

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III

I.A. 2729/2022

In

C.P. No. (IB) 2510/MB/C-III/2019

Under Section 30(6) and Section 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

Mr. Navin Khandelwal)	
(Resolution Professional of)	
M/s. Shimita Trading Pvt. Ltd.))	
Having office at:)	
206, Navneet Plaza, Old Palasia,)	... <i>Resolution Professional /</i>
Indore (M.P)-452018)	<i>Applicant</i>

IN THE MATTER OF

National Steel and Agro Industries Limited

... *Operational Creditor*

Vs

Shimita Trading Private Limited

... *Corporate Debtor*

Order pronounced on: 21.02.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Applicant: Adv. Aniruth Purusothaman

Per: Shri. Charanjeet Singh Gulati, Member (Technical)

ORDER

1. The above I.A. is filed by Mr. Navin Khandelwal, Resolution Professional of the Corporate Debtor (**RP**) under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Regulation 39(4) of the IBBI (Insolvency Resolution Process of Corporate Debtors) Regulations, 2016 (**Regulations, 2016**) seeking approval of the Resolution Plan submitted by Radhekripa Developers Private Limited (**Successful Resolution Applicant**) which was approved by the Committee of Creditors (CoC) by 100% voting at its 8th Meeting held on 26.08.2022.

Facts of the Case, in brief:

2. The Corporate Insolvency Resolution Process (**CIRP**) of Shimita Trading Private Limited (**Corporate Debtor**) was initiated by this Tribunal vide Order dated 10.12.2021 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**the Code**) and Mr. **Navin Khandelwal** was appointed as the Interim Resolution Professional (**IRP**).
3. The **Committee of Creditors** is as follows:

Sr. No.	Name of the Creditor	Amount claimed (In Rs.)	Amount Admitted (In Rs.)	Voting Percentage
1	Sagar Deposit and Advances Limited- Financial Creditor	10,17,425	10,00,000	100%
2	Pawan Khandelwal- Financial Creditor	50,00,000	50,00,000	0%

4. The claim of National Steel and Agro Industries Limited, being the operational creditor of the Corporate Debtor, was admitted to the extent of Rs. 13,14,80,928. Since the claim of operational creditor is more than 10% of the total debt, the operational creditor was allowed to attend the meeting in accordance with the provisions of I&B Code.

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5. The first meeting of Committee of Creditors (**CoC**) was held on 25.01.2022 wherein the CoC approved the appointment of Mr. Navin Khandelwal as the Resolution Professional (RP) by 100% voting.

6. The **Total Claims** received and admitted by the RP are as under:

Nature of creditor	Amount Claimed (In Rs.)	Amount Admitted (In Rs.)
Financial Creditors (Secured)	--	--
Financial Creditors (Unsecured)	60,17,425	60,00,000
Sub Total- A	60,17,425	60,00,000
Operational Creditor (other than Workmen and Employees and Government Dues)	21,34,46,914	13,14,80,928
Sub Total- B	21,34,46,914	13,14,80,928
Total A+B	21,94,64,339	13,74,80,928

7. The Valuation Reports procured by the RP in accordance with the provisions of the Code and the applicable regulations is annexed to the Application. The Fair Value of the Corporate Debtor is Rs. 65,99,253 and Liquidation Value of the Corporate Debtor is Rs. 43,71,303 as determined by Registered Valuers.

Issue of Expression of Interest

8. In terms of Section 25(2)(h) of the I&B Code, the RP published the 1st public notice in Form – G on 10.03.2022 inviting Expression of Interest (**EoI**) to submit Resolution Plan for the Corporate Debtor. The EoI was published in 2 newspapers, namely, **Free Press Journal (Mumbai Edition)** and **Navshakti (Mumbai Edition)**.

RFRP and Submission of Resolution Plan

9. In furtherance of the EoI issued by the RP, 2(two) Prospective Resolution Applicants (**PRAs**), namely Anand Vihar Reality Private Limited and Radhekripa Developers Private Limited, had shown interest.
10. The Resolution Professional issued the Request for Resolution Plan (RFRP), Evaluation Matrix, Information Memorandum and other relevant documents on 09.04.2022 to all the Prospective Resolution Applicants in consultation with the CoC. The last date to submit the Resolution Plan was 09.05.2022 which was extended till 19.05.2022 on request of PRAs after due approval from CoC.
11. Pursuant to Section 30 of the Code read with Regulations 37 and 38 of the IBBI Regulations, 2016, Resolution Plan was received only from Radhekripa Developers Private Limited.

