

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

IA. No. 5656/2023

In

C.P.(IB)No.4350/MB/C-II/2018

Application filed under section 30(6) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016.

Filed by

Mr. Brijendra Kumar Mishra,

Resolution Professional

of Swastik Tungsten Private Limited

I-21/22, Paragon Centre, P.B. Marg,

Worli, Mumbai – 400013.

...Applicant

In the matter of

Kerilee Investments Limited

...Operational Creditor

Versus

Swastik Tungsten Private Limited

...Corporate Debtor

Order Pronounced on: - 08.07.2024

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Coram:

Anil Raj Chellan

Member (Technical)

Kuldip Kumar Kareer

Member (Judicial)

Appearances:

For the Resolution Professional : Adv. Manoj Mishra

For the Successful Resolution Applicant : Counsel, Uttam Hathi

ORDER

Per: Kuldip Kumar Kareer, (Member Judicial)

1. The present Interlocutory Application is filed by Mr. Brijendra Kumar Mishra, the Resolution Professional of Swastik Tungsten Private Limited seeking approval of the Resolution Plan submitted by the Ajit Shamrao Arbatti, being the promoter of the Corporate Debtor (hereinafter referred to as “Resolution Applicant [RA]”) under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (‘the Code’) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation (‘the CIRP Regulations’). The Resolution Plan was duly approved by 100% of the Committee of Creditors (CoC) on 04.10.2023.
2. The Applicant submits that Kerilee Investments Limited, the Operational Creditor initiated the Corporate Insolvency Resolution Process (‘CIRP’) against Swastik Tungsten Private Limited (hereinafter

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called 'the Corporate Debtor') under Section 9 of the Code. This Tribunal vide order dated 23.12.2021 initiated CIRP against the Corporate Debtor and appointed Mr. Mukul Chopra, as the Interim Resolution Professional (IRP). However, in view of the inability of Mr. Mukul Chopra to act as the IRP, the Operational Creditor filed an Application being IA. No. 334 of 2022 seeking appointment of Mr. Brijendra Kumar Mishra as the IRP. Vide Order dated 14.02.2022, the Tribunal was pleased to appoint the Applicant herein as the new IRP of the Corporate Debtor.

3. The Applicant made a Public Announcement for inviting claims on 22.02.2022 in Form 'A' and the last date specified for receipt of claims was 05.03.2022. Further, the Applicant received four claims out of which 1 (one) is from Secured Financial Creditor i.e., Bank of Maharashtra.
4. The Applicant appointed registered valuers to determine the Liquidation Value and Fair Value of the Corporate Debtor for each class of assets namely, Mr. Kedar Chikodi for plant and machinery, Mr. Keshav for Land and Building, Mr. Kunal Vikamsey for plant & machinery and land & building, Mr. Aalhad Deshmukh and Mr. Dharmesh Trivedi for Securities and Financial Assets.
5. The Applicant convened 2nd CoC meeting on 12.05.2022 wherein the members of the CoC gave their approval for the publication of Form G. On 16.05.2022, the Applicant published Form G in 'Free Press Journal' (English) and in 'Navshakti' Marathi newspapers inviting Expression of Interest (EoI) till 31.05.2022. In response to the

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publication of Form G, the Applicant received one EoI from Mr. Ajit Arabatti, Suspended Director of the Corporate Debtor via email dated 29.05.2022.

6. In the 3rd CoC meeting held on 12.07.2022, the Applicant apprised the members of the CoC that only one EoI was received in response to the publication of Form G. Further, in order to explore more Resolution Plans, the members of the CoC passed a resolution for republishing Form G.
7. Pursuant to the resolution passed by the CoC in its 3rd CoC meeting held on 12.07.2022, Form G was re-published on 13.07.2022 in 'Free Press' (English) and 'Navshakti' Marathi newspapers. In response to the publication of the second Form G, Mr. Ajit Arabatti submitted a letter dated 21.07.2022 via mail on 22.07.2022 thereby requesting the continuation of the EoI submitted in response to the publication of first Form G. The Applicant had also received EoI from Proma Industries Limited. Thereafter, the Applicant issued a Provisional list of Prospective Resolution Applicants (PRAs) on 29.07.2022.
8. The Applicant vide email dated 06.08.2022 sent an Information Memorandum (IM), Evaluation Matrix (EM) and Request for Resolution Plan (RFRP) as per which the two PRAs had to submit their Resolution Plan by 05.09.2022. Further, out of two PRAs, the Applicant had received a Resolution Plan only from Mr. Ajit Arabatti, and the same was circulated to the CoC on 11.09.2022. Subsequently, the members of the CoC asked the PRA Mr. Ajit Arabatti, to revise its Resolution Plan. Accordingly, Mr. Ajit Arabatti submitted a revised

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Resolution Plan on 04.10.2022 and circulated the same to the CoC on 06.10.2022.

