

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT III



IA-4505/2023

In

(IB)-2057(ND)/2019

IN THE MATTER OF:

PUNJAB NATIONAL BANK

.....Financial Creditor

VERSUS

OLIVER ENGINEERING PRIVATE LIMITED

..... Corporate Debtor

IN THE MATTER OF IA-4505/2023

*Under Section 30(6) r/w Section 31 of IBC, 2016 r/w Regulation 39(4) of IBBI
(CIRP Regulations), 2016*

Mr. SUMIT SHUKLA

Resolution Professional of Oliver Engineering Private Limited

..... Applicant/Resolution Professional

Pronounced On: 12.09.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Mr. Maneesh Kumar, Advocate for RP

For SRA : Mr. Sumant Batra, Advocate



ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. Brief Facts of the Case

1.1. The present application has been filed by Mr. Sumit Shukla, Resolution Professional (“RP”) of M/s. Oliver Engineering Private Limited (“Corporate Debtor”) on 18.08.2023 under the provisions of Sections 30(6) read with Section 31 of the Insolvency & Bankruptcy Code, 2016 (“the Code” or “IBC”) read with Regulation 39(4) of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) for approval of the Resolution Plan in respect of Oliver Engineering Private Limited (“Corporate Debtor”).

1.2 This Adjudicating Authority vide order dated 26.04.2022 admitted the Company Petition (IB)-2057(ND)/2019 filed by Punjab National Bank (“Financial Creditor”), under Section 7 of the Code against the Corporate Debtor and initiated CIRP and declared the moratorium and appointed the Mr. Akash Singhal as an Interim Resolution Professional.

2. Collation of claims by RP

2.1 In terms of Section 13 and Section 15 of the Code, the Applicant/RP has submitted that the public announcement was published in two newspapers i.e. Financial Express (English Edition) and Jansatta (Hindi Edition) Delhi Edition on 12.05.2022 to invite the stakeholders for submission of their claims.

2.2 The CoC approved the Resolution for replacing Mr. Akash Singhal as IRP and appointed Mr. Sumit Shukla as new IRP and filed an application before this Adjudicating Authority for the same. This Adjudicating Authority vide order dated 04.08.2022 granted permission for the replacement of IRP.

IA-4505/2023 In (IB) – 2057(ND)/2019
Date of Order: - 12.09.2023



2.3 The CoC was constituted by the IRP and the list of CoC along with their representative vote share is as under: -

Name of Secured Financial Creditor	Vote Share (in %age)
Punjab National Bank	42.63%
Bank Of India	33.19%
Bank Of Maharashtra	24.18%
TOTAL	100%

2.4 The Notice & Agenda of all the meetings were prepared & circulated, all the meetings were called, held & conducted & minutes were prepared & circulated in compliance with Section 24 of the I&B Code, 2016 read with Regulation 18, 19, 20, 21, 22, 23, 24, 25A & 26 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

3. Evaluation and voting

3.1 The Applicant/RP pursuant to Regulation 36A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for inviting Expression of Interest [EOI] for the submission of Resolution Plan under the CIRP of the Corporate Debtor, published Form G on 26.07.2022 in two Newspapers, namely Financial Express (English Patiala Punjab) and Charhdikala (Punjabi) & the same was also filed with the IBBI via e-mail.

3.2 It was decided in 4th CoC meeting held on 22.08.2022 to issue Form – G with extended timelines in newspapers.

3.3 In 6th CoC meeting held on 15.09.2022, CoC members approved the terms of Request for Resolution Plan and Evaluation Matrix.

3.4 On 20.09.2022 the Applicant RP issued a final list of Resolution Applicants along with the Information Memorandum, Request for Resolution

IA-4505/2023 In (IB) – 2057(ND)/2019
Date of Order: - 12.09.2023



plan and Evaluation Matrix in accordance with the provisions under regulation 36 (B) of the CIRP Regulations.

3.5 The Resolution Professional received three Resolution plans. In 8th CoC meeting these Resolution plans were placed before CoC. The list of Resolution Applicants who has submitted the resolution plans are as under: -

I. International Tractors Limited

II. Kirloskar Ferrous Industries Limited

III. RKG Fund I, A Scheme of RKG Trsut

3.6 In the 9th CoC meeting, CoC members asked Resolution Applicants to submit more feasible and viable Resolution Plans. In 12th CoC meeting CoC had a discussion on Challenge Mechanism Process in terms of the queries sought by one of the PRAs.

3.7 In the 13th CoC meeting held on 27.02.2023, CoC instructed the RP to obtain the revised financial plans so, as to ascertain the value discovery during the negotiation. In 14th CoC meeting, the committee noted the progress/update as provided by the RP.

3.8 In response to the instructions of the CoC in 13th and 14th meetings, International Tractors Limited submitted its Affidavit of Financial Proposal on 20.03.2023 and whereas, the Kirloskar Ferrous Industries Limited submitted its Affidavit of Financial Proposal on 02.03.2023.

