

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-VI

I.A. 2017/2023

IN

C.P. No. IB- 763/ND/2021

(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016))

IN THE MATTER OF:

MINDA INDUSTRIES LIMITED

.... PETITIONER

VERSUS

UNICAST AUTOTECH PRIVATE LIMITED.

..... RESPONDENT

AND

AND IN THE MATTER OF:

MR. KANTI MOHAN RUSTAGI
RESOLUTION PROFESSIONAL OF
CORPORATE DEBTOR.

.... APPLICANT

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Resolution Professional: Mr. Kanti Mohan Rustogi, RP in person along with Mr. Kanishka Gautam and Mr. Shobhan Sachdeva, Advs.



ORDER

PER: BACHU VENKAT BALARAM DAS MEMBER (JUDICIAL)

ORDER DELIVERED ON: 31.10.2023

1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by Mr. Kanti Mohan Rustagi Resolution Professional (RP) of M/s. Unicast Autotech Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s Sahuwala Cylinders Private Limited ('Successful Resolution Applicant') as approved by the Committee of Creditors ('CoC') in its 11th CoC Meeting held on 23.03.2023 with 88.27% voting shares.
2. Briefly stated, the facts as averred by the applicant in the application are as follows:
 - a) That the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated vide order dated 08.07.2022 and Mr. Kanti Mohan Rustagi was appointed as IRP in the matter.
 - b) That the IRP prepared a list of Creditors after verification of claim received pursuant to the Public Announcement and constituted Committee of Creditors.
 - c) The IRP on receiving claims constituted the committee of creditors comprising of three Financial Creditors i.e., Bajaj Finance Limited, ICICI Bank, Minda Industries Limited.
 - d) That the IRP convened the first Meeting of Committee of Creditors ("COC") on 12.08.2022. In the said meeting, the COC resolved to appoint the Applicant i.e., Mr. Kanti Mohan Rustagi as Resolution Professional in the matter.
 - e) That in the 2nd Meeting of CoC, the CoC resolved to publish Expression of Interest/ Form G to invite prospective resolution applicants for submission of Expression of Interest by 08.09.2022.

- f) The RP received fourteen EOI(s) from PRA(s) the details of the same are as under: -



S. No.	Name of PRA
1	RKG Fund I, A Scheme of RKG Trust
2	Amrit Kumar Agarwal
3	Sahuwala Cylinders Private Limited
4	ASK Automative Private Limited
5	Micro Turner Group
6	Punch Ratan Fastners Private Limited
7	ASC Consulting Private Limited
8	Shanti G.D Ispat & Power Private Limited
9	Encore Asset Reconstruction Company Private Limited
10	Sandhar Technologies Limited
11	DICKEY ASSET MANAGEMENT PVT. LTD
12	Kudan Care Products Limited
13	Uno Minda Limited
14	Naksharta Corporate Advisors Limited

- g) That in the fifth meeting of CoC held on 19.10.2022, the CoC decided to grant extension to PRAs for submitting Resolution Plan till 10.11.2022.
- h) That till the last date of submission of resolution plan, four PRA(s) submitted their resolution plan. Details are as under: -

Serial No.	Name of the Resolution Applicant
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1.	ASC Consulting Private Limited
2.	ASK Automotive Private Limited
3.	Microturner
4	Sahuwala Cylinders Private Limited

- i) That after various discussions on the resolution plan in the CoC meetings, finally in the 11th CoC meeting held on 23.03.2023, the Resolution Plan of M/s Sahuwala Cylinders Private Limited, Microturner & M/s ASK Automotive Private Limited were put to vote, in which resolution plan submitted by M/s Sahuwala Cylinders Private Limited was approved by the members of CoC with 88.27% voting shares. Details of the voting results are as under: -

Sl. No.	Name of Creditor	Voting Share)%(Voting for Resolution Plan)Voted for / Dissented / Abstained(
1.	Bajaj Finance Limited	84.89%	Assented
2.	ICICI Bank	11.73%	Dissented
3.	Minda Industries Limited	3.38%	Assented

3. We have heard the submissions made by the Ld. Counsel for the applicant and have gone through the documents produced on record.

4. That some key features of the Resolution Plan are as follows:

- i. That the Resolution Applicant has proposed an amount of Rs. 56,77,76,000.00 including the CIRP Cost.

