



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV

IA No. 1576 of 2021
and

IA No. 333 of 2021

IN

CP No. (IB) 2176/ (MB)/ C-IV/ 2019

*In the matter of Application under section 30(6) for
approval of Resolution Plan under section 31(1) of the
Insolvency and Bankruptcy Code, 2016.*

In the matter of :

Mr. Mukesh Verma

Resolution Professional
of the Corporate Debtor

In the matter of :

Punjab National Bank

... Financial Creditor

Versus

J-Marks Exim (India) Private Limited

...Corporate Debtor

Order delivered on 19.04.2023

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Shri Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing)

For the Applicant

:

Mr. Sarosh E. Bharocha for the
Resolution Professional/ Applicant.



ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Bench is convened by videoconference today.
2. This Application under Section 30(6), 31 and 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) seeks the approval of the Resolution Plan submitted by the Successful Resolution Applicant.
 - 2.1 The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 25.05.2020 under section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Mukesh Verma, was appointed as Interim Resolution Professional, who was appointed as Resolution Professional (RP) of the Corporate Debtor vide resolution passed by CoC in its 2nd meeting held on 11.07.2020.
 - 2.2 It is submitted that the period of CIRP was extended by 90 days upto 20.02.2021 vide order dated 25.01.2021. It was further extended vide order dated 01.03.2021 for a period of 158 days wherein the period from 26.05.2020 to 30.10.2020 was excluded on account of the Covid Lockdown as stated in form H.
 - 2.3 The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor.



The RP issued Form-A under Regulation 6 dated 08.06.2020 calling the creditors to submit their claims. The last date for submission of proof of claim was 19.06.2022.

- 2.4 Furthermore, the Applicant after approval from the CoC in the 3rd CoC Meeting held on 08.08.2020 published Form G dated 09.08.2020 inviting Expression of Interest from Prospective Resolution Applicants.
- 2.5 As the said form G did not elicit any response, the Applicant published another Form G dated 03.09.2020. However, the said invitation for expression of interest also did not elicit any response, thus, the Applicant, after instruction from the CoC in its 8th CoC Meeting held on 12.11.2020 again published Form G dated 21.11.2020 wherein the last date for receipt of Expression of Interest was 06.12.2020 which was further extended by 02 days by the CoC till 08.12.2020 and the last date for submission of Resolution Plan was 01.02.2021.
- 2.6 In pursuance to the publication of Form G dated 21.11.2020, the provisional list of Prospective Resolution applicants was issued on 16.12.2020 and the Final list of Prospective Resolution Applicants was issued on 27.12.2020.
- 2.7 The applicant further states that, the Applicant had received two Resolution Plan namely from Steel Line (India) and M/s Puneet Alag; and the financial offers submitted by Both the Resolution Applicants were further revised and enhanced, and subsequently deliberated by



the CoC in the meetings held on 08.02.202, 10.02.2021 and 12.02.2021.

2.8 At the 12th CoC meeting held on 26.02.2021, the Resolution Plans received by the Applicant was to put forth for voting. The Applicant sought vote of the CoC members by electronic voting means, which was kept open for at least 24 hours, in accordance with the Regulation 26 of the CIRP Regulations on 01.03.2021. The said voting window was closed on 30.04.2021 after Multiple extensions.

2.9 Pursuant to this, the Resolution plan submitted by the M/s Steel Line (India) Private Limited was approved unanimously by the CoC as per Voting results of the CoC Members and was declared as Successful Resolution Applicant. The other plan submitted by M/s Puneet Alag was rejected by 100% vote.

2.10 The result of e-voting conducted was as follows:

Sr. No.	Details of Financial Creditors	Voting Preference	Percentage of Vote
1.	IDBI Bank Ltd	Assent	35.09%
2.	PNB	Assent	37.16%
3.	Edelweiss ARC Ltd	Assent	27.73%
4.	Jeenal R Shah	Assent	0.02

3. The salient features of the approved Resolution Plan of Successful Resolution Applicant are as follows:

- i. The summary of payments proposed to be made under the plan are as follows :