Extension of CIRP Period

12. The 180 days period as allowed under section 12 of the I&B Code expired on 26.06.2022. Consequently, during the 5th CoC Meeting dated 31.05.2022, the RP obtained approval for the extension of CIRP period by 90 days. In this regard, an Interlocutory Application No. 1703/2022 was filed seeking extension till 24.09.2022. However, the IA was pending adjudication when the RP filed the instant IA No. 2729/2022 for approval of Resolution Plan. In view of the same, this Tribunal vide order dated 03.03.2023 disposed of the extension application no. 1703/2022 as infructuous.

Approval of Resolution Plan by CoC

13. In the 6th and 7th CoC Meetings dated 30.06.2022 and 12.08.2022 respectively, there were discussions and negotiations with the

Resolution Applicant. It was agreed that the Resolution Applicant shall submit a revised Resolution Plan which shall be put for vote.

14. The revised Resolution Plan of M/s Radhekripa Developers Private Limited was submitted on 05.08.2022 for approval of CoC. The Resolution Plan submitted by Radhekripa Developers Private Limited (**Successful Resolution Applicant/SRA**) was placed before the CoC for voting on the 8th CoC Meeting held on 28.08.2022 and the same was approved by the CoC by 100% voting. Thereafter, the RP issued a Letter of Intent (**LoI**) dated 03.09.2022 to the Successful Resolution Applicant which was duly accepted.

15. **Brief background of the Successful Resolution Applicant:**

15.1 The Successful Resolution Applicant, Radhekripa Developers Private Limited, is a firm involved in the business of real estate activities, construction services, brokerage, commission, etc.

15.2 It is submitted that the Successful Resolution Applicant is interested in acquiring the Corporate Debtor as it is looking forward for some new trading business activities and opportunities in agricultural sector.

15.3 It is submitted that the Successful Resolution Applicant is not barred by Section 29A of the Code and an affidavit in this regard is also submitted by the Successful Resolution Applicant which is annexed to the Petition.

16. **Salient Features of Resolution Plan:**

16.1 The Committee of Creditors (CoC) in its 8th meeting held on 28.08.2022 approved the Resolution Plan of Radhekripa Developers Private Limited (**SRA**) by 100% voting. The SRA submits that it is not ineligible under Section 29A of the Code.

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- 16.2 As per Regulation 36B(4A) of the Regulations, the SRA has furnished the Resolution Plan Performance Security amounting to Rs. 10,00,000 in the form of Bank Deposit on 08.09.2022. Further, it is submitted that the Resolution Applicant shall arrange for funds from internal accruals plus outside borrowings.
- 16.3 The Resolution Plan proposes payment to CIRP cost, financial creditors and Operational creditors as stated therein. Further, compliance certificate in Form – H is submitted as mandated under Regulation 39(4) of IBBI Regulations, 2016.
- 16.4 The Resolution Plan amount is **Rs. 70,00,000 (Rupees Seventy Lakhs)**.
- 16.5 As per the Resolution Plan, the SRA shall infuse an amount of Rs. 1,00,000 divided into 10,000 equity shares of Rs. 10 per share in favour of SRA in Corporate Debtor, by way of subscription to equity shares of corporate debtor. The new shareholding pattern of Shimita Trading Private Limited shall be as follows:

Sr. No.	Particulars	Percentage	No. of Shares
1	Radhekripa Developers Private Limited along with their promoter and/or relative	100%	10,000
	Total	100%	10,000

- 16.6 In accordance with Regulation 38(1-A) of the IBBI Rules, 2016, the statement showing the treatment given to the stakeholders is given below:

Sr. No.	Particulars	Amount Admitted (in Rs.)	Settlement Value Offered (in Rs.)	Terms of Payment	Settlement %
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1	CIRP Costs	At Actuals (Rs. 10,00,000)	At Actuals (Rs. 10,00,000)	To be paid in full within 1 month from the Effective date	100%
2	Secured Financial Creditors	Nil	Nil	-	-
2	Unsecured Financial Creditors (un-related party)	10,00,000	10,00,000	To be paid within 3 months from the Effective date	100%
	Unsecured Financial Creditors (related party)	50,00,000	20,00,000	To be paid within 3 months from the Effective date	40%
3	Operational Creditors				
a	Employees and Workmen	Nil (No claims filed or admitted)	Nil	-	-
b	Government Authority Dues	Nil (No claims filed or admitted)	Nil	-	-
c	Operational Creditors	13,14,80,928	30,00,000	To be paid within 3 months from the	2.28%

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				Effective date	
	Total	13,84,80,928	70,00,000		

16.7 **Terms of the Resolution Plan and Implementation Schedule:**

- i) CIRP costs to be paid in priority within a period of 30 days from the date of approval by the Adjudicating Authority.
- ii) Rs. 30,00,000 to the Financial Creditors shall be paid in full within a period of 3 months from the date of approval of the Resolution Plan.
- iii) Rs. 30,00,000 to be paid to the Operational Creditor within a period of 3 months from the date of sanction of the Resolution Plan.