3.9 In the 15th CoC meeting held on 23.03.2023, the CoC reviewed the submissions, responses and affidavits submitted by the Resolution Applicants of Kirloskar Ferrous Industries Limited and International Tractors Limited and noted that the values discovered during the negotiation process were not feasible and viable. Accordingly, the Committee decided to proceed for the Swiss Challenge Method for value maximization.

3.10 On 10.04.2023, the RP conducted the challenge process through Linkstar Infosys Private limited wherein only Kirloskar Ferrous Industries Limited (KFIL) participated in the challenge process and further improvised

the financial viability of the Resolution Plan.



3.11 The 16th meeting of the CoC was convened on 13.04.2023 wherein, CoC noted the outcome of the Challenge process and asked RP to call for the modified Resolution Plan for all the RAs. On 20.04.2023, Kirloskar Ferrous Industries Limited submitted its modified Resolution Plan through e-mail.

3.12 The 17th meeting of the CoC was convened on 02.05.2023, wherein RP placed three Resolution Plans before CoC to decide upon by way of voting. During the voting process of the 17th CoC meeting held on 02.05.2023, the CoC approved the Resolution plan submitted by Kirloskar Ferrous Industries Limited, by 100% voting share. The relevant extract of the Resolution is as follows: -

"RESOLVED THAT pursuant to sub-section (3), (4) and sub-section (6) of Section 30 of the Insolvency and Bankruptcy Code, 2016, read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016 and other applicable provisions of Insolvency and Bankruptcy Code, 2016 and rules and regulations made thereunder, the approval of the Committee of Creditors (COC) of Oliver engineering Private Limited be and is hereby accorded for the modified Resolution Plan submitted by Kirloskar Ferrous Industries Limited being the most feasible and viable resolution plan."

RESOLVED FURTHER THAT the Committee of the Creditors of Oliver Engineering Private Limited hereby authorize that the resolution professional to file necessary application(s) before the adjudicating authority seeking the approval of the resolution plan approved by the COC with highest vote share.



4. Valuation of the Corporate Debtor

4.1 In the terms of Regulations 27 of CIRP Regulations, the Applicant has submitted the fair and liquidation value of the Corporate Debtor as follows:

FAIR VALUE	Rs. 1,537,975,367
LIQUIDATION VALUE	Rs. 993,725,491

5. Details of Resolution Plan/Payment Schedule

The Resolution Applicant has to the extent possible, taken into account the interests of all stakeholders of the Corporate Debtor in the following manner:

5.1 The Applicant submitted that, Resolution Plan includes a statement under Regulation 38 (1A) of the CIRP Regulations, 2016 wherein it has dealt with the interests of all stakeholders in compliance with the Code and regulations. The amounts provided for stakeholders under the Resolution Plan is as under: -

(Amount in Rs. lakh)

Sl. 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:	NA	NA	NA	NA
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	76276.58	76276.58	10638.14	13.95%
Total[(a) + (b)]			76276.58	76276.58	10638.14	13.95%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				
Total[(a) + (b)]			NIL	NIL	NIL	NIL



3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i)Government	1198.98	1198.98	30.13	2.51%
		(ii)Workmen	NIL	NIL	NIL	NIL
		(iii)Employees	211.05	201.49	201.49	95.47%
	(iv) OC other than Employees and government dues	3929.31	2975.60	185.29	4.71%	
	Total[(a) + (b)]	5339.34	4376.07	416.91	7.81%	
4	Other debts and dues		7.12	NIL	NIL	NIL
Grand Total			81623.04	80652.65	11055.05	13.54%

5.2 The Resolution Plan size is Rs. 110,55,05,000/- (Rupees One Hundred Crore Fifty-Five Lakhs and Five Thousand Only). The Resolution Plan defines “**Effective Date**” which means the date on which this Resolution Plan is approved by this Adjudicating Authority under Section 31 of the Code.

6. Compliance of the successful Resolution Plan with various provisions:

6.1 The compliance of the Resolution Plan is as under:

Section of the Code/ Regulation No	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/ No)
Section 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 Corporate Debtor?	In terms of the COC approved criteria i.e., Net worth & Group Turnover is more than 5 Crores and 20 Crores.	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit Resolution Plan as	RA has submitted in Para -5 (Annexure F).	Yes



	per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?		
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes	Yes
Section 30(2)	Whether the Resolution Plan-	Para – 5.3	Yes
	a.) Provides for the payment of insolvency resolution process costs?		
	b.) Provides for the payment to the operational creditors?	Para – 5.4	Yes
	c.) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Para – 5.7(b)	Yes
	d.) Provides for the management of the affairs of the corporate debtor?	Para – 6.2	Yes
	e.) Provides for the implementation and supervision of the resolution plan?	Para – 6.3	Yes
	f.) Contravenes any of the provisions of the law for the time being in force?	Para – 2.14.C	Yes
Section 30(4)	Whether the Resolution Plan	Yes	Yes
	a.) Is feasible and viable, according to the CoC?		
	b.) has been approved by the CoC with 66% voting share?	Yes	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Para - 6.3 (b) r/w 6.4 (b)	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date,	NA	NA



