

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-II**

MA. No. 4129/2019

&

IA. No. 904/2021

In

CP(IB)No. 3784/MB/C-II/2018

**Application filed under section 30(6), r/w
Regulation 39(4) of the IBBI (Insolvency
Resolution Process for Corporate Persons)
Regulations, 2016,**

Filed by

**Mr. Hasti Mal Kachhara,
Resolution Professional**

...Applicant

In the matter of

Oriental Bank of Commerce

...Financial Creditor

Versus

Steamline Industries Limited

...Corporate Debtor

Order Pronounced on :- 11.08.2023

Coram:

Shyam Babu Gautam

Member (Technical)

Kuldip Kumar Kareer

Member (Judicial)

Appearances (through video conferencing)

For the Resolution Professional: - Adv Rohit Gupta, PCA Ayush Rajani a/w

Khushbu Shah i/b AKR Advisors LLP

For the SRA

:- Adv. Prakhar Tandon & Adv. Agam Maloo

ORDER

Per: Kuldip Kumar Kareer, Member Judicial

1. The present Interlocutory application is filed by **Mr. Hasti Mal Kachhara** the Applicant, Resolution Professional of **Steamline Industries Limited**, the Corporate Debtor seeking approval of the resolution plan under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 jointly submitted by Invent Assets Securitisation & Reconstruction Company Private Limited and GMT Pipes & Tubes Private Limited. The Plan was duly approved by 100% of the Committee of Creditors (CoC).
2. The Applicant submits that the Financial Creditor, Oriental Bank of Commerce, initiated the Corporate Insolvency Resolution process

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(CIRP) against the Corporate Debtor under Section 7 of the Code on 13.03.2019 and appointed Mr. Hasti Mal Kachhara as the Interim Resolution Professional (IRP).

3. The IRP made public announcements on IBBI website on 09.04.2019 and in the newspapers viz Free Press Journal and Navshakti on 10.04.2019.
4. There were two Financial Creditors and the total claim admitted of the Financial Creditors was Rs. 139,33,41,077.42/-. Further there were 9 Operational Creditors other than Employees and Workmen and the total claim admitted was Rs. 1,45,48,488/-. Further, no claims had been received from any of the employees and workers of the Corporate Debtor, since the same were fully paid by the Insolvency Professional during the CIRP period.
5. The CoC was constituted on 26.04.2019 and the IRP was appointed as the Resolution Professional (RP) on 08.05.2019.
6. The Applicant appointed two registered valuers namely M/s Adriot Valuation Services Pvt. Ltd. & M/s. Kanti Karamsey & CO. Advisors LLP to conduct valuation of assets of the Corporate Debtor.
7. In the 2nd CoC meeting held on 11.06.2019, the RP invited Expression of Interest (EoI) for the purpose of submission of the Resolution Plan. The first advertisement for inviting EoI was published in Free press Journal, Navshakti and Sandesh (Gujarati Edition) on 14.06.2019 and

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for receipt of EoI by 04.07.2019 and receipt of Resolution Plan 15 days prior to the last date of the CIRP. Later the last date for invitation of EoI was extended from 04.07.2019 to 15.07.2019.

8. Seven Prospective Resolution Applicants (PRAs) showed interest and the said was recorded in the 3rd CoC meeting held on 17.07.2019. Further, in the 4th COC meeting held on 07.09.2019, the RP had received only three Resolution Plans and the RP informed the PRAs that the Plan submitted by them will be evaluated as per the Evaluation Matrix as approved by the members of the CoC. In the 6th CoC meeting held on 22.10.2019, the PRA's were asked to submit revised Resolution Plans along with the clarifications/replies as raised by the RP. The RP discussed the terms and conditions of the respective Resolution Plans and thereafter the members of the CoC asked the three bidders to revise their bid. Accordingly, one M/s Invent Assets Securitization and Reconstruction Pvt. Ltd. revised its bid and the members of the CoC also asked other 2 bidders to revise their bids. However, the other two PRA's confirmed that the bid which they had provided earlier was the final one and they would not outbid the highest bidder i.e. M/s Invent Assets Securitisation and Reconstruction Pvt. Ltd.
9. In the 7th CoC meeting held on 22.11.2019, the RP informed the PRA's, that the bids have been shortlisted for Resolution based on evaluation and to submit their Resolution Plans, if any. Further, the RP informed the members of the CoC that one PRA i.e. M/s Invent Assets Securitization and Reconstruction Pvt. Ltd. submitted an addendum dated 25.10.2019 and 19.11.2019 and proposed to pay Rs. 2752.28