Compliance Certificate in Form – H

17. Pursuant to Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Successful Resolution Applicant has prepared a Compliance Certificate in **Form H** which is annexed to the Application.

18. Compliance of mandatory requirements under the Insolvency & Bankruptcy Code, 2016:

Sr. No.	Particulars	Compliance
1	<u>Section 25:</u> Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the Corporate Debtor?	Yes.
2	<u>Section 29A:</u> Whether Resolution Applicant is eligible to submit resolution plan as per final list of Resolution	Yes.

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	Professional or Order, if any, of the Adjudicating Authority?	
3	Section 30:	
	(1) Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes. The Resolution Applicant has submitted an affidavit under section 29A of IBC, 2016 confirming his eligibility for submission of Resolution Plan.
	(2)(a) Whether the Resolution Plan provides for payment of insolvency resolution process costs?	The Resolution Plan provides for payment of resolution process cost estimated at Rs.10,00,000 including any other Costs incurred / payable till the date of approval on actual basis, and in priority to payment of other debts of Corporate Debtor.
	(2)(b) Whether the Resolution Plan provides for the payment of the debts of operational creditors?	The Resolution Plan provides the repayment of debts of operational creditors in such manner as specified in Section 30(2)(b) of the Code.
	(2)(b) Whether the Resolution Plan provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Not Applicable.
	2(c) Whether the Resolution Plan provides for the management of the affairs of the Corporate Debtor?	Yes. The Resolution Applicant shall identify and appoint a suitable professional to manage the affairs of the company on a day-to-day basis, with the support of the Company and with guidance from the Board of Directors.
	2(d) Whether the Resolution Plan Provides for implementation and supervision of the resolution plan?	Yes. Resolution Applicant/ Management Team will ensure that the resolution plan is implemented and supervised suitably. Entire crystallized amount is

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		proposed to be paid to financial creditors and operational creditors within 3 months from the date of approval of resolution plan by NCLT.
	(2)(e) Whether the resolution plan contravenes any of the provisions of the law for the time being in force?	Resolution Applicant has prepared the Resolution Plan after taking into consideration compliance of all applicable laws and regulations and shall not contravene any of the provisions of the law for the time being in force
	(2)(f) Whether Plan conforms to such other requirements as may be specified by the Board?	The Resolution Plan has been prepared taking every aspect into consideration so as to conform with such other requirement as may be specified by Board
	4(a) Whether the Resolution Plan is feasible and viable, according to the CoC?	Yes.
	4(b) Whether the Resolution Plan has been approved by the CoC with 66% voting share?	Yes. 100% voting share.
4	Section 31: (1) Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Yes.

19. Compliance under mandatory requirements under IBBI (Insolvency Resolution Process of Corporate Debtors) Regulations, 2016

Regulation 35		
A	Whether the Resolution Professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered	There are no such transactions found and the same was informed to the CoC in the 8 th meeting held on 26.08.2022.

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	under sections 43,45,50 or 66, before 115 th day of the insolvency commencement date, under intimation to the Board?	
Regulation 38		
1	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Yes.
1A	Whether the resolution plan includes a statement as to how it has dealt with the interest of all stakeholders?	Yes.
1B	<p>i) Whether the Resolution Applicant or any of its related parties has failed to implement or contribute to the failure of implementation of any resolution plan approved under the Code?</p> <p>ii) If so, whether Resolution Applicant has submitted the statement giving details of such non-implementation?</p>	Yes. Clause 3.1 (point f)
2(a)	Whether the Resolution Plan provides the term of the plan and its implementation schedule?	Yes.
2(b)	Whether the Resolution Plan provides for the management and control of the business of the corporate debtor during its term?	Yes.
2(c)	Whether the Resolution Plan provides adequate means for supervising its implementation?	Yes.
3	Whether the Resolution Plan demonstrates that -	
(a)	It addresses the cause of default?	Yes.
(b)	It is feasible and viable?	Yes.
(c)	It has provisions for its effective implementation?	Yes.