	under intimation of 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?	Para – 5.4	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Para – 5.2	Yes
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.	Para – 2.14 (e)	No
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	NA	NA
Regulation 38(2)	Whether the Resolution Plan provides: a.) The term of the plan and its implementation schedule?	Para – 6.4 to 6.6	Yes
	b.) For the management and control of the business of the corporate debtor during its term?	Para – 6.2	Yes
	c.) Adequate means for supervising its implementation?	Para – 6.3 (b)	Yes
Regulation 38(3)	Whether the resolution plan demonstrates that – a.) It addresses the cause of default?	Para – 4	Yes
	b.) It is feasible and viable?	Yes	Yes
	c.) It has provisions for its effective implementation?	Para – 6.3	Yes
	d.) It has provisions for approvals required and the timeline for the same?	Para – 8	Yes
	e.) The resolution applicant has the capability to implement the resolution plan?	Yes	Yes



Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Yes, payment of Rs. 11.16 crore being 10% of the value of plan has been deposited.	Yes

6.2. The Applicant/RP submits that the Successful Resolution Applicant is not disqualified under Section 29A of the Code to submit the Resolution Plan, as required by Regulation 39(1)(a) of the CIRP Regulations. A separate undertaking has also been submitted along with the EoI by the Successful Resolution Applicant, as mandated in terms of Regulation 39(1)(c) of the CIRP Regulations. The Applicant/RP has filed a Compliance Certificate in the prescribed Form, i.e., **Form-H** as per the amended Resolution Plan in compliance with Regulation 39(4) of the CIRP Regulations.

7. Details of proceedings by/against the Company/RP

The payment to creditors as envisaged under the Resolution Plan under all nature of cases filed by creditors against the Corporate Debtor, shall be made only after the withdrawal of pending litigation/ cases/proceedings against the Corporate Debtor. All the ongoing cases against the Corporate Debtor including but not limited to mentioned, shall be considered as settled without any payment. All investigations against the Corporate Debtor by any agency shall be stopped forever and cases to proceed any further without any liability on the Corporate Debtor/Resolution Applicant and no action shall be initiated against the Corporate Debtor/Resolution Applicant. All the ongoing arbitration proceedings against Corporate Debtor, known or unknown, or award, decree or execution of such decree as passed, such shall be considered as withdrawn. As per Information Memorandum and further information shared, if there are any cases pending on behalf of the Corporate Debtor against the other parties. It is proposed that the Successful Resolution Applicant shall pursue legal/recovery proceedings against other parties and the entire amount recovered, if any shall

belong to Corporate Debtor only and nothing will distribute.



8. Details on Management and Implementation as per the Resolution Plan

The Resolution Plan also provides details of management and control, implementation and supervision of the Resolution Plan.

9. Declarations and Undertakings

9.1 In accordance with the terms of RFRP, approved by the Committee on 12.08.2023 the RP issued the Letter of Intent ('LOI') upon Kirloskar Ferrous Industries Limited and in terms of the provision of RPRF, on 14.08.2023, KFIL deposited a sum of Rs. 11.16 crores towards the performance security which is equal to 10% of their Plan value in the CIRP account.

9.2 The Resolution Plan provides that amount due to Operational Creditors & dissenting Financial Creditor shall be given priority in payment over financial creditors as per the amended Regulation 38(1) of the CIRP Regulations.

9.3 Resolution Plan has dealt with the interests of all stakeholders, like, secured and unsecured Financial Creditors, Operational Creditors of the Corporate Debtor, statutory dues and interests of the employees and workmen, as per the requirement of Regulation 38(1A) of the CIRP Regulations.

9.4 The KFIL submitted confidentiality undertaking in terms of the provisions under regulations 36-B of CIRP Regulations.

9.5 The report of credit rating agency ICRA dated 23.12.2021 along with the credit information duly certified by the Bank of Maharashtra on 17.10.2022.

9.6 In terms of Regulation 38 (3) of the CIRP Regulations, as assessed and evaluated by the CoC the plan demonstrates that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; no approvals are required under any other law; and the resolution applicant has

the capability to implement the resolution plan.



10. Analysis & Findings

10.1 On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC in its 17th meeting dated 02.05.2023 with 100% voting share. As per the CoC, the Plan meets the requirement of being a viable and feasible and for revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

10.2 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 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 Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble 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.

10.3 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 Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have 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).”

10.4 In view of the discussions and the law thus settled, 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. The same needs to be approved.

10.5 The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law.

10.6 As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

10.7 In case of non-compliance of this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the performance security amount of Rs. 11.16 crores.

10.8 The present application has been filed with bonafide means, in the interest of justice and to advance the objectives of the Code.

11. Orders

11.1 The Application **IA No. 4505 of 2023 in IB - 2057 of 2019** is allowed. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

- i. 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. Further in terms of the Judgment of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited v/s 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 to a claim which is not a part of the Resolution Plan.

iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), New Delhi 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.

iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.

v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.

vi. 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.

vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

SD/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**