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV

IA No. 1576 of 2021
AND
IA No. 333 of 2021
IN
CP No. (IB) 2176/(MB)/ C-IV/ 2019

Sr. No.	Description	Amount
1.	CIRP Cost	At actuals 8,67,28,414
2.	Secured Financial Creditors	(less CIRP cost)
3.	Unsecured Financial Creditors	5,00,000
4.	Operational Creditors including Statutory Liabilities (Income Tax + Service Tax & Others) and other Creditors	18,71,586
5.	Workmen & Employees dues including gratuity	0.00
6.	Any other Liability, incl – contingent liabilities	0.00
	TOTAL OUTLAY UNDER THE RESOLUTION PLAN	8,91,00,000

Clause 4.5: Summary Proposal of Resolution Applicant

Sr. No.	Particulars	Amount
1.	Payment towards CIRP Cost	At actuals – within 15 days from the Effective date
2.	Upfront payment to Operational Creditors Settlement amount including statutory and other creditors	INR 18,71,586 (Within 15 days from the effective Date) i. INR 6,34,867/- towards Earth Castle Premises Cooperative Society Ltd. ii. INR 12,36,719/- towards The Brihanmumbai Electric Supply and Transport Undertaking.
3.	Upfront cash recovery to Secured Financial Creditors	INR 2,50,00,000/- less CIRP Cost at actuals.
4.	Proposed Deferred Payment for Secured Financial Creditors.	Financial Creditors i. INR 68,64,427/- less CIRP Cost at actuals (within 15 days from the Effective date). ii. INR 1,81,35,573/- (within 30 days from the Effective date).



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV

IA No. 1576 of 2021
AND
IA No. 333 of 2021
IN
CP No. (IB) 2176/(MB)/ C-IV/ 2019

		iii. INR 1,37,00,000/- (within 45 days from the Effective date). iv. INR 1,37,00,000/- (within 60 days from the Effective date). v. INR 1,37,00,000/- (within 75 days from the Effective date). vi. INR 2,06,28,414/- (within 90 days from the Effective date).
5.	Upfront cash recovery to Unsecured Financial Creditors	Unsecured Financial Creditors (Ms. Jeenal R Shah) i. INR 5,00,000/- (within 15 days from the Effective date)
6.	Payment towards Admitted claim of State Tax Department	Nil
7.	Payment towards outstanding employee and workmen dues including Gratuity	NA
8.	Equity upside to Financial Creditors	NA
9.	Provident Fund for Workmen & Employees	NA

Clause 4.6 Details of Settlement Plan to various Creditors

<i>Sr. No.</i>	<i>Parameters</i>	<i>Amount Payable</i>	<i>Sources of Funds</i>	<i>Description of Proposal</i>
1.	Upfront Cash Recovery for Secured Financial Creditors.	INR 2,50,00,000/- less CIRP Cost at actuals	Please refer Clause 7	Please refer Clause 5.3.4 (a)
2.	Upfront Cash Recovery for Unsecured Financial Creditors (Ms. Jeenal Shah)	INR 5,00,000/-	Please refer Clause 7	Please refer Clause 5.3.4 (b)
3.	NPV of Payment to Financial Creditors	INR 8,64,36,901/-	NA	NA
4.	Equity allotment to Financial Creditors	NA	NA	NA
5.	Treatment of Other Stakeholders (other than Financial Creditors)			
4a	Operational Creditors including Statutory Liabilities	INR 18,71,586/-	Please refer Clause 7	Please refer Clause 5.3.3
4b	Employees and Workmen dues including gratuity & EPF.	NA	NA	Please refer Clause 5.3.5



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV

IA No. 1576 of 2021
AND
IA No. 333 of 2021
IN
CP No. (IB) 2176/(MB)/ C-IV/ 2019

4c	Any other liabilities and Contingent Liabilities	NA	NA	Please refer Clause 5.3.6
----	--	----	----	---------------------------

Clause 4.7 Details of Fresh Capital Infusion

Sr. No	Parameters	Amounts Payable	Sources of Funds
1.	Fresh Capital Infusion	Equity Contribution of INR 1,00,00,000/- shall be brought up- front.	In the form of the equity/other sources from promoters/ investor/ shareholders/ contribution/ Subordinate Debt
		Unsecured Loan/ Quasi Equity of INR 7,91,00,000/- Crores out of which INR 1,73,71,586/- shall be brought up-front (the same shall be subordinated to bank debt)	

This timeline is indicative, and the duration may be less or more. In case the aforementioned timelines are not met then the CoC and the Resolution Applicant will mutually decide the extended timeline for payment in terms of the **Schedule 4. This may also be subject to Business Day conventions.*

