

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT- 1**

ITEM No.304

IA/205(AHM)2023 in CP(IB) 385 of 2020

**Order under Section 54 IBC, 2016**

**IN THE MATTER OF:**

Vikash Gautamchand Jain RP of  
Shreebhav Polyweaves Pvt Ltd  
Vs  
GMSRA Infracon Pvt ltd & Ors

.....Applicant

.....Respondents

**Order delivered on 27/09/2023**

**Coram:**

Shammi Khan, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order.

The order is pronounced in open Court vide separate sheet.

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
DIVISION BENCH  
COURT-I**

**IA No.205 of 2023  
In  
CP(IB) 385 of 2020**

**IA No.205 of 2023**

[An application under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 for approval of resolution plan]

**Vikash Gautamchand Jain**

Resolution Professional of  
Shreebhav Polyweaves Private Limited  
204,Wall Street 1, Near Gujarat College,  
Ellisbridge, Ahmedabad,  
Gujarat-380006

**Applicant**

Versus

- 1. GMSRA Infracon Private Limited**  
Successful Resolution Applicant  
Having address at:  
Plot no. 2, Opp. S.P. Residence,  
Jail Road, Sirohi,  
Rajasthan-307001
- 2. Raj Radhe Finance Limited**  
Sole Financial Creditor  
47, Shyamal Row House 3/B,  
Nr. Shyamal Cross Roads,  
Satellite, Ahmedabad,  
Gujarat-380015
- 3. Sanjay Aggarwal**  
(Member of Suspended Board of Director)  
403, Brijratan Apartments,  
Brijwasi Estate, Opp. Umrigar School,  
Parle Point, Surat-395007
- 4. Shalini Aggarwal**  
(Member of Suspended Board of Director)  
403, Brijratan Apartments,  
Brijwasi Estate,  
Opp. Umrigar School,  
Parle point, Surat-395007.

**5. Income Tax, Department, Surat**

Having address at:  
Circle 2(1)(2), Surat  
Gujarat-395003

**Respondents**

**Order Pronounced on: 27/09/2023**

**Coram: Shammi Khan, Member (Judicial)**  
**Kaushalendra Kumar Singh, Member (Technical)**

**Appearance:**

**For the Applicant:** Mr. Nipun Singhvi, Advocate along with Mr. Vishal J Dave and Adv. Pragati Tiwari in IA/205(AHM)2023

**For the Respondent:** Mr. Nilesh Udernani, Advocate in  
IA/205(AHM)2023.  
A R Gupta & Associates in CP(IB)385 of 2020

**For the Income Tax**

**Department:** Ms. Pankti Shah, Advocate on behalf of Ms. Maithili D. Mehta, Advocate.

**ORDER**

1. This application is filed on 06.02.2023 under Section 30(6) of Insolvency & Bankruptcy Code, 2016 by Mr. Vikash Gautamchand Jain Resolution Professional (RP) of the corporate debtor-Shreebhav Polyweaves Private Limited for approval of the Resolution Plan submitted by GMSRA Infracon Private Limited.
2. The averments made by the applicant/ resolution professional in the present application and as argued by the learned counsel are summarized as under:
  - (i) The corporate debtor was admitted in Corporate Insolvency Resolution Process (CIRP) on 31.08.2021. Mr. Nirav Tarkas was appointed as Insolvency Resolution Professional (IRP). On 18.09.2021

the IRP made a public announcement of the CIRP of the corporate debtor thereby calling upon its creditors to submit their claim with requisite proof. The Committee of Creditors (CoC) was constituted consisting of sole financial creditor- State Bank of India having 100% voting right.

(ii) The CoC resolved to replace the IRP Mr. Nirav Tarkas and to appoint Mr. Vikash Gautamchand Jain (Applicant) as Resolution Professional (RP). The same was approved by this Adjudicating Authority.

(iii) The CoC instructed the RP to publish Form G calling upon the prospective resolution applicants to submit the EoI/Resolution Plans for the corporate debtor.