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(d)	It has provisions for approvals required and the time for the same?	Yes.
(e)	The Resolution Applicant has the capacity to implement the Resolution Plan?	Yes.
Regulation 39		
2	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No such application filed.
4	Provide details of performance security received as referred to in sub-regulation (4A) of Regulation 36.	Yes. Amount of Rs. 10 lakhs has been received from SRA on 08.09.2022

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

Section/ Regulation No.	Description of Activity	Latest Timeline under Regulation 40A	Date as per timeline	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	10.12.2021	10.12.2021
Regulation 6(1)	Publication of Public Announcement	T+3	13.12.2021	30.12.2021
Section 15(1)(c)/ Regulation 12(1)	Submission of Claims	T+14	24.12.2021	11.01.2022
Regulation 13(1)	Verification of Claims	T+21	31.12.2021	18.01.2022
Section 26(6A)/ Regulation 15A	Application for Appointment of Authorized Representative, if necessary	T+23	02.01.2022	NA
Regulation 17(1)	Filing of Report certifying	T+23	02.01.2022	19.01.2022

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	Constitution of CoC			
Section 22(1) and Regulation 17(2)	First Meeting of CoC	T+30	09.01.2022	25.01.2022
Regulation 35A	Determination of fraudulent and other transactions	T+115	04.04.2022	22.04.2022
Regulation 27	Appointment of two registered Valuers	T+47	26.01.2022	12.02.2022 & 24.06.2022
Regulation 36(1)	Submission of Information Memorandum to CoC	T+54	02.02.2022	20.02.2022
Regulation 36A	Invitation of EoI	T+75	23.02.2022	10.03.2022
	Publication of Form G	T+75	23.02.2022	10.03.2022
	Provisional list of Resolution Applicants	T+100	20.03.2022	04.04.2022
	Final list of Resolution Applicants	T+115	04.04.2022	19.04.2022
Regulation 36B	Issue of RFRP which includes Evaluation Matrix and Information Memorandum	T+105	25.03.2022	09.04.2022
Section 30(6)/ Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	24.05.2022	22.09.2022
Section 31(1)	Approval of Resolution Plan	T=180	08.06.2022	

21. On perusal of Form-H, it is seen that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code. The Resolution Plan also meets the

requirements of Regulations 37, 38, 38(1A) and 39 (4) of the IBBI Regulations, 2016. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. It is also observed that the Plan amount is more than the Liquidation amount.

22. It is pertinent to mention here that an interlocutory application No. 1703 of 2022 was filed by National Steel and Agro Industries Limited, the Operational Creditor of the Corporate Debtor. The main contention of the operational creditor was that the proposed distribution of money receivable under the Resolution Plan is not fair and equitable. However, the said application was dismissed on merits by this Tribunal vide Order dated 22.12.2023.
23. In **K Sashidhar v. Indian Overseas Bank & Others (2019) 12 SCC 150**, the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (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.

24. In **Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta & Ors (2020) 8 SCC 531**, the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom has approved.
25. In view of the law laid down by Hon'ble Supreme Court, the commercial wisdom of the COC is to be given paramount importance for approval / rejection of the resolution plan. As the Resolution Plan meets the requirements of the I & B Code and the IBBI Regulations, the same needs to be approved. Accordingly, the **Resolution Plan is approved** with the following directions:
- i) The Resolution Plan submitted by M/s Radhekrishna Developers Private Limited 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.
 - ii) No person 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.
 - iii) The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall review operational performance of the Corporate Debtor.

- iv) The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise further line of action required for starting of the operations.
- v) As per the Resolution Plan, extinguishment of existing shares of the Corporate Debtor, allotment of shares to the Resolution Applicant and reduction of share capital do not require the consent of shareholders as required under the Companies Act or any other authority for implementation of the Resolution Plan.
- vi) **Reliefs and Concessions:**
- a) Approval of the Resolution Plan shall not be a ground for termination of any existing consents, approvals, licenses, concessions, authorizations, permits or the like that has been granted to the Corporate debtor or for which the Corporate Debtor has made an application for renewal, grant permissions, sanctions, consents, approvals, allowances, exemptions etc.
- b) Any Exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted but the Resolution Applicant is at liberty to approach Competent Authorities for the exemptions if permitted under the law.

- c) For past non-compliances of the Corporate debtor under applicable laws the Resolution Applicant shall not be liable for any liabilities and offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016.
- d) It is hereby clarified that in terms of the Judgement of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited**, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim which is not a part of the Resolution Plan. In above terms, this plan is hereby approved.
- e) With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- vii) 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. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

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- viii) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- ix) 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.
- x) The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

26. Accordingly, the Resolution Plan in IA/2729/2022 is hereby **allowed** and **approved**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Uma, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)