4. The Applicant states and submits that
- i. the Resolution Plan is in due compliance with the requirements of Section 30(2) of the Code read with Regulation 38 of the CIRP Regulations and the Resolution Applicant is eligible to submit resolution plan and it does not fall under any of the category as mentioned in Section 29A of the Code;



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV

IA No. 1576 of 2021
AND
IA No. 333 of 2021
IN
CP No. (IB) 2176/(MB)/ C-IV/ 2019

- ii. the Resolution Plan has been approved by the CoC by 100% vote in their commercial wisdom as they have found the plan to be viable and feasible;
- iii. he has filed IA no.1148/2021 in relation to Avoidance Transaction u/s 44 & 66 of the Code, which is pending before Adjudicating Authority; and
- iv. The Resolution Plan is not subject to any contingency and is filed 25 days before the expiry of the period of CIRP provided in section 12 of the Code.
5. The details of Creditor's claims admitted by the Resolution Professional claims and the amount provided against such claims in the plan are as follows:

Sr. No.	Nature of Creditors	Amount Claimed (In Lakhs)	Amount Admitted (In Lakhs)	Amount provided in the Plan (In Lakhs)	Amount provided to the amount claimed (In Lakhs)
1	Secured Financial Creditor (who voted in favor of the Resolution Plan)	53,48,42,502	53,48,42,502	53,48,42,502	53,48,42,502
2	Unsecured Financial Creditor	-	-	-	-
3	Operational Creditors	1,07,156	1,07,156	1,07,156	1,07,156
4	Other Creditors	-	-	-	
5	Workmen and Employees	-	-	-	
6	Statutory Dues	-	-	-	
7	Other Debts and Dues	-	-	-	
Grand Total		53,48,42,502	53,48,42,502	53,48,42,502	53,48,42,502



6. The Applicant has filed application along with Form 'H' prescribed under Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and has appended a tabular summary of Applicant's determination of compliance of the Resolution Plan with various provisions and regulations under the Code and CIRP Regulations and has declared that-
- a. The Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of Operations;
 - b. The Resolution Applicant is eligible to submit resolution plan as per the final list of Resolution Professional;
 - c. The Resolution Applicant has submitted an Affidavit stating that it is eligible;
 - d. The Resolution Plan-
 - i. provides for the payment of insolvency resolution process costs;
 - ii. provides for the payment to the operational creditors;
 - iii. provides for the payment to the financial creditors who did not vote in favour of the resolution plan.
 - iv. provides for the management of the affairs of the Corporate Debtor.
 - v. provides for the implementation and supervision of the resolution plan.
 - vi. Contravenes any of the provisions of the law for the time being in force.
 - e. The Resolution Plan-
 - i. is feasible and viable according to the CoC, and
 - ii. has been approved by the CoC with 66% voting share;
 - f. The Resolution plan has provisions for its effective implementation plan, according to the CoC;



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV

IA No. 1576 of 2021
AND
IA No. 333 of 2021
IN
CP No. (IB) 2176/(MB)/ C-IV/ 2019

- g. The amount due to the operational creditors under the resolution plan has been given priority over financial creditors;
 - h. The Resolution Plan includes a statement as to how it has dealt with the interests of all stakeholders;
 - i. The Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code;
 - j. The Resolution Applicant has submitted the statement giving details of such non-implementation;
 - k. The Resolution Plan provides-
 - i. the term of the plan and its implementation schedule;
 - ii. the management and control of the business of the Corporate Debtor during its term;
 - iii. Adequate means for supervising its implementation.
 - l. The Resolution Plan demonstrates that-
 - i. it addresses the cause of default;
 - ii. it is feasible and viable;
 - iii. it has provisions for its effective implementation;
 - iv. it has provisions for approvals required and the timeline for the same;
 - v. the resolution applicant has the capability to implement the resolution plan.
 - m. The RP has not filed applications in respect of transactions observed, found or determined by him;
 - n. The RP has provided details of performance security received as referred to in sub-regulation (4A) of regulation 36B.
7. We have heard the counsel(s) and perused the material on record.