9. In the 4th CoC meeting held on 27.12.2022, the Applicant was regularized as Resolution Professional (RP) of the Corporate Debtor. Further, the revised Resolution Plan was discussed at length and Mr. Ajit Arabatti was asked to incorporate certain points in the revised Resolution Plan and submit the same by 31.12.2022.
10. The Final Resolution Plan was put to vote before the members of the CoC on 31.07.2023 and voting lines were open till 08.08.2023. The said timelines were further extended from time to time by the Applicant at the request of the sole member of the CoC in order to get approval from the Head Office.
11. Accordingly, on 04.10.2023, the sole member of the CoC being Bank of Maharashtra, passed the Resolution for approval of the Resolution Plan and the Plan was approved by 100% majority on 04.10.2023.

12. **Brief background of the Corporate Debtor:**

The Corporate Debtor is engaged in the manufacturing of inorganic chemicals like Tungsten Trioxide, Tungsten Metal Powder, Ammonium Para Tungstate, Tungstic Acid etc. under the brand 'Swastik'.

13. **Brief background of the Resolution Applicant:**

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- a) The Resolution Applicant is the Promoter, Chairman and Mentor of the Corporate Debtor and also the proprietor of Shri Venkatesh Organics. Under his leadership, the Corporate Debtor Company was awarded the best PM Product (Raw Material) Award in 2015 for the indigenous development of Tungsten Powder. The Company imports Tungsten ore from UAE and the raw material is sourced from domestic suppliers. The Company also exports its products to countries namely USA, Iran, and Poland. The Resolution Applicant has a Tangible Net worth of Rs.1.86 Crores as on 31.03.2022.

14. Salient features of the approved Resolution Plan:

Amount in Lakhs

| 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. | CIRP costs | CIRP cost | 22,00,000 | 22,00,000 | 22,00,000 | 100% |
| 2. | Secured Financial Creditors | a) Creditors not having a right to vote under sub-section (2) of Section 21 | - | - | - | 0.00% |
| | | (b) Other than (a) (i) who did not vote in favour of the | - | - | - | - |

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| | | | | | | |
|---|-------------------------------|--|-----------------|-----------------|-------------|-------------------------------------|
| | | Resolution Plan | | | | |
| | | (ii) who voted in favour of the Resolution Plan 1. Bank of Maharashtra | 27,61,51,059.66 | 25,70,97,045.11 | 5,70,00,000 | 22.17% Of the admitted claim |
| | | Total a+b | 27,61,51,059.66 | 25,70,97,045.11 | 5,70,00,000 | 22.17% |
| 2 | Unsecured Financial Creditors | a) Creditors not having a right to vote under sub-section (2) of section 21 | - | - | - | - |
| | | b) Other than (a) above (i) who did not vote in favour of the Resolution Plan | | | | |
| | | (ii) who voted in favour of the Resolution Plan | - | - | - | - |
| | | Total a+b | - | - | - | - |
| 3 | Operational Creditors | (a) Related Party of Corporate Debtor | - | - | - | - |
| | | (b) Other than (a) above | - | - | - | - |

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| | | | | | | |
|---|---|--|------------------------|------------------------|--------------------|---------------|
| | | (i) Government | - | - | - | - |
| | | (ii) Workmen | - | - | - | - |
| | | (iii) Employees | - | - | - | - |
| | | (iv) Operational Creditors (other than Workmen and Employees and Government Dues) Suppliers/ Creditors | 4,38,36,879 | 1,46,42,977 | 15,00,000 | 10% |
| | | Total a+b | 4,38,36,879 | 1,46,42,977 | 15,00,000 | 10% |
| 4 | Total | | 34,86,30,193.66 | 27,17,40,022.11 | 6,07,00,000 | 17.41% |
| 5 | Need basis for improvement of Operations/ Working Capital | | | | 93,00,000 | |
| 6 | Grand Total | | | | 7,00,00,000 | |

a. The Successful Resolution Applicant prescribes a total amount of Rs. 7,00, 00,000/- (Rupees Seven Crores Only) to the stakeholders of the Corporate Debtor.

b. **Timeline of Payment of the Proposed under the Resolution Plan**

The sum of Rs. 6.07 Crores is proposed to be paid in the following tranches by the Resolution Applicant: -