Lakhs against the admitted dues of all the Creditors of the Corporate Debtor.

10. In the 8th CoC meeting held on 04.12.2019, Joint Resolution Plan submitted by M/s Invent Assets Securitization and Reconstruction Pvt. Ltd. & GMT Pipes & Tubes Pvt. Ltd. was put to vote and was approved with requisite majority.

11. **Brief Background of the Corporate Debtor**

a. The Corporate Debtor Company was incorporated as a Private Limited Company on 13.08.1991. The Company trades in various range of products like coils, bearings, flanges etc. Reasons which led to severe financial distress of the Corporate Debtor Company are :-

(i) The Corporate Debtor Company was adversely affected due to reasons beyond control of promoters, which includes Anti-dumping duty initiated by the USA, falling of nickel process which led to inventory value loss, announcement of anti-dumping duty by European commission, 19% import duty imposed in India made Raw Material expensive and also the demonetization and the implementation of GST which led to slowdown in the market.

(ii) Sub-optimal capacity utilisation of the Steel Pipes & Tubes plant led to heavy wear and tear of Plant & Machinery.

12. **Brief Background of the Resolution Applicant**

(a) Invent Assets Securitisation and Reconstruction Company Private Limited (Invent) was established in March, 2003. Invent is engaged in the business of acquisition and resolution of Non-Performing financial asset of Banks and Financial Institutions. Till March, 2019, Invent's total acquisitions of assets exceeded Rs. 18500 crores.

(b) GMT pipes and Tubes Private Limited, is incorporated in July, 2017 and is engaged into Manufacturing, Trading and Exporting of range of stainless steel seamless pipes/tubes etc. GMT has achieved turnover of around Rs. 30.37 Crores including exports of Rs. 7.03 Crores for the year 2018 and Rs. 90.85 Crores including exports of Rs. 46.02 Crores in the year 2019.

13. The combined strengths of the Resolution Applicants being expertise to leverage on their existing experiences in Turnaround and additional capital back shall lead to effective resolution of the Corporate Debtor Company.

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**SALIENT FEATURES OF THE APPROVED RESOLUTION
PLAN**

A. The proposed payments under the Resolution Plan are detailed hereunder in a tabular form ;-

(Rs. in Lakhs)

Sr. No	Category of Stakeholder	Amount claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Claimed (%)
1.	CIRP Cost			25	
2.	Secured Financial Creditors	13933.41	13933.41	2499.45*	17.94%
3.	Other Unsecured Financial Creditors	2563.92	22221.43	0	0%

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4.	Operational Creditors	1.25	0.70	0.04	3.2%
5.	Workmen & Employees	0	0	0	0%
6.	Government	4141.36	144.78	7.24	0.17%
	Total	20,639.94	16,300.32	2506.73	15.38%

- It includes Rs. 25 Lakhs towards unpaid CIRP costs.

I. The Resolution Plan provides for on first priority, all expenses related to work carried out by the Resolution Professional, to the extent not already discharged from the cash flows of the Company. The unpaid CIRP cost as on date of submission of the Plan is NIL. Resolution Plan provides for Rs. 25 Lakhs towards undischarged Insolvency Resolution Process cost. Additional cost, if any, as determined by the RP on approval of CoC, shall be paid from payments proposed to be paid to financial creditors.

