



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – IV

IA/34/2024

In

C.P.(IB)/1057(MB)2021

(Under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.)

Mr. Rakesh Kumar Tulsyan

...Resolution Professional of the Corporate Debtor

Versus

Bank of Baroda & Ors.

... Respondents

In the matter of:

Sterling Enameled Wires Private Limited

...Financial Creditor

Versus

Nik-San Engineering Company Limited

...Corporate Debtor

Order delivered on 29.08.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member(Judicial)



Appearances:

For the Applicant : Mr. Prakhar Tandon i/b Mr. Agam H. Maloo., Ld. Counsel Applicant.

Resolution Professional Present in person: Mr. Rakesh Kumar Tulsyan.

It is an application filed by Mr. Rakesh Kumar Tulsyan, Resolution Professional of the Corporate Debtor (“RP/Applicant”) under Section 30(6) and Section 31 of the Insolvency & Bankruptcy Code, 2016 (“the Code”) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process Corporate Persons) Regulations, 2016 for seeking approval of Resolution Plan submitted by *M/s. Aesthetic Stampings & Laminations Limited alongwith Abhishek Naresh Choudhary* (referred as to as “Resolution Applicant”), for *Nik-San Engineering Company Limited* (hereinafter called as the “Corporate Debtor”) and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.

Brief Facts:-

1. The Corporate Debtor was admitted into CIRP vide order dated 03.11.2022. The Applicant herein is the Resolution Professional appointed by this Tribunal vide the aforesaid admission order dated 03.11.2022 passed in the above captioned company petition *u/s. 9*. The Applicant has published the FORM-A for public announcement of CIRP on 07.11.2022.



2. After initiation of CIRP, in compliance with Section 13 and Section 15 read with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the Applicant has published the Form – A for public announcement of Corporate Insolvency Resolution Process (hereinafter referred as “CIRP”) in four newspapers namely the *Financial Express* (Mumbai Edition), *Aapala Mahanagar* (Mumbai Edition), *Free Press Gujarat*, (Vadodara Edition), *Lokmitra* (Vadodara Edition) dated **07.11.2022**.
3. The First Meeting of the CoC was conducted by the IRP on **03.12.2022**, wherein the IRP was confirmed as the Resolution Professional (“RP”). The said appointment was duly confirmed by this Bench vide Order dated 03.11.2022. The CoC also approved the appointment of the valuers for different class of assets and auditors and the appointment of Transaction Auditor *M/s BNK & Associates*.
4. The Applicant RP submits that a total of Fourteen CoC meetings were held during the CIRP period.
5. The Company appeal was filed before the Hon’ble NCLAT – New Delhi challenging the admission order dated 3rd November 2022. The said appeal was thereafter dismissed by the Hon’ble NCLAT.
6. Pursuant to the aforesaid the Applicant RP published FORM-G i.e. Notice inviting Expression of Interest (“EOI”) for submission of Resolution Plan for the Corporate Debtor. Accordingly, the said FORM-G was published in 4 newspapers on 17.01.2023.



7. Since, the CIRP period of 180 days was expiring on 02.05.2023. The Applicant/RP filed an application bearing *Interlocutory Application (IBC) No. 1757 of 2023*, seeking an extension of 90 days to the CIRP Period. This Bench was pleased to grant the extension vide Order dated **04.05.2023**.
8. The Applicant/RP in its 4th CoC meeting apprised the receipt of four resolution plans from the Prospective Resolution Applicant(s) (“PRA”) and discussions ensued thereafter in subsequent meetings of the CoC towards materialisation of the Resolution Plan.
9. Meanwhile, the extended CIRP period was coming to an end on 31-07-2023. Accordingly, the Applicant RP filed, an *Interlocutory Application (IBC) no. 3396 (MB) of 2023*, seeking an extension of another 60 days beyond 270 days extending the CIRP period till 30-09-2023. The said Interlocutory Application was allowed by this Tribunal vide order dated **10.08.2023**.
10. During the **11th CoC** meeting held on **25.08.2023**, the Resolution Plans submitted by the top two PRAs for resolution of the Corporate Debtor, namely (a) Aesthetic Stampings & Laminations Ltd. + Abhishek Choudhary and (b) Vilas Transcore Limited, were voted upon.
11. The CoC comprising of sole member, Bank of Baroda approved the Resolution Plan submitted by *Vilas Transcore Limited*. Accordingly, Applicant filed an application under the provisions of Section 30(6) of the Code bearing **IA No 4903 of 2023**, seeking approval of the Resolution Plan submitted by Vilas Transcore Limited.



