also held that whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating

authority or the appellate authority. In view of the above discussion, the decision taken by the sole Financial Creditor i.e Punjab National Bank falls within the ambit of its commercial and banking wisdom and is therefore, not being interfered with.

11. Section 29A of the Code relates to persons not eligible to be resolution applicant. Section 29A(c) of the Code states *inter alia* that a person shall not be eligible to submit a resolution plan if such person at the time of submission of the resolution plan has an account of a corporate debtor of whom such person is a promoter classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India and at least a period of 1 year has elapsed from the date of such classification till the date of commencement of CIRP of the Corporate Debtor. As per information memorandum (Annexure A-6 of the application), the Debtor defaulted in payment of its dues to Financial Creditor, Punjab National Bank and hence the account was classified as NPA on 20.04.2015. Therefore, the conditions provided for in Section 29A(c) of the Code being satisfied, the resolution applicants being Directors of the suspended Board of Director of the Corporate Debtor are not eligible to submit a resolution plan. However, Section 240A inserted by Act 26 of 2018, Sec 37 (w.e.f. 06.06.2018) *inter alia* states that notwithstanding anything to the contrary contained in the Code, the provisions of clause (c) of Section 29A shall not apply to the resolution applicant in respect of CIRP of any Micro, Small and Medium Enterprises (MSME). The Explanation to Section 240A of the Code states that for the purpose of the Section, the expression MSME means any class or classes of enterprises classified as such under sub section (1) of Section 7 of

the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act, 2006).

12. Section 7(1) of the MSMED Act, 2006 refers to classification of enterprises in two categories (a) enterprises engaged in the manufacture or production of goods pertaining to an industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951; (b) enterprises engaged in providing or rendering of services. It is noticed that for the first category, the notification of the enterprises was made by S.O.1642(E) dated 29.09.2006 of the Ministry of Small Scale Industries read with S.O. 199(E) dated 16.01.2009 of the Ministry of Micro, Small and Medium Enterprises. However, no such similar notification has been brought to our notice by the RP or the resolution applicant in respect of the second category of enterprises referred above i..e. enterprises engaged in providing or rendering of services. The resolution applicant has submitted a copy of certificate issued by the General Manager, Distt. Industries Centre, Bhatinda reading as under:-

> *Certified that M/s Ambey Consgtruction Co. having regd. office at H.No.21605 treet No.7, Power House Road, Bhatinda, Punjab 151001 is registered under Small Scale Unit vide Registration No.03/14/12/00008 dated 28.03.2007. The unit name is changed from Ambey Construcftion Co. to M/s Ambey construtech Private Limited, Regd. office at H.No.21605, Street No.7, Power House Road, Bhatinda w.e.f. 20.12.2011 as per R.O.C. Chandigarh vide CIN No. is U45200PB2011PTC035768.*
>
> *The same is registered on 24.12.2012 in our records.*

13. Reference has been made to D.O. No.2(3)/1/2007-MSME POL dated 16.11.2007 of the Joint Secretary and Additional Development Commissioner, Ministry of Micro, Small and Medium Enterprises, Govt. of India. It is seen that the first para of the D.O. refers to Section 7(1)(b) of the Micro, Small and Medium Enterprises Development Act, 2006, which has come into force w.e.f. 02.10.2006 clarifying service enterprises as Micro, Small or Medium based on the investment in the "Equipments" and Section 8 (1)(a) and (b) of the Act providing for filing of Entrepreneurs Memorandum (EM) by such enterprises. Para No.3 of the D.O. *inter alia* states that an illustrative list of activities classified as service activities by WTO/GATT which can be acknowledged as service enterprises under the MSMED Act, 2006 is enclosed for reference to avoid delays in the acknowledgement of the EMs for Service Enterprises. It is argued that the Debtor is covered by Part-3 of the Services Sectoral Classification List - Construction and Related Engineering Services. It is further submitted that by notification No.10/57/06-AS4/2089 dated 31.10.2006, issued by the Principal Secretary to Government of Punjab, Department of Industries and Commerce, the General Managers, Distt. Industries Centres in the State have been designated as the authorities with which the memorandum shall be filed by a person who intends to establish or has already established a Micro or Small Enterprise as specified in clause (a) of sub section (1) of Section 8 of the said Act.