(iv) The RP published Form-G on 03.05.2022 in widely circulated English as well as local language newspapers. In response thereto the he received three Resolution Plan from Novatis Fashion Private Limited & Gargi Texofeb Private Limited (in consortium); Vikash Mittal along with Himanshu Mittal; and Ashok Mehta

(v) Pursuant to the approval from CoC the RP filed an application bearing I.A. No. 418 of 2022 seeking extension and exclusion of CIRP period of 207 days. The said application was allowed by this Adjudicating Authority and the RP was directed to complete the process till 31.07.2022.

(vi) The Resolution Plans as received from the prospective resolution applicants and their subsequent revised Resolution Plans were discussed in various CoC meetings. Thereafter, one of the prospective resolution applicants withdrew the resolution plan and the remaining two resolution plans were put to vote in the 9<sup>th</sup> CoC meeting held on 02.09.2022. However, all the plans were rejected by the CoC and the CoC also abstained from voting on the resolution of liquidation.

(vii) Meantime, the extended CIRP was about to get over on 31.07.2022, therefore, the RP filed an application (IA No.659 of 2022) for extension of CIRP by further 90 days period. However, the said application was rejected by this Adjudicating Authority since 330 days were already over.

Pursuant to the said order the RP filed an appeal against the order of this Adjudicating Authority before Hon'ble NCLAT for an extension of CIRP period by further 90 days and the said appeal was allowed vide order dated 14.10.2022 by the Hon'ble NCLAT granting 90 days extension.

(viii) Subsequently, the CoC instructed the RP to publish revised Form G calling upon the prospective resolution applicants to submit the EoI/Resolution Plans for the corporate debtor and therefore the RP published revised Form-G. In response thereto, the RP received three EOI however, only one Resolution Plan was received by the RP from GMSRA Infracon Private Limited.

(ix) The State Bank of India vide email dated 09.01.2023 informed the Applicant that they have transferred the exposure of the Corporate Debtor to Raj Radhe Finance Limited. Accordingly, in 12<sup>th</sup> CoC meeting held on 10.01.2023, the CoC was reconstituted consisting of only Raj Radhe Finance Limited as the sole Financial Creditor. Thereafter, the Resolution Plan of GMSRA Infracon Private Limited was discussed and put for vote and the same was approved by the sole CoC member. The undertaking under section 29 A is filed by the Successful Resolution Applicant.

(x) The resolution applicant- GMSRA Infracon Private Limited has proposed to infuse a sum of **Rs.9,37,00,000/-**. The details of the proposed payment to the stakeholders are as follows:

(Rs. in lakhs)

SI 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	NA	NA	NA	NA
		(b) Other than (a) above: (i) who did not vote in favour of the resolution	NA	NA	NA	NA
		(ii) Who voted in favour of the resolution plan	2856.06	2856.06	800.00	28.01%
		<b>Total [(a)+(b)]</b>	<b>2856.06</b>	<b>2856.06</b>	<b>800.00</b>	<b>28.01%</b>
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	NA	NA	NA	NA
		<b>Total [(a)+(b)]</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
3.	Operational Creditors	(a) Related Party of	NA	NA	NA	NA

		Corporate Debtor				
		(b) Other than (a) above:				
		(i) Government -ESI Corporation	-	-	-	-
		-Employees Provident Fund Organization	0.25	0.23	0.05	19.72%
		(ii) Workmen	NA	NA	NA	NA
		(iii) Employees	NA	NA	NA	NA
		(iv) Other Operational Creditors	NA	NA	NA	NA
		Total [(a)+(b)]	<b>0.25</b>	<b>0.23</b>	<b>0.05</b>	<b>19.72%</b>
4	Other debts and dues		NA	NA	NA	NA
5	Contingency	Contingent Liability	NA	NA	8.95	
6	CIRP				26.00	
7	Working Capital				100.00	
8	Payment of fees to the board				2.00	
Grand Total			<b>2856.31</b>	<b>2856.29</b>	<b>937.00</b>	

(xi) The RP has examined the resolution plan and the compliances required. For ready reference, the compliances examined by the RP are reproduced hereunder:

322

Code / Regulation No.	Resolution Plan	Resolution Plan	Resolution Plan
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?	Refer EOI	Resolution Applicant provided undertaking along with EOI its capabilities having regard to the complexities and scale of business of CD.
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?	Schedule- 1 of Resolution Plan and undertaking forms part of the EOI	Yes Resolution Applicant has submitted an undertaking along with EOI confirming his eligibility for submission of Resolution Plan.  Verification on eligibility of RA to submit Resolution plan is conducted by Resolution Professional.  Requisite documents/information pertaining to compliance with section 29A of the code have been provided by the Resolution Applicant as part of the Expression of Interest & Resolution Plan.
Section 30 (1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Forms a part of the EOI & Schedule 1	Yes Resolution Applicant has submitted an affidavit/undertaking confirming his eligibility for submission of Resolution Plan.
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?	Point No. 3.3.1 and 3.5 of Resolution Plan  Point No. 3.3.1, 3.6 and 7.8.3 of Resolution Plan	Yes. The Resolution Plan provides for payment of CIRP cost to the extent of Rs. 26,00,000/- in priority to the repayment of other debts of the Corporate Debtor.  The Outstanding CIRP Costs shall firstly, be paid from the Cash flow / Recovery from debtors during CIRP period. Any excess amounts of the unpaid/outstanding CIRP Costs shall be paid by resolution applicants by way of infusion of fresh fund by the Resolution Applicant.  Any saving in the CIRP Cost shall be passed to Resolution Applicant.  RA has proposed total payment of Rs. 5,000/- to the operational Creditors from the upfront cash as full and final settlements. Claims arise in future will be paid from the amount Rs. 8,95,000/-, reserved for contingent liability. Any saving in Contingent Liability shall accrue to the Corporate Debtor. The Resolution Applicants shall pay to the Operational Creditors (including Statutory Dues, if any) an amount which is higher of the following:  (a) the amount of claim admitted i.e., Rs.5 000/-;  (b) the Liquidation Value available for their Claims in the event of a liquidation of the Corporate Debtor under Section 53 of the IBC;  (c) the amount that would have been paid to such creditors, if the amount to be distributed under this Resolution Plan had been distributed

Vikash Gautamchand Jain  
Insolvency Professional  
IBBI/IFA-001/IP-PO0354/2017-18/10612



	(c) provides for the payment to the financial creditors who did not vote in favor of the resolution plan?	Point No. 3.8 of Resolution Plan	in accordance with the order of priority in sub-section (1) of Section 53 of the IBC  The payment due to Operational Creditors will be paid in priority to any other Creditors of the Corporate Debtor. Yes, Resolution plan complies Section with 30(2)(b) & Regulation 38(1)(a).  The Resolution Plan provides that any Dissenting Financial Creditor would be paid the liquidation value due to them in priority to other financial creditors in terms of Section 30(2) of the Code read with Regulation 38(1)(b) of the Regulations.
	(d) provides for the management of the affairs of the corporate debtor?	Point No. 5 of Resolution Plan	Yes, Complied The Resolution Plan has provided for the management of the affairs of the Corporate Debtor after the approval of the resolution plan.
	(e) provides for the implementation and supervision of the resolution plan?	Point No. 6 of Resolution Plan	The Resolution Plan contains the provisions of this section/regulation. The Resolution plan provides for formation of Monitoring Committee for supervision and implementation of Resolution Plan consist of the following members: -  1.Resolution Professional as the Chairman of the Monitoring Committee. 2.One representative of the CoC 3.One member nominated by the Resolution Applicant The Monitoring committee shall supervise the implementation of the Resolution Plan
	(f) contravenes any of the provisions of the law for the time being in force?	Point No. 7.8.10 of Resolution Plan	Yes, Complied.  The Resolution Applicant declares that this Resolution Plan is not in contravention of the provisions of any applicable laws for time being in force.  Further, the Resolution Applicant has prepared Resolution plan taking into consideration of compliance of all applicable laws, However, the relief and concessions seeks into the Resolution Plan from various authorities, shall be subject to approval of AA.
Section 30(4) & Regulation 38 (3)(b)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Point No. 7.8.8 of Resolution Plan and Schedule 1	(a) Resolution Plan demonstrate that resolution plan is feasible and viable.  (b) Approval of Resolution Plan has been decided with <b>100% voting</b> by the member of committee of creditors.
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Point No. 6.4, 8.1& 8.3 of Resolution Plan	<b>Yes</b> Resolution Plan covers all the provisions as required under section 31(1) for the effective implementation of Resolution Plan.