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| Sr. No. | Particulars | Timelines | Amount (in Crores) |
|---------|---|--|-----------------------|
| 1. | Infusion of funds by Cash Equity | Within 45 days from approval of Resolution Plan by the Tribunal | 0.37 |
| 2. | Infusion of funds by Debt or from internal accruals | Within 30 days from approval of the Resolution Plan by the Tribunal. (Rs. 9.30 Lakhs have already been paid from Rs. 2 Crores in view of Bank of Maharashtra already having withdrawn Rs. 9.30 Lakhs during CIRP period which has been adjusted herein) | 2.00 |
| | | Within 6 months from approval of the Resolution Plan by the Tribunal | 1.00 |
| | | Within 12 months from approval of the Resolution Plan by the Tribunal | 2.70 |
| | | Additionally, need based working capital | 0.93 |
| | | Total | 7.00 |

c. **Sources of Funds:**

- i) That out of the total amount of Rs. 7 Crores, the Resolution Applicant has a net worth of Rs. 1.86 Crores as of 31.03.2022. Further, the Resolution Applicant has the following strategic partners and investors who have provided their letter of intent with respect to making investments in the Corporate Debtor:

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- a. Omkareshware Mines and Minerals (Ahmedabad based group)
 - b. Metadyne (Towanda based overseas group)
- ii) Further, the Resolution Applicant has also received an in-principle commitment from one of Grameen Patsantha (Co-operative Institutions) against the security of the land and building subject to release of the claim by the Financial Creditors on payment.

a. **Business Plan of the Resolution Applicant:**

- i) On and from the closing date, the Corporate Debtor shall be wholly owned by the Resolution Applicant, together with all the development potential in relation to all rights, title, entitlements, interest, easements and benefits arising therefrom.
- ii) The SRA seeks to acquire the Corporate Debtor on a 'clean slate' basis and utilize the property and develop the same as per the business plan.

b. **Financial Proposal of the Resolution Applicant**

I. **CIRP costs:**

- i) The amount payable towards CIRP cost is Rs. 22 Lakhs. The CIRP costs will be paid out in priority over the payments to any other Creditors on or before the Transfer Date after adjusting the amount already paid during the CIRP.

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II. Payments to the Operational Creditors:

The Resolution Applicant proposes to pay an amount of Rs.15,00,000/- to the Operational Creditors.

III. Secured Financial Creditors:

The Resolution Applicant proposes to pay an amount of Rs.5,70,00,000/- to the Secured Financial Creditors.

IV. Working Capital:

The Resolution Applicant proposes to infuse Rs.93,00,000 towards working capital.

V. Capital Reduction

The existing subscribed share capital of the Corporate Debtor is Rs. 2.86 Crores which is 28.64 Lakh shares of face value Rs. 10 each. The Resolution Applicant proposes to cancel all the shares issued to the existing shareholders hence making their percentage of shareholding as NIL. Further, all the liabilities of the Company appearing as current borrowings with respect to such equity shares which have been reduced will be completely reduced to NIL without any liabilities, claims or obligations on the approval of the Resolution Plan. The share certificate held by the shareholders of the Corporate Debtor shall stand cancelled.

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c. **Capital Infusion**

The Resolution Applicant proposes to issue fresh equity of Rs. 0.37 Crores. The equity shares of face value Rs. 10 each would be issued equivalent to the actual amount infused by the Resolution Applicant.

d. **Monitoring Committee:**

The Resolution Applicant proposes to form a Monitoring Committee comprising of four persons of which two persons will be nominated by the Financial Creditors, one to be nominated by the Resolution Applicant and one will be the Resolution Professional or any independent Insolvency Professional.

e. **Implementation of the Resolution Plan:**

The Resolution Applicant proposes to implement the Resolution Plan within a period of 60 days from the Plan approval date by this Tribunal or such other extended date as may be agreed in writing between the Secured Financial Creditors and the Resolution Applicant (Closing Date).

f. **Recoveries from Preferential/Fraudulent Transaction:**

Any proceeds received from the transactions in terms of Sections 43, 45, 47, 49, 50 or 66 of the Code, the said shall ensure to the benefit of the approving Financial Creditors.

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g. Performance Guarantee:

In accordance with regulation 36B (4A) of the CIRP Regulations, the Resolution Applicant has provided performance security by way of a bank guarantee dated 01.11.2023 issued by IDBI Bank Ltd. for a sum of Rs. 50,00,000/- (Rupees Fifty Lakhs only).

h. Eligibility of the Resolution Applicant under Section 29A of the Code:

The Resolution Applicant is the suspended promoter of the Corporate Debtor and is eligible under Section 29A to submit the Resolution Plan as the Corporate Debtor is a Registered MSME entity.

i. Relief and Concessions

The Successful Resolution Applicant has sought various reliefs and concessions based on the clean slate concept laid down by the Hon'ble Supreme Court in various judgements, reliefs which are necessary to keep the Corporate Debtor as going concern, release it from all liabilities/ proceedings, disputes and noncompliance prior to the NCLT Approval Date and extended period for renewal or revival of licenses for running the business of the Corporate Debtor.