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II. The Applicant herein had filed Additional Affidavit setting out the details of the CIRP cost. The CIRP cost summary (excluding taxes) is hereunder below :-

Particulars	From 13.03.2019 to 11.08.2021	From 12.08.2021 to 30.11.2021	Total From 13.03.2019 to 30.11.2021
(A) CIRP process related costs:	74.32	8.07	82.40
IRP/RP Fees & OPE			
IPE Fees & OPE	55.07	6.00	61.07
Public Announcement (Form A & Form G)	1.48	-	1.48
CoC meeting Expenses	0.78	-	0.78
Valuer Fees & OPE	12.31	-	12.31

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Fees of Legal Advisors	1.83	-	1.83
Transaction Auditor Fees & OPE	2.19	-	2.19
Total (A)	147.99	14.08	162.07
Operating Cost for running CD as a Going Concern (B)	1646.56	283.17	1929.73
Total (A+B)	1794.55	297.25	2091.80
Total (A+B) (in Rs Crores)	17.95	2.97	20.92

III. The Resolution Applicant states that the Corporate Debtor is a going concern and has been running during the entire Corporate Insolvency Resolution Process with an average monthly sales/gross revenue of Rs. 53.68 Lakhs. The CIRP cost has been absorbed from internal resources of the Corporate Debtor and hence no impact has been caused either to the Resolution Applicant or the members of the CoC since the entire financial offer under the Plan will be distributed amongst the stakeholders in view of the provisions of section 53 of the Code.

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- IV. The Resolution Plan provides for payment of Rs. 24,20,00,000/- plus simple interest @ 9% p.a. on the balance outstanding Resolution Plan amount payable to the secured financial lenders within 6 months from effective date till the final date of payment. The interest amount shall be paid along with the final payment towards assignment of debts along with all underlying securities, collaterals, guarantees & admitted claims by the Secured Financial Creditors. The Resolution Applicant shall make upfront down payment of Rs 500 Lakhs within 75 days from the effective date in cash and issue Security receipts to existing secured Financial lenders for Rs. 1920 Lakhs which shall be redeemed within 12 months from the effective date as per the Resolution Plan (effective date shall be the date of Order of approval of the Resolution Plan).
- V. Resolution Plan provides for the Operational Creditors (other than statutory creditors) an amount of Rs. 0.04 Lakhs as in respect to its admitted claims of Rs. 0.70 Lakhs as specified in the information memorandum.
- VI. The Resolution Plan provides for a payment of Rs. 7.24 Lakhs in totality towards current and any future tax liability & statutory litigations which may arise in respect of its admitted claims of Rs. 144.74 Lakhs as on date of submission of plan. These liabilities are recorded as contingent liabilities in the provisional financial statements as on 13.03.2019. payment provided under the Plan towards statutory dues shall be in lieu of tax assessments of all the years upto CIRP date.

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- VII. The Resolution Applicant proposes to revive the operations and business of the Company. It also proposes to retain the services of all the employees of the Company. Thus, the Resolution Plan protects interest of all workmen & Employees.
- VIII. The Resolution Applicant has provided breakup of gross amount to be paid to secured Financial Lenders as follows :-

Particulars	Amount (In Rs.)
Upfront Payment (E + 75 Days)	5,00,00,000/-
1 st Payment (E + 6 Months)	7,10,00,000/-
2 nd Payment (E + 12 Months)	12,10,00,000/-
Interest Amount (Approx.)	54,45,000/-
Total	24,74,45,000/-

- IX. Further, for the supervision of the Resolution Plan, a Monitoring Committee shall be formed comprising of a representative from Financial Creditors (as decided by CoC), Resolution Applicant as well as any Insolvency Professional (which could include existing Resolution Professional)/Consultant mutually agreed by representative of Secured Financial Creditors and Resolution Applicant to supervise the implementation of the Resolution Plan.
- X. The Applicant further submits that the Resolution Plan submitted is in compliance with **Section 30 (2) of the Code and Regulation 38**

(A) of the CIRP Regulations. The RP has provided a compliance certificate in “**FORM H**” as mandated under the Code for seeking approval of the Resolution Plan from this Bench.