12. During the pendency of the erstwhile plan approval application, Varsha Engineers (unsecured financial creditor) filed an IA no. 4997 of 2023, seeking to be inducted in the CoC, by granting them proportionate voting rights and permission to participate in the CoC of the Corporate Debtor. Furthermore, an Objection IA No. 5507 of 2023, was filed by the suspended director of the Corporate Debtor (MSME) challenging the decisions of Bank of Baroda (*erstwhile sole CoC member*) in rejecting the Resolution Plan submitted the applicant.
13. This bench vide order dated **06.12.2023** in **IA No. 4997 of 2023** directed to include Varsha Engineers as member of COC. Pursuant to the aforesaid order dated 06.12.2023 the Resolution Plan filed in **IA 4903 of 2023** was remanded back to the COC for fresh reconsideration. As the plan was remanded back to the CoC, this bench also disposed of **IA 5507 of 2023** Objection Application directing the COC to consider the proposal of the Applicant therein on merit and take a decision as per law.
14. Meanwhile, an **Interlocutory Application no.1086 of 2024**, was filed seeking an extension of another 84 days beyond 330 days from **07.12.2023** to **29.02.2024** and **Interlocutory Application no.1411 of 2024** seeking further extension of another 30 days which were *allowed* by this Tribunal vide order dated **14.05.2024**.
15. In view of the aforesaid facts iterated hereinabove, the COC was reconstituted and **14th CoC** meeting was held on **15.02.2024**, wherein, a Resolution Plan filed by **Aesthetic Stampings & Laminations Ltd. + Abhishek Choudhary** was approved by the CoC with 100% majority.



16. After perusing the material available on record, the said matter was listed on **03.07.2024** this tribunal has observed that e-voting for the **14th COC** meeting and **15th COC** meeting had not been annexed to the present application. Therefore, the applicant was directed to file the same by way on an Additional Affidavit. The applicant has complied with the same.

Salient features of the Resolution Plan

17. The Applicant RP submits that the Resolution Plan on behalf of the Successful Resolution Applicant viz. ***Aesthetic Stampings & Laminations Ltd. + Abhishek Choudhary*** proposes a payment of INR 30,65,84,377/- Crores apropos the timelines , in the manner as encapsulated hereunder:

<i>Category of Creditor</i>	<i>Claim admitted Amount</i>	<i>Payment as per the Resolution Plan</i>	<i>Timeline</i>
<i>CIRP cost</i>	<i>1,50,00,000.00</i>	<i>1,25,00,000.00 Or on actual basis.</i>	<i>Within 15 days of the approval of the Resolution Plan by, this Tribunal; In case the CIRP cost exceeds this balance, the deficit amount will be borne by the Resolution Applicant. The CIRP cost has already reached to around 1,25,00,000/- as informed by the Resolution Professional, therefore the scenario of CIRP cost being less than the proposed amount is unlikely.</i>

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			<i>The CIRP cost covers all the costs as defined in the code.</i>
<i>Secured Financial Creditors</i>	<i>15,09,94,786.00</i>	<i>8,74,64,280.00 against fund based Rs. 6,35,30,507 against non-fund based loans</i>	<i>Rs. 8,74,64,280 Within 15 days (Including Performance Guarantee and EMD) of the approval of the Resolution Plan by this Tribunal; The Bank of Baroda has live Bank Guarantees amounting to Rs. 6,35,30,507 which the Resolution Applicant is desirous of continuing. The Resolution Applicant will offer Fixed Deposit amounting to 100% of the total bank guarantee amount as the margin money after the approval of Resolution Plan against the said bank guarantees.</i>
<i>Unsecured Financial Creditor</i>	<i>1,56,66,256</i>	<i>1,56,66,256</i>	<i>Rs. 1,56,66,256 Within 15 days of the approval of Resolution Plan by this Tribunal;</i>

