

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

IA. No. 3704/2022
In
CP(IB)No. 110/MB/C-II/2022

Application filed under section 30(6), r/w Section 31(1) of the Insolvency & Bankruptcy Code,2016 read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,

Filed by

**Mr. Prakash Naringrekar,
Resolution Professional**

...Applicant

Vs

Viaan Industries Limited

...Respondent

In the matter of

Cash Ur Drive Marketing Private Limited

...Financial Creditor

Versus

Viaan Industries Limited

...Corporate Debtor

Order Pronounced on: - 06.02.2024

Coram:

**Anil Raj Chellan
Member (Technical)**

**Kuldip Kumar Kareer
Member (Judicial)**

Appearances -

For the Resolution Professional : Adv. Dharmesh Shah

ORDER

Per: Anil Raj Chellan, Member Technical

1. The present Interlocutory application is filed by **Mr. Prakash Naringrekar** the Applicant, Resolution Professional of **Viaan Industries Limited** ('the Corporate Debtor') seeking approval of the resolution plan 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 Persons) Regulations, 2016 ('CIRP Regulations') submitted by Kundan Care Products Limited, the Successful Resolution Applicant ('SRA') and duly approved by 100% of the Committee of Creditors ("CoC") of the Corporate Debtor in its 10th CoC meeting held on 18.11.2022.
2. The Applicant submits that the Financial Creditor, Cash Ur Drive Marketing Private Limited, initiated the Corporate Insolvency Resolution process ('CIRP') against the Corporate Debtor under Section 7 of the Code vide Order dated 11.03.2021, and Mr. Prakash Naringrekar was appointed as Interim Resolution Professional('IRP'). The Applicant published the Public Announcement for inviting claims on 14.03.2022 in Form 'A' and the last date for receipt of claims was 25.03.2022.
3. Pursuant to the said admission order and receipt of claims, the CoC was constituted with Cash Ur Drive Marketing Private Limited as sole member

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on 02.04.2022, and the CoC unanimously resolved and confirmed appointment of the Applicant as the Resolution Professional ('RP').

4. In the 2nd CoC meeting, the Applicant presented and circulated the detailed invitation for Expression of Interest ('EoI') for Resolution Plan to the members of the CoC. The eligibility criteria for submission of the Resolution Plan in Form G was published in the notification and advertisement on 25.05.2022.
5. In the 3rd CoC meeting, the Applicant received additional claims from two Operational Creditors i.e. GST Department and Manibhadra Creations. The Applicant accepted the claim of Manibhadra Creations of Rs. 3 Lakhs only. Further, the Applicant informed the CoC members about certain transactions that may fall in the category of specified/avoidance transactions. The Applicant appointed H L Saini & Co. CA on 01.07.2022, as Transaction Auditor and based on their report filed applications for Specified/avoidance transactions against the suspended directors.
6. The Applicant (RP) had received EoI from 3 applicants on 19.06.2022 and in the 4th CoC meeting held on 04.07.2022, the Applicant issued the final list of three eligible prospective Resolution Applicants and placed before the CoC. The three Prospective Resolution Applicants are as follows:

Sr. No.	Name of Prospective Resolution Applicants
1.	Mr. Vivek Kumar Ratakonda
2.	Ananthari Industries Private Limited
3.	Kundan Care Products Limited

7. The CoC, in the 10th meeting held on 12.11.2022, discussed and evaluated the Resolution Plans received from all three Resolution Applicants along with the Comparative statements of salient features of the Resolution Plan and evaluation matrix, etc. After affording opportunity to all Resolution Applicants to improve their respective Resolution Plans and holding discussions, the CoC approved the Resolution Plan submitted by Kundan care Products Limited by 100% of votes.

8. **Brief background of the Corporate Debtor**

(a) The Corporate Debtor is a company limited by shares and incorporated on 19.10.1982 under the Companies Act, 1956 with the Registrar of Companies Maharashtra, Mumbai. It is a public listed company with Bombay Stock Exchange engaged in trading, media and entertainment Industry and the business of the Corporate Debtor was in low stages since the outbreak of Covid Pandemic.

(b) The Corporate Debtor does not have any land & building, Plant and machinery and the assets are in the nature of receivables from debtors, loans and advances etc.