FINANCIAL PROPOSAL OF THE RESOLUTION PLAN

(In INR)

S. No.	Particulars	Amount	Timeline
1.	CIRP cost	68,00,000.00	Upfront-within 90 days of plan approval by AA
2.	Financial Creditors	31,93,99,564.20	Upfront-within 90 days of plan approval by AA
3.	Operational Creditors	15,76,435.80	Upfront-within 90 days of plan approval by AA
4.	Capital Expenditures	9,00,00,000.00	INR 50,00,000/- paid upfront within 90 days from approval of plan by AA. Remaining INR 8,50,00,000/- within 1 year thereafter.
5.	Working Capital	15,00,00,000.00	Second half of 1 year from the date of upfront payment.
Total		56,77,76,000.00	

DISTRIBUTION OF FUNDS



S. No.	Category of Claims/ Creditors	Amount Admitted	Amount proposed in Resolution Plan	Remarks	Terms of Payment
A.	CIRP Cost	68,00,000.00 (as on the date of filing the application the CIRP Cost as informed by RP to RA was 45,21,030.33)	68,00,000.00	100% of the total CIRP Cost shall be paid.	Payable as follow: <ul style="list-style-type: none"> • Upfront of entire payment shall be made within 90 days of plan approval by AA • If CIRP cost exceeds the proposed amount the same would be adjusted from the payment proposed to Financial Creditors. (Clause VI at Pages 66 to 67 of Vol-I of Main Application)
B.	Payment towards claims				

(i)	Secured Financial Creditors (Bajaj Finance Limited)	32,96,87,689.00	31,93,99,564.20	Will be paid in proportion to their admitted claim amount.	Payable as follows: <ul style="list-style-type: none"> • Upfront of entire payment shall be made within 90days of plan approval by AA
(ii)	Secured Financial Creditors (ICICI Bank)	4,55,65,669.64		Will be paid in proportion to their admitted claim amount.	Payable as follows: <ul style="list-style-type: none"> • Upfront of entire payment shall be made within 90days of plan approval by AA
(iii)	Secured Financial Creditors (Minda Industries Limited)	1,62,87,746.00		Will be paid in proportion to their admitted claim amount.	Payable as follows: <ul style="list-style-type: none"> • Upfront of entire payment shall be made within 90days of plan approval by AA
(iv)	Operational Creditors – other than workmen/ employees	31,52,87,159.00		15,76,435.80	Will be paid in proportion to their admitted claim amount.
Total (A+B)		71,36,28,263.64	32,77,76,000		
C. Other Costs					



C.		Other Costs		
(i)	Capital Expenditure		9,00,00,000	INR 50,00,000/- would be infused upfront within 90 days from approval of plan by AA. Remaining INR 8,50,00,000/- within infused within 1 year thereafter.
(ii)	Working Capital		15,00,00,000	Would be infused in the Second half of 1 year from the date of the upfront payment.
Total (C)			24,00,00,000	
Total (A+B+C)		71,36,28,263.64	56,77,76,000	

SOURCES OF FUNDS

The amount proposed in the Resolution Plan shall be paid out of net owned funds and Borrowed funds. Further, the RA has obtained confirmation from HDFC Bank, sanctioning in principle amount of Rs.50,00,00,000/- for the acquisition of the Corporate Debtor.

FAIR AND LIQUIDATION VALUE

The average fair value and liquidation value of Corporate Debtor is Rs. 42,29,11,660 and Rs. 33,57,31,318/- respectively

- ii. That the final resolution plan submitted by Resolution Applicant meets the requirements of Section 30(2) of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(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;	Yes, Clause B(l) of the plan
30(2)(b)	provides for the payment of	Yes



	<p>debts of operational creditors in such manner as may be specified by the Board which shall not be less than-</p> <p>(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or</p> <p>(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</p>	<p>The Resolution Applicant proposed an amount of Rs. 15,76,435.80/- to the OCs.</p>
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Yes
30(2)(d)	the implementation and supervision of the resolution plan;	Yes
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	Yes



30(2)(f)	conforms to such other requirements as may be specified by the Board.	Yes
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iii. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]	Yes
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]	Yes Provided under part VIII of the Resolution Plan
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]	Not applicable
38(2)(a)	A resolution plan shall provide the term of the plan	Yes



	and its implementation schedule;	
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	Yes
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	Yes
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:	Yes Clause 7 of the Resolution Plan provides for the same. The Creditors of the Corporate Debtor shall be the beneficiaries of the avoidance transaction and the amount realized shall be distributed as per section 53 of the Code.
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	Yes
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	Yes
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	Yes
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	Yes
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	Yes



- iv. With respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016.
- v. The applicant has prayed for number of waivers in the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, we direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

"25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings."



This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

5. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is duty bound to follow the judgement of the **Hon’ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

35. Whereas, 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. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their



commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

6. Also the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”

7. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.
8. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution

applicant and other stakeholders involved. In view of the above, **I.A.**

2017/2023 stands allowed.



It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.

10. However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).**
11. Accordingly, MoA and AoA of the corporate debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
12. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.

13. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.



14. Let the copy of the order be served to the parties

SD/-

(RAHUL BHATNAGAR)
MEMBER TECHNICAL

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER JUDICIAL