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<i>Employees</i>	--	--	--	
<i>Workmen</i>	--	--	--	
<i>Operational Creditors</i>	<i>Govt. Dues</i>	--	--	--
	<i>Operational Creditors other than Govt. Dues</i>	10,63,25,928	2,39,23,334.00	<i>Within 15 days of the approval of the Resolution Plan this by Tribunal;</i>
TOTAL		20,30,84,377.00 <i>(Twenty crores- Thirty Lakhs Eighty Four Thousand Three Hundred Seventy Seven only)</i>		
<i>Towards Working Capital</i>	--	10,00,00,000/-		<i>Rs. 10.00 crores will be infused in the corporate Debtor within the next 24 months from the effective date for maintenance and capacity upgradation of the existing machineries.</i>
<i>Litigation Cost</i>		5,00,000/-		<i>Rs. 5,00,000 will be kept aside to deal with litigation regarding CIRP.</i>

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<i>Working Capital for Running during CIRP period post Approval from COC</i>		30,00,000/-	
<i>Total</i>		30,65,84,377/-	

18. As per the Applicant RP, the averages of the Fair Value and Liquidation Value have been determined by the 2 Registered Valuers. The said determination of the requisite Fair Value and Liquidation Value, as provided in FORM-H, are as hereunder:

Fair Value:

Rs.13,94,95,493/- (Indian rupees thirteen crores, ninety- four lakhs, ninety-five thousand, four hundred and ninety-three only)

Liquidation Value:

Rs. 9,96,09,991/- (Indian rupees Nine crores ninety-six lakhs, nine thousand, nine hundred ninety-one only)

19. The Successful Resolution Applicant viz. *M/s. Aesthetic Stampings & Laminations Limited alongwith Abhishek Naresh Choudhary*, has further confirmed that it is eligible to submit the Resolution Plan in consonance with Section 29A of IBC, 2016.



20. The Learned Counsel for the Applicant Resolution Professional has annexed a certificate of the **Form-H** to the Application, under Regulation 39(4) of the CIRP Regulations, 2016 to certify that the Resolution Plan has approved by the CoC meets all the requirements of the IBC and its Regulations, as extracted hereto:

FORM H
COMPLIANCE CERTIFICATE

)Under Regulation 39)4(of the Insolvency and Bankruptcy Board of India)Insolvency Resolution Process for
Corporate Persons(Regulations, 2016

I, **RAKESH KUMAR TULSYAN**, an insolvency professional enrolled with **THE INDIAN INSTITUTE OF INSOLVENCY PROFESSIONAL OF ICAI** and registered with the Board with registration number **IBBI/IPA001/IP-P01144/2018-19/11970**, am the resolution professional for the corporate insolvency resolution process)CIRP(of **NIK-SAN ENGINEERING COMPANY LIMITED**)CD(.

2. The details of the CIRP are as under:

Sr. No.	Particulars	Description
1	Name of the CD	NIK-SAN ENGINEERING COMPANY LIMITED
2	Date of Initiation of CIRP	03-11-2022
3	Date of Appointment of IRP	03-11-2022
4	Date of Publication of Public Announcement	07-11-2022
5	Date of Constitution of CoC	22-11-2022
6	Date of First Meeting of CoC	03-12-2022
7	Date of Appointment of RP	10-03-2023
8	Date of Appointment of Registered Valuers	10-12-2022