9. **Brief Background of the Successful Resolution Applicant**

(a) Kundan Care Products Ltd (hereinafter ‘the Successful Resolution Applicant’) is a company incorporated in the year 2004 and engaged in wide range of businesses including manufacturing and exporting of gold, precious metals, refinery, cosmetics to chemicals, agro commodities, polymers, petro product, import of bullion and pharmaceutical items, hydroelectricity, wind

electricity generation etc.

(b) The Successful Resolution Applicant has acquired a hydro project Rishiganga Power Corporation Limited. The said plant was damaged in the year 2016 due to natural calamity. After acquiring the same, the Resolution Applicant restarted the project in June 2020.

(c) The Resolution Applicant has also acquired two windmills, Aston Solar Private Limited and Luni Power Company Private Limited having 4.5MW hydroelectric project.

(d) The Successful Resolution Applicant along with its group companies have experience in revival of stressed projects.

10. SALIENT FEATURES OF THE APPROVED RESOLUTION

A. Synopsis of Payments to various Stakeholders.

The Successful Resolution Applicant has proposed total discharge amount of Rs.1,00,00,000 (Rupees one crore only) as under:

Sr. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Admitted %
1	CIRP Cost	Nil	-	-	2000000	100%
2	Secured Financial Creditors	Nil	0	0	0	0.00
3	Unsecured Financial Creditors	(i) who did not vote in favour of	0	0	0	0.00

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		the resolution plan (ii) who voted in favour of the resolution plan	21830760	17533152	75,00,000	42.77
		Total[(i)+(ii)]	21830760	17533152	75,00,000	42.77
4	Operational Creditors	(a) Related Party of Corporate Debtor	0	0	0	0
		(b) Other than (a) above:				
		(i) Government	398400365	70776705	4,99,445	0.70346
		(ii) Workmen	0	0	0	0
		(iii) Employees	0	0	0	0
		(iv) Other than Workmen and Employees	442592	300000	555	0.70346
		Total [(a)+(b)]	398842957	71076705	500000	0.70346
5	Other debts and dues	Nil	0	0	0	0.00
	Grand Total		420673717	88609857	100,00,000	11.2854

B. CIRP Cost

CIRP cost outstanding as on the date of resolution plan is Rs.16 lakh. However, the Resolution Plan provided CIRP Cost upto Rs.20 lakhs. In case, the CIRP cost goes over and above 20 Lakhs, the amount demarcated for the Financial Creditor

will get reduced to that extent.

C. Payment to Financial Creditors

An amount of Rs 75.00 Lakhs is proposed to be paid, subject to changes in CIRP Cost as above, to the Unsecured Financial Creditors.

D. Payment to Operational Creditors other than employees, workmen.

An amount of Rs. 5.00 Lakhs is proposed to be paid to settle all the claims of Operational Creditors pertaining to the period prior to the insolvency Commencement Date. The Resolution Plan assumes no additional liability that has accrued between the Insolvency Commencement date and Completion Date.

E. Employees and workmen

As per the Information Memorandum, no workman has filed a claim and hence no amount is proposed to be paid to the employees and workmen.

F. Treatment of Statutory Liabilities

The Statutory Liability appearing in the information memorandum to be part of Operational Creditors. The offer made to the Operational Creditors shall remain similar to the Statutory Liability that may arise. The Resolution Applicant and the Corporate Debtor would not be liable for any Statutory Liabilities in respect of Corporate Debtor that may arise in future for the period before effective date.

G. Any other Liabilities and Contingent Liabilities

The Resolution Applicant proposes NIL payment to any liabilities claims and debts, arising out of the litigations as mentioned in the information memorandum.

H. Monitoring Committee for Supervision and Implementation of the Resolution Plan.

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A monitoring committee consists of the Resolution Professional and the Successful Resolution Applicant who shall supervise the implementation of the Resolution Plan during the term as defined in the Resolution Plan as under:

S. No	Activity	Timeline (Days)
1	Effective Date	Approval of the Resolution Plan by the NCLT
2	Completion Date	Effective Date + 60 days (maximum)

The Successful Resolution Applicant retains the right to remove any defect or difficulties arising in the implementation of the Resolution Plan by moving an application before the Adjudicating Authority, which may pass such order for removal of difficulty in implementation of the Resolution Plan without the involvement of the CoC or the Resolution Professional.