Vikash Gautamchand Jain  
Insolvency Professional  
IBBI/IPA-001/IP-PO0354/2017-18/10612

Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Point No. 3.3.1, 3.6 and 7.8.3 of Resolution Plan	Yes, Resolution plan complies Regulation 38(1)(a).  The payment due to Operational Creditors will be paid in priority to any other Creditors of the Corporate Debtor.																					
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Point No. 7.1 of Resolution Plan	Resolution plan dealt with dues of with the interest of all stakeholders, including financial and operational creditors of the corporate debtor as per the terms set out in Plan.  Resolution Applicant provides statement that this Resolution Plan has adequately dealt with the interest of all stakeholders, including the financial creditors and operational creditors of the Corporate Debtor.  <table border="1"> <thead> <tr> <th>S. No.</th> <th>Particulars</th> <th>Amount (In Crores)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Secured financial Creditors</td> <td>8,00,00,000</td> </tr> <tr> <td>2</td> <td>Operational Creditors - ESIC</td> <td>5,000</td> </tr> <tr> <td>3</td> <td>Fees to IBBI Board</td> <td>2,00,000</td> </tr> <tr> <td>4</td> <td>Contingent liability</td> <td>8,95,000</td> </tr> <tr> <td>7</td> <td>CIRP Cost</td> <td>26,00,000</td> </tr> <tr> <td colspan="2">Total</td> <td>8,37,00,000</td> </tr> </tbody> </table>	S. No.	Particulars	Amount (In Crores)	1	Secured financial Creditors	8,00,00,000	2	Operational Creditors - ESIC	5,000	3	Fees to IBBI Board	2,00,000	4	Contingent liability	8,95,000	7	CIRP Cost	26,00,000	Total		8,37,00,000
S. No.	Particulars	Amount (In Crores)																						
1	Secured financial Creditors	8,00,00,000																						
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7	CIRP Cost	26,00,000																						
Total		8,37,00,000																						
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?	Point No. 7.8.11 of Resolution Plan	The resolution plan includes a statement giving details that the resolution applicant or any of its related parties has not failed to implement nor contributed to the failure of implementation of any other resolution plans approved by the NCLT at any time in the past.  N/A																					
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?	(a) Point No. 6 of Resolution Plan  (b) Point No. 5 of Resolution Plan  (c) Point No. 6 of Resolution Plan	(a) Resolution plan provides for the term of the plan and its Implementation Schedule  (b) The Resolution Plan has provided for the management and control of the business of the corporate Debtor during the terms  (c) The resolution plan contains the provisions of this section/regulation. The Resolution plan provides for formation of Monitoring Committee for supervision and implementation of Resolution Plan.																					

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Regulation 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?  (e) the resolution applicant has the capability to implement the resolution plan?	Point No. 2.8, 6 and 7.8.8 of Resolution Plan	Yes,  (a) Complied (clause 2.8)  (b) Complied (clause 7.8.8)  (c) Complied (clause 6)  (d) Complied (clause 6)  (e) Requisite details /information / documents pertaining to eligibility /capability of the Resolution Applicant has been provided by the Resolution Applicant as part of the Resolution Plan/Expression of Interest and /or as part of the supporting documents with the Resolution Plan/EoI.
Regulation 39 (2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NA	Transaction Audit was duly carried out by J Baxi & Co. and an application has been filed (IA No. 800 of 2022) with the Hon'ble NCLT Ahmedabad. Next hearing date is 28.02.2023
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Point No. 4.3 of Resolution Plan	The Resolution Applicant has deposited <b>Rs 05 Lakhs</b> as Earnest Money Deposit (along with EOI) and <b>Rs 10 Lakhs</b> as Earnest Money Deposit (along with submission of Resolution Plan). The Resolution Applicant deposited Rs. 41,85,000/- in lieu of Performance Bank Guarantee as required under the RFRP i.e., 5 % of offered amount in favour of CD along with Rs. 45 Lacs (Remaining EMD) in accordance with the RFRP.