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9	Date of Issue of Invitation for EoI	17-01-2023
10	Date of Final List of Eligible Prospective Resolution Applicants	15-02-2023
11	Date of Invitation of Resolution Plan	17-01-2023
12	Last Date of Submission of Resolution Plan	14-02-2023
13	Date of Approval of Resolution Plan by CoC	13-04-2024
14	Date of Filing of Resolution Plan with Adjudicating Authority	26-03-2024
15	Date of Expiry of 180 days of CIRP	02-05-2023
16	Date of Order extending the period of CIRP	04-05-2023
17	Date of Expiry of Extended Period (180+90 = 270 days) of CIRP	31-07-2023
18	Date of Expiry of 330 days of CIRP	30-09-2023
19	Date of Remand Back of Resolution Plan	06-12-2023
20	Date of expiry of 84 days beyond 330 days of CIRP from 06-12-2023 extending the period of CIRP	28-02-2024
21	Date of expiry of 30 days beyond 414 days of CIRP from 06-12-2023 extending the period of CIRP	28-03-2024

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22	Date of Expiry of Extended Period of CIRP	28-03-2024
23	Fair Value	Rs. 13,94,95,493
24	Liquidation value	Rs. 9,97,57,804
25	Number of Meetings of CoC held	15

3. I have examined the Resolution Plan received from Resolution Applicant)**Aesthetic Stampings & Laminations Limited along with Abhishek Naresh Choudhary**(and approved by Committee of Creditors)CoC(of NIK-SAN ENGINEERING COMPANY LIMITED.

4. I hereby certify that-

)i(the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016)Code(, the Insolvency and Bankruptcy Board of India)Insolvency Resolution Process for Corporate Persons(Regulations, 2016)CIRP Regulations(and does not contravene any of the provisions of the law for the time being in force.

)ii(the Resolution Applicant)Aesthetic Stampings & Laminations Limited along with Abhishek Naresh Choudhary(has submitted an affidavit pursuant to section30)1(of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

)iii(the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

)iv(~~The voting was held in the meeting of the CoC on 25-08-2023 and re-constituted CoC on 13-04-2024 where all the members of the CoC were present.~~

Or

I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.

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]strike off the part that is not relevant[

5. The list of financial creditors of the NIK-SAN ENGINEERING COMPANY LIMITED being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share )%(	Voting for Resolution Plan)Voted for / Dissented / Abstained(
1	Bank of Baroda	90.6%	Voted
2	Varsha Engineers	9.4%	Voted

6. The Resolution Plan includes a statement under regulation 38)1A(of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. lakh(

Sr. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	0	0	0	0
			1509.95	1509.95	1509.95	100%

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		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	1509.95	1509.95	1509.95	100%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	156.66	156.66	156.66	100%
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	0	0	0	0
		(ii) who voted in favour of the resolution plan	156.66	156.66	156.66	100%
		Total[(a) + (b)]	156.66	156.66	156.66	100%
3	Operational Creditors	(a) Related Party of Corporate Debtor	0	0	0	0
		(b) Other than (a) above:				
		(i)Government	0	0	0	-
		(ii)Workmen	0	0	0	-
		(iii)Employees	0	0	0	-
		(iv)OC for Goods & Services	1277.69	1063.26	239.23	22.50
		Total[(a) + (b)]	1277.69	1063.26	239.23	22.50
4	Other debts and dues		0	0	0	0
Grand Total			2956.90	2729.87	1905.84	69.81

*If there are sub-categories in a category, please add rows for each sub-category.

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Amount provided over time under the Resolution Plan and includes estimated value of non-cash components.
It is not NPV.]

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share)%(held before CIRP	Voting Share)%(held after CIRP
1	Equity	4691600	0	100%	0
2	Preference	0	0	0	0

9. The compliance of the Resolution Plan is 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?		Yes
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?		Yes
Section 30)1(	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		Yes
Section 30)2(Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being	CLAUSE 7	Yes Yes Not Applicable Yes

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	in force?]		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?		Yes Yes
Section 31)1(	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes
Regulation38)1(	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?		Yes
Regulation 38)1A(	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?		Yes
Regulation 38(1B)	(i) Whether 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. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]		No Not Applicable
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?		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 required and the timeline for the same?		Yes Yes Yes Yes