OBSERVATIONS OF THE ADJUDICATING AUTHORITY

14. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.
15. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.
16. Further, it is observed that Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan,
 - a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;
 - b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than,
 - i. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

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- ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation - For the purpose of this section –

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and
- (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

c) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

a) The implementation and supervision of the resolution plan;

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- b) Does not contravene any of the provisions of the law for the time being in force;
- c) Confirms to such other requirements as may be specified by the Board.

17. Section 30 (4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.

18. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

19. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
- c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified u/s 30(2)(c) of the Code.
- d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

20. The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code. In terms of Regulation 27 of the Regulations, Liquidation value was ascertained through two registered valuers. The aggregate of the average of Fair Value of all the assets is Rs. 43.08 Crore and the Liquidation value of assets is Rs. 24.50 Crore.

21. The RP has complied with the requirements of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.

22. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of The Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.

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23. The Resolution Plan has been approved by the CoC in the with 100% votes in terms of Section 30(4) of the Code.

24. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by CoC, meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

25. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom has approved. In para 42 Hon'ble Court observed as under:

"Thus, it is clear that the limited judicial review available,

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*which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

26. In view of the discussions and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. We are thus inclined to allow the Application in the following terms.

ORDER

- (i) **The Application IA No. 4129 of 2019 in CP 3784 of 2018 be and the same is allowed.** The Joint Resolution Plan submitted by M/s Invent Assets Securitization & Reconstruction Company Private Ltd. & GMT Pipes & Tubes Private Ltd. is hereby approved. It shall become 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,

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guarantors and other stakeholders involved in the Resolution Plan.

(ii) The Resolution Applicant has filed IA No. 904 of 2021 considering the provisions of Section 32A of the Code that the liabilities of the Corporate Debtor for any offence or default committed prior to the commencement of the CIRP shall cease and the Corporate Debtor shall not be prosecuted for such offence from the date of the Resolution Plan being approved by the Tribunal.

(iii) In view of the above, reliance is placed on in the case of ***Committee of Creditors of Essar Steel India Limited Through Authorised Signatory V/s Satish Kumar Gupta (Civil Appeal No. 8766-67 of 2019)*** it was held that after the approval of the Resolution Plan by the Adjudicating Authority, the Resolution Applicant starts on a fresh slate. A relevant extract of the judgment is as under :-

“A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the Corporate Debtor. Thus, the successful resolution applicant does on a fresh slate, as been pointed out by us hereinabove.

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- (iv) Hence, in view of the above, and approval of the Resolution Plan, the Corporate Debtor is freed from the liability of any offence committed prior to the commencement of the CIRP proceedings but the people who have been in charge of the assets of the Corporate Debtor will continue to be criminally liable and no bars is placed against any agencies to pursue investigations against them. Accordingly, **IA 904 of 2021 is allowed and disposed of.**
- (v) Further, no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.
- (vi) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
- (vii) This Tribunal will not deter such authorities to deal with any of the issues arising after giving effect to the Resolution Plan.
- (viii) As to the Reliefs sought stated in F(l) of the Resolution Plan, the exemption as sought for in relation to the stamp duty or tax liability, registration charges, fees arising out of the implementation of the Resolution Plan is not granted.
- (ix) As to Reliefs sought in F(u) for waiver of any potential direct/indirect tax liability (including but not limited to any potential

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MAT liability, potential liability under Section 56 and 50CA of Income Tax Act, 1961/ interest/ penalty) to be levied in future is not granted.

- (x) As regards the other reliefs and concessions as sought for which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP as stipulated under Section 32A of the Code, is granted to the Resolution Applicants. With regard to other concessions and reliefs, most of them shall stand subsumed in the reliefs granted above.
- (xi) The exemptions, if any, sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- (xii) Further, in terms of the Judgment of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited**, on the date of the approval of the 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 are not a part of the Resolution Plan.
- (xiii) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), for information and record. The Resolution Applicant, for effective implementation of

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the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

- (xiv) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (xv) 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.
- (xvi) The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

**SHYAM BABU GAUTAM
MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
MEMBER (JUDICIAL)**