14. We have noted above that in respect of enterprises engaged in providing or rendering of services, there is no notification similar to the notification issued in respect of enterprises falling within Section 7(1) (a) of the

MSMED Act, 2006. We are therefore, of the view that the reliance by the learned counsel for the resolution applicant on the D.O. dated 16.11.2007 (*supra*) of the Ministry of Micro, Small and Medium Enterprises notification dated 31.10.2006 (*supra*) of Government of India and Department of Industries and Commerce, Govt. of Punjab, albeit with reference to filing of Entrepreneurs Memorandum (EM), is justified. The copy of the provisional balance sheet of the Debtor showing investment in plant and machinery satisfying the criteria of MSME in Section 7 of the MSMED Act, 2006 as at 13.02.2018 (date of initiation of CIRP) has been filed at Annexure A-1A of the application. Copy of affidavit dated 11.07.2018 of eligibility under Section 29A of the Code of Shri Puneet Garg, Director of suspended Board of Directors of the Debtor is filed at Annexure A-9 of the application. It is *inter alia* stated in the minutes of 10th COC meeting that the RP further mentioned that eligibility of the resolution applicant was examined under section 29A of the Code and the resolution applicants were found eligible to give the resolution plan. In view of the certificate given by the General Manager, Distt. Industries Centre, Bhatinda (*supra*) and the discussion made above, it is held that the benefit of Section 240A(1) of the Code is available to the resolution applicants i.e. Shri Puneet Garg and Shri Harvinder Pal Singla, Directors of the suspended Board of Directors of the Corporate Debtor and they are therefore, eligible under Section 29A of the Code.

15. The present application is filed for approval by the Adjudicating Authority of the resolution plan under Section 31(1) of the Code which reads as follows:-

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

16. We have already discussed above that the resolution plan has been approved by the CoC under Section 30(4) in the 10th CoC meeting held on 22.10.2018 by a vote of 100% of voting share of the Financial Creditor. The requirements as referred to in Section 30(2) of the Code are as below:-

> *"The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—*
>
> *(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;*
>
> *(b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;*
>
> *(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;*
>
> *(d) the implementation and supervision of the resolution plan;*
>
> *(e) does not contravene any of the provisions of the law for the time being in force;*
>
> *(f) conforms to such other requirements as may be specified by the Board.*
>
> ***Explanation**- For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of*

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 contravention of that Act or law."

17. In clause 9 of the revised form H (Diary No.106 dated 09.01.2019), the Resolution Professional has given the compliance of the resolution plan as under:-

Section of the Code / Regulation No.	**Requirement with respect to Resolution Plan**	**Clause of Resolution Plan**	**Compliance (Yes / No)**
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the COC having regard to the complexity and scale of operations of business of the CD?	I GEN INFO	Yes Res. Plan discussed in three COC meetings and was found compliant-page 190, 198, 205.
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	I GEN INFO	Yes In view of sec 240A Res. Applicant is qualified.
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	I GEN INFO	Yes Undertaking is at page 213
Section	Whether the		

30(2)	Resolution Plan: (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment of the debts of operational creditors? (c) provides for the management of the affairs of the Corporate debtor? (d) provides for the implementation and supervision of the resolution plan? (e) Contravenes any of the provisions of the law for the time being in force?	4.1 4.2 4.10 4.11	Yes NA Yes Yes No
Section 30(4)	Whether the Resolution Plan (a) Is feasible and viable, according to the COC? (b) Has been approved by the COC with 66% voting share?	4.13 4.13	Yes Yes Approval of COC is at page 209
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation	4.4.4	Yes being a straight forward plan of payment

	plan, according to the COC?		there is adequate provision for its effective implementation.
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	The Res. Professional is of the opinion that no transactions are covered under sections 43,45,50 or 60.	
Regulation 38 (1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the – (a) Insolvency resolution process costs? (b) Liquidation value due to operational creditors? (c) Liquidation value due to dissenting	 I 4.4.4 Nil	 Yes Nil Nil

	financial creditors?		
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	4.1	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) Adequate means for supervising its implementation?	4.9 4.10 4.11	Yes Yes Yes
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals	4.10 4.10 4.4.4 4.4.4	Yes Yes Yes Yes

	required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	 4.4.4	 Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Res. Professional has not observed any transactions those need to be filed against the promoter director, so no application has been filed.	

18. The compliance of the conditions provided for in Section 30(2) of the Code is discussed as under:-

Section 30(2)(a):- We find that in para 4.1 of the resolution plan (Annexure A-7 of the application), it has been stated that the insolvency resolution process cost shall be paid first and recovered from the resolution plan amount of ₹650 lacs. Agenda item No.6 of 10th CoC meeting (*supra*) inter alia records that in case insolvency resolution process cost exceeds ₹5.00 lacs, the resolution applicant undertakes to bring further funds to meet such excess.

Section 30(2) (b):- It is stated in para 4.2 of the resolution plan that there is no claim filed by any Operational Creditor and therefore, nothing is proposed to be paid to them. It is further submitted that since the liquidation value is assumed as NIL, Nil payment is proposed for

Operational Creditors. We have already discussed above that the liquidation value as stated in revised Form H is ₹23.24 lacs whereas the claim of the secured Financial Creditor Punjab National Bank is much more i.e. ₹1920.04 lacs. Therefore, the liquidation value for the Operational Creditors is NIL.