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)e(the resolution applicant has the capability to implement the resolution plan?		Yes
39)2(	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]		Yes

10. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16)1(	Commencement of CIRP and Appointment of IRP	T	T
Regulation 6)1(	Publication of Public Announcement	T+3	07-11-2022
Section 15)1)(c(/Regulation 12)1(	Submission of Claims	T+14	19-11-2022
Regulation 13)1(	Verification of Claims	T+21	22-11-2022
Section 26)6A(/ Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	Not Applicable
Regulation 17)1(	Filing of Report Certifying Constitution of CoC	T+23	22-11-2022
Section 22)1(and regulation 17)2(	First Meeting of the CoC	T+30	03-12-2022
Regulation 35A	Determination of fraudulent and other transactions	T+115	24-03-2023
Regulation 27	Appointment of two Registered Valuers	T+47	10-12-2022
Regulation 36)1(	Submission of Information Memorandum to CoC	T+54	14-02-2023
Regulation 36A	Invitation of EoI	T+75	17-01-2023
	Publication of Form G	T+75	17-01-2023
	Provisional List of Resolution Applicants	T+100	09-02-2023
	Final List of Resolution Applicants	T+115	15-02-2023
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	16-02-2023
Section 30)6(/ Regulation 39)4(Submission of CoC approved Resolution Plan	T+165	26-03-2024

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Section 31)1(Approval of Resolution Plan	T+180	
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11. The time frame proposed for obtaining relevant approvals is as under:

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1				
2				
3				

12. The Resolution Plan is not subject to any contingency.

or

~~The Resolution Plan is subject to the following contingencies)Elaborate the contingencies(:~~

i.....

ii.....

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made, or circulars issued thereunder)If any deviation/ non-compliances were observed, please state the details and reasons for the same(:

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1				
2				
3				

14. The Resolution Plan is being filed ___ days before the expiry of the period of CIRP provided in section 12 of the Code.

14A. Whether the resolution professional has, in accordance with regulation 35A, -

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- (a) applied to the Adjudicating Authority on or before the one hundred and thirty-fifth day of the insolvency commencement date: No
- (b) filed Form CIRP 8 with the Board on or before the one hundred and fortieth day of the insolvency commencement date: No

15. Provide details of section 66 or avoidance application filed / pending. - NIL

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43			
2	Undervalued transactions under section 45			
3	Extortionate credit transactions under section 50			
4	Fraudulent transactions under section 66			

15A. The committee has approved a plan providing for contribution under regulation 39B as under:

- a. Estimated liquidation cost: Rs.
- b. Estimated liquid assets available: Rs.
- c. Contributions required to be made: Rs.
- d. Financial creditor wise contribution is as under:

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1	Bank of Baroda	
2	Varsha Engineers	

15B. The committee has recommended under regulation 39C as under:

- a. Sale of corporate debtor as a going concern: Yes
- b. Sale of business of corporate debtor as a going concern: Yes

The details of recommendation are available with the resolution professional.

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15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D. Not Applicable

16. I **RAKESH KUMAR TULSYAN** hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.




Name of the Resolution Professional: Rakesh Kumar Tulsyan

IP Registration No: IBBI/IPA-001/P-01144/2018-19/11970

Address as registered with the Board: B-4, Vinay Tower, Kranti Nagar, Lokhandwala, Kandivali East, Mumbai - 400101

Email id as registered with the Board: tulsyanrk@gmail.com

Date: 01-07-2024

Place: Mumbai

21. To ensure completeness of record and transparency, the Applicant further submits that the Applicant herein had vide a letter dated 19.03.2024, cancelled and revoked the letter of intent dated 26.09.2023 issued to Vilas Transcore Limited as the erstwhile successful resolution applicant.