Observations of the Adjudicating Authority:

15. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with the Application.

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16. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30(2) are fulfilled and no provision of law for the time being in force appears to have been contravened.

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

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

Regulation 39 (3B) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that where two or more Resolution Plans are put to vote simultaneously, the Resolution Plan, which receives the highest votes but not less than requisite votes, shall be considered as approved. In this case, three Resolution Plans had been put to vote and the Resolution Plan submitted by “Mr. Ajit Shamrao Arbatti” received the highest votes (100%) and hence this Resolution Plan is considered as approved by the CoC.

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

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requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.

19. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
- a. Payment of CIRP cost as specified under Section 30(2)(a) of the Code;
 - b. Payment of debts of the Operational Creditors as specified under Section 30(2) (b) of the Code;
 - c. For the management of the affairs of the Corporate Debtor after approval of the Resolution Plan; and
 - d. The implementation and supervision of the Resolution Plan by the RP and the CoC as specified under Section 30(2) (d) of the Code.
20. In *K Sashidhar vs. Indian Overseas Bank and Ors. (Civil Appeal No. 10673/2018 decided on 05.02.2019) (2019)* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by the 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 a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by the CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further

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held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan 'as approved' by the requisite percentage of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is with reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements. The legislature, consciously, has not provided any ground to challenge the commercial wisdom of the individual financial creditors or their collective decision before the Adjudicating Authority.

21. In CoC of *Essar Steel India Limited vs. Satish Kumar Gupta and Ors (2020) 8 SCC 531* the Hon'ble Apex Court clearly held that the Adjudicating Authority would not have the power to modify the Resolution Plan which the CoC in their commercial wisdom has approved. In para 42, the Hon'ble Court observed as under:

'Thus, it is clear that the limited judicial review available which can in no circumstances trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, in so far as the Adjudicating Authority is concerned and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).'

22. In view of the discussions and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and the Regulations 37, 38, 38(1A), and 39(4) of the CIRP Regulations. The Resolution Plan is not

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in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. We, therefore, allow the Application in the following terms:

ORDER

23. The Application **IA. No. 5656 of 2023 in C.P.(IB) 4350 of 2018 is allowed** and the Resolution Plan submitted by “Ajit Shamrao Arbatti” is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors including the Central Government, any State Government, or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
24. In terms of the judgment of Hon’ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (Civil Appeal No. 8129 of 2019 decided on 13.04.2021) (2021) SC 212*, on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of claims which are not a part of the Resolution Plan. Accordingly, no person including the Central Government, any State Government or any local authority, guarantors and other stakeholders, will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which is not a part of the Resolution Plan.

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25. Any exemption as sought in relation to the payment of Income Tax Returns, waivers from the applicability of any section under the Income Tax Act, 1961, the Central Goods and Services Tax Act, 2017, and other indirect taxes arising out of the implementation of the Resolution Plan is not granted. However, the Resolution Applicant is at liberty to approach competent Authorities for the exemptions, if permitted under the law.
26. With respect to the grant of license/Government approval, if the license or approval is terminated, suspended, or revoked, the Resolution Applicant may approach the concerned Authorities for such approvals, or renewals.
27. All the equity shares and preference shares of the Corporate Debtor would stand extinguished by way of a reduction in the capital of the Company without any payment to the shareholders holding such shares without the requirement of writing the words 'and reduced'. Such reduction of share capital shall not require any further approval, act or action as required under the Companies Act, 2013 including Section 66 of the Companies Act, 2013 and such cancellation shall not require the consent of any of the creditors or shareholders of the Corporate Debtor.
28. The Monitoring Committee as proposed in clause 3.8.2 (b) of the Resolution Plan shall be constituted to supervise and implement the Resolution Plan.
29. The approval of the Resolution Plan shall not be construed as a waiver of any future statutory obligations and shall be dealt with by the

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appropriate Authorities in accordance with law. The Corporate Debtor may obtain necessary approval required under any law for the time being in force from the Appropriate Authority within a period of one year from the date of approval of the Resolution Plan.

30. Other reliefs and concessions not covered in the aforesaid paragraphs including exemption from levy of stamp duty, fees and registration charges that may be applicable in relation to this Resolution Plan and its implementation are not granted.
31. The moratorium declared under Section 14 of the Code shall cease to have effect from this date.
32. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with a copy of this order for information.
33. The Applicant shall forthwith send a certified copy of this order to the CoC and the Resolution Applicant respectively for necessary compliance.

Sd/-

**ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
MEMBER (JUDICIAL)**