3. The Applicant vide Purshish dated 28.02.2023 prayed to add Income Tax Department as party in the present application. Therefore, notice was issued upon Income Tax Department as well as on Suspended Management.

On issuance of notice, the Income Tax Department filed its report dated 15.03.2023, wherein it is stated that the corporate debtor has total tax demand dues with the Income Tax Department amounting to Rs.50,49,233/-. Further, it is stated that penalty proceedings are pending against the corporate debtor and it was also found that said company is a willful defaulter of remittance of the Tax. No reply is received from Suspended Management.

4. The present application was heard and reserved for orders on 10.05.2023. On perusal of the plan, it is observed that it seeks reliefs and concessions for carry forward of losses under the Income Tax Act and therefore, as per Section 79 (2) of the Income Tax Act, reasonable opportunity needs to be given to the Principal Commissioner of Income Tax. However, no submissions were made by the RP as to whether any notice was issued by the RP for representation of the Principal Commissioner of Income Tax.

Further, it was also noted that nothing has been placed on record stating that the plan is not conditional to the sanctioning of relief and concession. Therefore, clarification was sought by this Adjudicating Authority on these points vide its order dated 17.05.2023

5. In compliance of the said order dated 17.05.2023, the RP filed an affidavit dated 08.06.2023 stating that the notice of hearing was given to Principal Commissioner of Income-tax via email as well as via post. Further, the Successful Resolution Applicant also filed an affidavit dated 09.06.2023 clarifying that, the resolution plan is not conditional to the sanctioning of reliefs and concessions by this Adjudicating Authority.

6. During the hearing held on 17.07.2023, the Income Tax Department submitted that reply with regards to carry forward of losses in accordance with section 79(2) of the Income Tax Act, 1961 has been filed and as per the latest ITR of the Corporate Debtor it has a carry forward total loss of Rs. 24,18,52,601/- and unabsorbed depreciation of Rs.7,86,34,804/- and total outstanding demand of Rs. 50,49,233/- . Keeping in view these figures this Adjudicating Authority stated that Ld. Counsel for the RP is expected to explain as to whether these figures were placed by the RP before the CoC and whether CoC considered the benefit which would accrue to SRA, if such losses were allowed on approval of the Plan. It was also noted that plan value in

this case is merely Rs. 8.00 Cr. whereas the tax benefits on account of the losses would be more than Rs. 8.00 Crs.

7. The RP in compliance of order dated 17.07.2023 filed an affidavit dated 31.07.2023 wherein it is stated that the RP conducted 14<sup>th</sup> meeting of CoC on 27.07.2023 and apprised the CoC members about the query put forth by this Adjudicating Authority. The CoC in order to clarify said query stated that they have considered the figures of carry forward losses and the benefit that would accrue to the successful resolution applicant, if such losses were allowed on approval of resolution plan and thereafter approved the resolution plan of successful resolution applicant.
8. We heard the learned counsel for the RP and on perusal of records it is noted that the CoC approved the resolution plan of GMSRA Infracon Private Limited by 100% voting and it is not necessary for us to go into details of the commercial aspect of the plan. We proceed to examine the plan in view of sections 30(2) and 31 of the IBC r.w. Regulation 38 of the IBBI (CIRP of the Corporate Debtor Regulation, 2016). The RP has produced on record the compliance certificate in Form-H. It shows that the **fair value** of the assets of the corporate debtor is **Rs.8,20,87,026/-** whereas, the **liquidation value** is **Rs.5,93,68,874/-**. The successful resolution applicant has proposed a payment of **Rs.9,37,00,000/-** in the resolution plan.
9. In order to obtain the approval of the Adjudicating Authority the resolution plan should adhere to the following requirements as per **Section 30(2) of the Code r.w. CIRP Regulation 38:**
  - (i) It should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the corporate debtor.