8. During the course of hearing in the present application, we asked the Ld. Counsel to clarify whether VAT/Sales Tax dues have been treated in accordance with the decision of Hon'ble Supreme Court in case of Rainbow Papers Limited; and why payment towards statutory dues and unsecured financial debt of IDBI is NIL. The Ld. Counsel filed a affidavit dated 29.01.2023 clarifying that the statutory dues pertain to demands raised by Maharashtra VAT authorities; the decision in case of Rainbow Papers Limited is distinguishable as Maharashtra VAT Act does not contemplate lien as is case under Gujarat VAT Act; and the liquidation value for these statutory dues is NIL. It was further submitted that the interest of IDBI has already been taken care under allocation of amounts payable to secured financial creditors and IDBI has voted in favour of the plan. As regards discrimination within class of Operational Debts i.e. Electricity dues claim vis a vis Statutory due claim, it was submitted that different sub-class under a class, which are separately and distinctly identifiable, cannot be said to result into discrimination. However, vide Additional Affidavit dated 10.03.2023, the applicant stated that the Successful Resolution Applicant has agreed for treating the two Operational Creditors namely Best undertaking and Earth castle Premises Cooperative Societies limited at par and proportional distribution of the amount allocated to the Operational Creditors between the two, without any change in the allocation of the amount for the Financial Creditors and COC has also approved the same with 99.98% vote.
9. This Application was reserved for orders on 13.03.2023. On perusal of the material before us, we noticed that the order dated 1.3.2021 allowing exclusion of period of 158 days on account of COVID is not on record and the file also does not contain any order fixing the hearing in any Application



on 1.3.2021. Accordingly, we listed this application for clarification and was told that the applicant had also not received copy of any such order, however, the said exclusion was ordered in open court. To support his contention, the applicant produced before us cause list of 1.3.2021 on 31.3.2023, where we noticed that an application no. 333/2021 was listed for hearing under CP No. (IB) 2176/(MB)/C-IV/2019, and said application pertain to such exclusion and is lying undisposed. In view of this, we de-reserved this matter to consider and dispose off IA No.333/2021 before proceeding to consider present application. The IA No. 333/2021 was listed on 10.04.2023 alongwith present application; Ld. Counsel was heard on that date; and both IAs were reserved for order. After considering the prayer and the fact that the Resolution Plan has already been approved by 100% vote and the is lying before us for final approval of Adjudicating Authority, **we allow IA No. 333/2021 and order exclusion of 158 days(starting from the date of order passed by the Adjudicating Authority 27.05.2020 till 31.10.2020).**

10. We note that no application has been filed by any person opposing the plan and IA no 1148/2021 relating to avoidance transactions is pending before us. The Resolution professional has submitted that all claims received by him have been considered and no claim has been received from any workmen or employees relating to Provident Fund, ESI or Gratuity. Accordingly, we feel that the Resolution plan meets the requirement of section 30(2) of the Code and deserve to be approved.

ORDER

11. The Interlocutory Application No. 1576 of 2021 is allowed. The Resolution Plan submitted by the Steel Line (India) is hereby approved. It shall become



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV

IA No. 1576 of 2021
AND
IA No. 333 of 2021
IN
CP No. (IB) 2176/(MB)/ C-IV/ 2019

effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

12. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
13. The moratorium under Section 14 of the Code shall cease to have effect from this date.
14. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
15. The pending IA no. 1148/2021 pertaining to Avoidance Transaction u/s 43 & 66 of the Code shall be pursued by the Committee of Creditors in the manner decided by them and the proceeds of recovery from such transactions if any shall be distributed among the Financial Creditors up to the settlement of their admitted claims. If any sum is left after such satisfaction, the same



shall be distributed amongst other creditors in accordance with 53 of the code.

16. In terms of the judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited***, “on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV

IA No. 1576 of 2021
AND
IA No. 333 of 2021
IN
CP No. (IB) 2176/(MB)/ C-IV/ 2019

in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

17. In the view of the above judgement the applicant is entitled to waivers/ concessions/ reliefs as expressly provided under the Code and under any other law for the time being in force. Further, any application for renewal or extension or restoration of any license or approval or connection from any authority shall be subject to payment of prescribed fee and/ or deposit(s) and adherence to the procedure stipulated by such authority, however such authority shall not refuse /deny/approval/extension/restoration merely on ground of previous defaults/non-compliance of the Corporate Debtor.
18. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
19. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
20. The Interlocutory Application No. 1576/2021 and IA 333/2021 in CP No. 2176/2019 is accordingly allowed and disposed of.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)
19.04.2023.

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)