I. Recoveries from Preferential/Fraudulent Transactions.

Any amount recovered out of preferential/ fraudulent transactions u/s. 43,45, 50 and 66 of the Code shall enure to the Financial Creditor.

J. Eligibility of Applicants under Section 29A of the Code:

The Successful Resolution Applicant has submitted a declaration stating that the Resolution Applicant or any of its directors or key managerial person is not disqualified under section 29A of the Code.

K. Performance Guarantee.

In relation to performance security, the Applicant states that he had received Rs. 2,50,000/- along with EOI and also received remittance of Rs. 7,50,000/- from the Successful Resolution Applicant (Total Rs. 10,00,000/-) which is retained by the Applicant as Security Deposit.

L. Source of Funds.

The total proposed financial consideration of Rs. 1,00,00,000/- is proposed to be paid/ settled to all stakeholders in cash and by way of infusion by the shareholders/ promoters in the form of Equity/ Shareholder Contribution or Redeemable Optionally Convertible Debentures/ Unsecured Subordinated Debt sourced from Resolution Applicant, loan from Resolution Applicant's associate/ group companies/ family members/ Internal Accruals/ thru Nominee entity as per sole discretion of the Successful Resolution Applicant.

M. Registered Valuers.

The Applicant appointed registered valuers to determine Liquidation Value and Fair Value of the Corporate Debtor namely, Mr. Chandrashekhar Joshi and Mr. Yogesh Rasal for Plant and Machinery; Mr. Riken Vira and Mr. Rakesh Tulsyan for Securities and Financial Assets.

11. The Applicant further submits that the Resolution Plan submitted is in compliance **with Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations**. The RP has provided a compliance certificate in "**FORM H**" as mandated under the Code for seeking approval of the Resolution Plan from this Tribunal.

Observations of the Adjudicating Authority.

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

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

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

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

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

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

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

17. The Resolution Plan has been approved by the CoC in its 10th meeting with 100% votes in terms of Section 30(4) of the Code.

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

19. In *CoC of Essar Steel* (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating

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Authority does not have power to modify the Resolution Plan which the CoC in their commercial wisdom has approved. In para 42 Hon'ble Court observed as under:

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

20. The Applicant has filed Compliance Certificate in Form H along with the Plan. On perusal, the same is found to be in order.

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

ORDER

22. The Application IA No. 3704 of 2022 in CP (IB) No. 110/2022 is allowed. The Resolution Plan submitted by Mr. Prakash Naringrekar is hereby approved. It shall become effective from this date and shall from 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.

23. In terms of the judgement of the 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), on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which are not a part of the Resolution Plan. 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.

24. The Monitoring Committee as proposed in para 15 of the Resolution Plan shall be constituted for supervising the effective implementation of the Resolution Plan.

25. The approval of the Resolution Plan shall not be construed as waiver of any future statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan relating to period after the date of this order shall be subject to approval by the Authorities concerned. This Tribunal will not deter such authorities to deal with any of the issues arising after effecting the Resolution Plan.

26. The concession sought in relation to the stamp duty, taxes, registration charges, etc for implementation of the approved Resolution Plan is not granted.

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However, the Resolution Applicant is at liberty to approach the competent authorities for the exemption, if permitted under the law.

27. The Resolution Applicant for renewal of various licenses and effective implementation of the Resolution Plan, shall obtain all necessary approvals under any law for the time being in force, within such period as may be prescribed. However, if any approval of the shareholder is required for extinguishment of existing shares of the Corporate Debtor, allotment of shares to the Resolution Applicant and reduction of share capital of Corporate Debtor under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the Resolution Plan, such shareholders' approval shall be deemed to have been given and it shall not be a contravention of that Act or law. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), for information and record.

28. With respect to the application(s) relating to preferential/fraudulent/avoidance transactions under section 43, 45, 50 and 66 of the Code pending before this Tribunal, all cost of and recovery from those proceedings shall be of the Financial Creditor.

29. As regards the other reliefs and concessions, as sought for, which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP as stipulated under Section 32A of the Code, is granted to the Resolution Applicants. However, exemptions, if any, sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.

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30. The reliefs and concessions which are not specifically granted or in violation of any law in force shall be construed as 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 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)**