[Section 30(2)(a)]

- (ii) The repayment of the debts of operational creditors should not be less than the amount to be paid to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code, or the amount that would have been paid to the said creditors if the amount to be distributed under the resolution plan had been distributed in accordance of section 53(1) of the Code.

Moreover, the payment to the operational creditor is to be made in priority over the financial creditor;

Further the repayment of the debts of dissenting financial creditors should not be less than the amount that would have been paid to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code and the payment to the said dissenting financial creditor is to be made in priority to the consenting financial creditors.

[Section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b)];

- (iii) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan.

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

- (iv) The implementation and supervision of the resolution plan.

[Section 30(2)(d) read with CIRP Regulation 38(2)(c)];

- (v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e)];

- (vi) It conforms to such other requirements as may be specified by the Board.

[Section 30(2)(f)]

Such other requirements of the resolution plan as detailed in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 which are not covered above, are as under:

- (a) The resolution plan should include statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors of the corporate debtor.

[CIRP Regulation 38 (1A)]

- (b) The resolution plan should include a statement giving details as to whether the resolution applicant or any of its related parties has at any time failed to implement or caused to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority.

[CIRP Regulation 38 (1B)]

- (c) The resolution plan should contain the term of the plan and its implementation schedule.

[CIRP Regulation 38(2)(a)]

- (d) The resolution plan should also demonstrate that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; has provisions for approvals required and timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan.

[CIRP Regulation 38(3)]

10. In view of the above provisions of the Code, the resolution plan submitted before us has been examined as follows:

(i) In the plan, the provision towards CIRP costs is made for Rs.26,00,000/- to be paid within 60 days from the effective date in priority to the repayment of other debts of the corporate debtor. Thereby, section 30(2)(a) has been complied with. Further, the plan provides that any excess amount of the unpaid/outstanding CIRP Costs shall be paid by resolution applicants by way of infusion of fresh fund by the Resolution Applicant and any savings in the CIRP cost shall be passed to the Resolution Applicant.

(ii) There are no dissenting financial creditors.

As far as operational creditors are concerned, the operational creditors should not be paid less than the amount payable to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code, or the amount that would have been paid to the said creditors if the resolution plan value had been distributed in accordance of section 53(1) of the Code.

In the present case the liquidation value is Rs.5,93,68,874/- and the total admitted claim of secured financial creditors is Rs.8,00,00,000/-. As such if the said liquidation value was to be considered in the event of liquidation as a total amount to be distributed as per sec 53 then the operational creditors would have got nothing. Similarly, if the total proposed plan value is to be distributed in accordance with sec 53 then we find that the proposed plan value is Rs.9,37,00,000/-, however out of this amount the contribution towards working capital is Rs.1,00,00,000/- and if the balance amount i.e. Rs.8,37,00,000/- was to be distributed in accordance with sec 53 then after the payment of CIRP cost, payment to secured financial creditors and allocation of amount to contingent liability, Rs.5,000/- would only remain to be paid to the operational creditors. The plan proposes payment of Rs.5,000/- to the operational creditors and as such the provisions of



section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b) are complied with.

- (iii) The mechanism for management and control of the affairs of the corporate debtor after approval of the resolution plan has been provided in the resolution plan itself whereby the Monitoring Committee consists of one representative from CoC, one representative of the Resolution Applicant and Resolution Professional to supervise the Implementation of Plan. We hold that thereby provisions of Section 30(2)(c) read with CIRP Regulation 38(2)(b) are complied with.
- (iv) The resolution plan contains a provision wherein, the implementation of the said plan will be supervised by the Monitoring Committee. Thereby, Section 30(2)(d) read with CIRP Regulation 38(2)(c) has been complied with.
- (v) The RP has submitted that the plan does not contravene any provisions of law. We also noted that the plan does not contravene any provisions of the law for the time being in force. Thereby, Section 30(2)(e) has been complied with.
- (vi) The resolution plan also conforms to other IBBI Regulations as given hereunder:
  - a) The resolution plan adequately deals with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor. Thereby, the plan is in compliance with CIRP Regulation 38 (1A).
  - b) It is submitted that neither the resolution applicant nor any of its related parties have at any time failed to implement or contributed to the failure of implementation of any other resolution plan which was approved by the

Adjudicating Authority. Thereby, the plan is in compliance with CIRP Regulation 38 (1B).