In para 4.3 to 4.3.4 of the resolution plan, it has been stated that 100% waiver of the dues of the statutory creditors is sought since no claim has been filed and the liquidation value for payment of statutory dues will be NIL. It is stated in in para 4.3.1 that there is VAT payable for ₹130275/- for FY 2013-14 and there is also contingent liability for Income Tax for A.Y. 2011-12 ₹7,54,56,990/- and A.Y. 2012-13 ₹84,46,250/-. <u>The waiver of statutory dues is to be decided by the respective government departments. Therefore, no approval for waiver of statutory dues is being given in this order.</u>

<u>Section 30(2)(c)</u>:- Para 4.10 of the resolution plan states that it is proposed that the resolution applicant shall take over the management and control of the Corporate Debtor during the term of the resolution plan; the resolution applicants will introduce the required amount from their sources as long term funds to revive the company; the fixed assets available with the Corporate Debtor will be utilised for reviving new construction contracts to be bid by the Corporate Debtor. It is further stated that the main reason for default in the past had been non-availability and non-extension of bank guarantees by the bank with the result that the Corporate Debtor could not bag new contracts and pursue

the existing contracts. It is stated that now the promoters have decided to act as sub-contractors where there is no need of providing bank guarantee.

Section 30(2) (d):- The minutes of the 10th meeting of the CoC held on 22.10.2018 (*supra*) (Agenda item No.6) *inter alia* notes that the resolution plan will be implemented and supervised by the existing RP at a fee mutually agreed between the resolution applicant and the existing RP. It is noted that the remuneration was discussed and fixed at ₹75,000/- per month commencing from 12.11.2018 till the implementation of complete resolution plan. It is noted in the minutes that the management of the Corporate Debtor will report to the RP. It is stated in the minutes that extinguishment of liability and release of company's assets/charge will take place once full and final payment is made to the Financial Creditor and after this complete ownership of 100% will be transferred to the resolution applicant.

Section 30 (2) (e):- It has been stated by the RP in the revised Form H filed by Diary No.106 dated 09.01.2019 that the resolution plan does not contravene any of the provisions of the law for the time being in force.

Section 30(2)(f):- In the revised Form H (*supra*) the RP has discussed the compliance of the Regulations 38(1), 38(1A) 38(2) and 38(3) of the Regulations and has stated that compliance of these Regulations has been made. Regulations 35A and 39(2) of the Regulations relate to transaction of the nature covered under Section 43, 45, 50 and 66 of the Code. It has been stated in the revised Form H (*supra*) that the RP is of the opinion that no transactions are covered under the above sections and therefore, application need not be filed against the promoter/Directors.

Proviso to Section 31(1) of the Code:- We find that as per the resolution plan, ₹645 lacs is to be paid to the Financial Creditor and the CIRP cost are ₹5.00 lacs. As per para 4.4.1 of the resolution plan (*supra*), the resolution applicants are to bring in the amount from their own sources i.e. by way of disposal of their personal belongings and arranging of funds from their friends and relatives particularly from Shri Narinder Mittal resident of Bhatinda. The payment schedule is given in agenda item No.6 of the 10th meeting of COC (*supra*). The table is already extracted in para 7 above. The implementation and supervision of resolution plan is to be made by the existing RP and the management of the Corporate Debtor is also to report to him. Further, the extinguishment of liability and release of the company's assets/charge is to take place only when full and final payment is made to the Financial Creditor.

19. We have made discussion above regarding the eligibility of the resolution applicants under Section 29A of the Code as well as the satisfaction of the requirements under Section 30(2) and proviso to Section 31(1) of the Code. In the revised form H (Diary No.106 dated 9.1.2019), the RP has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the

time being in force and the resolution plan has been approved by the CoC in accordance with the provisions of the Code and Regulations by 100% voting share of Financial Creditor after considering its feasibility and viability and other requirements specified by the Regulations.

20. Under the provisions of Section 31(1) of the Code, the resolution plan as approved by the CoC under Section 30(4) of the Code is therefore, approved subject to the observations made in para No.18 (*supra*) that waiver of statutory dues will be decided by the respective government departments. Pursuant to provisions of Section 31(1) of the Code, we direct that the approved resolution plan shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan (except in respect of statutory dues) (*supra*).

21. We also direct as under:-

(a) The moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect;

(*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.

(c) As regards Section 31(4) of the Code relating to resolution applicant obtaining necessary approval required under any law for the time being in force, the same is not applicable in the present case in view of para 11 of the revised Form H (*supra*) in which it is stated that obtaining of approvals is not applicable in the present case.

22. In result thereof, CA No.509/2018 stands disposed of.

Pronounced in open court.

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

February 20, 2019
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