Findings of this Tribunal

22. The Applicant Resolution Professional has filed this Application seeking approval of Resolution Plan by this Tribunal, submitted by the Resolution Applicant viz. *M/s. Aesthetic Stampings & Laminations Limited alongwith Abhishek Naresh Choudhary* stating that the plan is in accordance with Section 30(2) of IBC, 2016, and other provisions laid thereunder.
23. Upon perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
- i. Payment of CIRP Cost as specified u/s. 30(2)(a) of the Code.
 - ii. Repayment of Debts of Operational Creditors as specified u/s. 30(2)(b) of the Code.
 - iii. 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.
 - iv. The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s. 30(2)(d) of the Code.
24. The Applicant RP has complied with the requirements of the Code in terms of Section 30(2)(a) to 30(2)(f) of IBC, 2016, and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of CIRP Regulations.
25. The Applicant 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 has been approved by the members of CoC in the Fourteen CoC Meeting convened on 15.02.2024, with a voting percentage of 100% (One hundred percent). Further, there are no such pending proceedings u/s. 66(1) r/w. 43(1) and 44(1) of the Code.



26. The bench vide order dated 22.07.2024 raised a query with regards to the CIRP cost reflecting Rs. 1.50 Cr, whereas the SRA has provided only Rs.1.25 cr. for the said cost. In this regard, the Resolution Professional clarified that the actual CIRP cost incurred is only Rs. 1.25 cr. However, the Corporate debtor is a going concern, extra amount of Rs. 0.25 cr. is factored in as a provisional reserve, which SRA will pay in case expenses is incurred.
27. The Resolution Applicant has additionally sought certain waivers, concessions and relief *per Item [8]* of the Resolution Plan. We make it expressly clear that no reliefs, concessions and dispensations that fall within the domain of other government department/authorities are granted hereto, and the same shall be dealt with by the respective competent authorities/fora/offices, Government (State or Central) with regard to the respective reliefs, if any. In light of the same, we are of the considered view that the Applicant is not entitled to any relief from this tribunal.
28. The Learned Counsel for the Applicant RP has categorically affirmed that the implementation of the Resolution Plan is not conditional or contingent upon grant of any or all of such reliefs, concessions and dispensations by this Adjudicating Authority.
29. In so far as the approval of the Resolution Plan is concerned, we rely on the following Judgments of Hon'ble Apex Court which clearly lay down the scope and jurisdiction of the Adjudicating Authority while approving a Resolution Plan.



- a) ***K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018)*** wherein 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. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less”.

The Hon'ble Supreme Court has further held at para 35 of the above judgement that the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 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.

- b) ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors,*** wherein it was held that

“the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the



majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved”

- c) The recent ruling in ***Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors***, wherein the Apex Court has observed that:-

*21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of *K. Sashidhar v. Indian Overseas Bank and Others*, *Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others*, *Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others*, *Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another*, and *Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others*.*



27. *This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:***

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

30. Thus, from the catena of judgments rendered by the Hon’ble Supreme Court on the scope of jurisdiction of the Adjudicating Authority while approving the Resolution Plan, it is amply clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors. This Adjudicating Authority



is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC.

31. In view of the discussions and the law thus settled, 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. The same needs to be approved. Hence ordered.
32. The **Interlocutory Application No.34/2024** in **C.P.(IB)/1057(MB)2021** is *allowed*. The Resolution Plan submitted by *M/s. Aesthetic Stampings & Laminations Limited alongwith Abhishek Naresh Choudhary* is hereby **approved**.
33. It shall become effective from this date and shall form part of this order.
 - i. 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.
 - ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law.
 - iii. We make it expressly clear that **no** reliefs, concessions and dispensations that fall within the domain of other government department/authorities are granted hereto, and the same shall be dealt with by the respective

competent authorities/fora/offices, Government (State or Central) with regard to the respective reliefs, if any .

- iv. Further in terms of the Judgment of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited v/s 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 a part of the Resolution Plan.
- v. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra 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.
- vi. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vii. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- viii. 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.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – IV

IA/34/2024
In
C.P.(IB)/1057(MB)2021



ix. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

34. The **Interlocutory Application No.34/2024** in **C.P.(IB)/1057(MB)2021** is accordingly *allowed* and *disposed of*.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
29.08.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)