- c) The term of the Plan is 540 days and the timeline is provided at pg. no. 249-250 of the Application.

Thereby CIRP Regulation 38(2)(a) has been complied with.

- d) The resolution plan addresses the cause of default; is feasible and viable; has provisions for its effective implementation; contains provisions for approvals required and the timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan. Thus CIRP Regulation 38(3) has been complied with.

11. The resolution applicant GMSRA Infracon Private Limited is the Company in Construction Sector for past 14 years and is one of the fastest growing water construction and infrastructure organization. The Company has surplus resources and now wishes to enter the Textile Sector. Sources of funds is stated to be unsecured loan for relatives & associate companies/firm and internal accruals.

12. It is also noted that the resolution applicant has sought certain reliefs & concessions such as:

- i) To direct CBDT, Central Board of Indirect Tax, Customs, Value Added Tax Authorities, State Government Tax Authorities, to grant reliefs, exemptions, waivers from applicability, of sections of Income Tax Act, 1961. Further Corporate Debtor should be permitted to carry forward its unabsorbed business losses notwithstanding a change in shareholding of the Company pursuant to this Resolution Plan;
- ii) To direct GST authorities to provide credit of Rs.40,83,104/- or any such amount credited to Corporate Debtor to be continued to be available for the benefit of Resolution Applicant on approval of plan;

- iii) Waiver with respect to all actions, proceedings or penalties under any applicable law for any dues or non-compliances and the same be permanently extinguished; etc.
- iv) Waiver from all past liabilities incurred and accrued prior to the commencement of CIRP.

Further, the approval of the resolution plan is not conditional to the grant of reliefs & concessions sought by the resolution applicant.

13. As far as reliefs and concessions claimed by the resolution applicant with respect to the unpaid liabilities after approval of the plan and the claims not filed at all with the RP during the CIRP, the law has been well settled by the Hon'ble Supreme Court in the case of **Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021** in the following words:

86. *“.....The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*

87. *We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief.....”*

14. In view of the above, all unpaid liabilities and claims that are not filed with the RP before the approval of the resolution plan and those which

are not included in the said resolution plan would stand extinguished. The unpaid liabilities so extinguished together with extinguished existing share capital would be converted to “Capital Reserve”. The accumulated losses as per the balance sheet will have to be set off first against such capital reserve and the remaining losses, if any, can be considered in accordance with the provisions of section 79(2) of the Income Tax Act. For this purpose, the applicant or the successful resolution applicant can through a separate application apply before this Adjudicating Authority with a notice to the Principal Chief Commissioner of Income Tax having jurisdiction for allowing carry forward losses, if any, under the provisions of section 79(2) of the Income Tax Act.

As far as other reliefs and concessions as sought by the resolution applicant, we direct the said successful resolution applicant to approach the concerned statutory authority for those concessions and those authorities will consider the same in accordance with the relevant provisions of law keeping in view the intent and spirit of the IBC.

15. The proviso to section 31 of the Code, 2016, states that before passing any order for approval of the resolution plan, the Adjudicating Authority should also be satisfied that the resolution plan has provisions for its effective implementation. We being satisfied, approve the resolution plan submitted by GMSRA Infracon Private Limited for Corporate Debtor i.e., Shreebhav Polyweaves Private Limited and in addition to the above directions, proceed to pass the following order:

- (i) Application is allowed.
- (ii) The resolution plan of GMSRA Infracon Private Limited for Corporate Debtor i.e., Shreebhav Polyweaves Private Limited allowed as per Section 30(6) of the IBC, 2016.
- (iii) The approved ‘Resolution Plan’ shall become effective from the date of passing of this order.

- (iv) The order of moratorium dated 31.08.2021 passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this order.
- (v) The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).
- (vi) The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

16. Accordingly, IA 205 of 2023 in CP(IB) 385 of 2020 is allowed and stands disposed of in terms of the above directions.

17. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-  
**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

-SD-  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

Aarti/Swati-LRA