

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2



Item No.301 – IA 664 of 2023
In
CP(IB)/224(AHM)2021

Order under Section 9 IBC

IN THE MATTER OF:

Deepak Sharma HUF
V/s
Gurukrupa Appearals Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 18/10/2023

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

**IA No. 664 / NCLT / AHM / 2023
IN
CP(IB) No. 224 / NCLT / AHM / 2021**

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

IN THE MATTER BETWEEN

**Mr. Rahul Nareshbhai Shah
RP of M/s Gurukrupa Apperals Ltd.**

.... Applicant

AND IN THE MATTER OF

**Deepak Sharma, HUF
Creditor**

... Operational

Versus

Gurukrupa Apperals Pvt. Ltd.

... Corporate Debtor

Order pronounced on 18 .10.2023

Coram:

**Coram:
MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**



MEMO OF PARTIES

Mr. Rahul Nareshbhai Shah

Resolution Professional of
Gurukrupa Apperals Pvt. Ltd.
9B, Vardan Tower, Lakhudi Circle,
Navrangpura, Ahmedabad-380014

... Applicant

Present:

For the Applicant : Mr. Arjun Padhiyar, Adv. a.w Mr. Sumit Parikh,

ORDER

1. The present application is filed under Section 30(6) read with Section 31 of the Code, 2016 and other relevant provisions of the Code, seeking for approval of the resolution plan in the matter of Gurukrupa Apperals Private Limited (IN CIRP).
2. The applicant states that the present Insolvency application was being preferred and filed by one of the Operational Creditor i.e. Deepak Sharma, HUF under section 9 of the Insolvency and Bankruptcy Code 2016 seeking for the Initiation of Corporate Insolvency Resolution Process of the Corporate Debtor i.e. Gurukrupa Apperals Private Limited. The applicant states and submits that erstwhile IRP had in accordance with Section 21 of the code applicant/erstwhile IRP had constituted the Committee of Creditors ("CoC").
3. The Applicant further submits that, Erstwhile IRP had convened the First meeting of the Committee of Creditors ("CoC") on 12.01.2023, wherein the said meeting, the CoC Members had resolved to replace & appoint the applicant as Resolution Professional of the Corporate Debtor. Pursuant to resolution passed in the aforesaid Second CoC



meeting, Publication of Form G was made in the newspapers namely Financial Express - (English (Language & Gujarati Language) on 15.02.2023 wherein the last date for submission of Expression of Interest was 06.03.2023.

4. The Applicant further state and submit that, the Third meeting of the CoC was held on 05.05.2023 wherein Applicant apprises the Members about pursuant to publication of Form G i.e. Invitation for Expression of Interest the applicant had received two Resolution Plans from the Prospective Resolution Applicants ie. CIRP Consultancy Services Private Limited and Gurukrupa Apperals-Proprietor of Nilay Bheda, both the Resolution Plan(s) are discussed in the said meeting.
5. The Fifth meeting of the CoC was held on 25.05.2023, wherein the applicant along with CoC Members had received the revised Resolution Plans from the Prospective Resolution Applicants, also discuss the feasibility and viability of the Resolution Plans as submitted by both the Prospective Resolution Applicant(s), hence the CoC Members had approved the Revised Resolution plan as submitted by the CIRP Consultancy Services Private Limited. They authorized the applicant/Resolution Professional to submit the revised resolution plan dated 19.05.2023 with the Adjudicating Authority by casting 100% votes in favour.
6. The Summary of the Terms of Payments under the Resolution Plan is as given below:



Sr No	Category of creditors	Amount of Claim	Claim Admitted	Amount Provided in the Plan	Payment Mode	Payment Term
1.	IRP Cost	NA	NA	19,00,000	NEFT/cheque or any other means	The CIRP cost will be paid within 60 days from Hon'ble NCLT Order
2.	Operational Creditor (Other than government dues)	55,981,598	51,137,124	51,138	NA	Within 60 days from effective date.
3.	Workmen and Employees	NIL	NIL	NIL		NA
4.	Financial Creditor- Secured	10,53,14,875	10,53,14,875	29,77,610	NEFT/cheque or any other means	Within 90 days from effective date.
5.	Financial Creditor- Unsecured	NIL	NIL	NIL	NA	
6.	Government Dues	21,252	21,252	21,252	NEFT/cheque or any other means	To be paid within 60 days from

						effective date
7.	Total -A (1+2+3+4+5+6)	16,02,65,542	15,64,73,251	49,50,000		



7. As per para 8.7 of the resolution plan submitted by the applicant, the resolution applicant shall infuse Rs.100 lakhs towards CAPEX and working capital requirement.
8. As per the list of Creditors, there are no dues outstanding towards the Employees/Workmen. No claim has been received from any employee or workmen. Hence, RA does not propose to make any payment towards dues of employees/workmen, under this resolution plan.
9. Proposal for Statutory Liabilities including outstanding Governmental Authority Dues, Tax, etc. is mentioned as per Information Memorandum, to be a claim of Rs. 21252/- has been received from Government Departments and RP has admitted amount of Rs. 21252/-. As per various judgments of Supreme Court and NCLAT, the claim of PF department is to be paid in full, since the statutory liabilities are Operational Debt, the Resolution Applicant is required to ensure that it pays at least the Liquidation Value in respect of the statutory liabilities. The Liquidation Value assumed to be Nil in this case as set out in the Resolution Plan. Hence, RA propose full payment of outstanding Statutory dues i.e. Rs.21252/-. The amount shall be paid within 60 days from the date of approval of resolution plan.
10. The RP has provided a detailed brief on the Resolution Plan received by this Tribunal on 18 September 2023 which is taken on record. The approval of the plan was filed on 1.6.2023, well before 180 days (10.6.2023).
11. The RP had appointed two valuers and obtained report on the properties. The average value of the properties were Fair Value at



Rs.48,68,768 and Liquidation Value was at Rs.33,03,311. The Liquidation Value of the Company is not sufficient to cover the debt of Financial Creditors of the Company in full. Therefore, the Liquidation Value to the Operational Creditors including Government Dues or the other creditors or stakeholders (including dues to employee other than workmen), government dues, taxes etc. and other creditors and stakeholders is NIL and therefore they will not be entitled to receive any payment. Accordingly, the Resolution Applicant seeks a waiver of all the sum due towards payment of Operational Creditors. However, the RA proposes to make a payment of 0.1% of the claim amount to the Operational Creditors. Claim of operational creditors is Rs. 5,11,37,124/-hence RA proposed to pay Rs. 51,138/-. The same shall be paid within period of 60 Days from the date of approval of resolution plan.

12. As per Regulation 38(1)(a) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Liquidation Value due to the operational creditor should be paid in priority to other debt. If any operational creditor is having liquidation value exceeding NIL, it shall be paid in priority by Resolution Applicant. As per the list of Creditors, total claims filed by the Financial Creditors amount to Rs.10,53,14,875/-and total amount of Rs. 10,53,14,875/- have been verified and admitted by the Resolution Professional, forms the part of Admitted Debt ("Financial Creditors"). Resolution Applicant shall pay Rs. 29,77,610/- towards secured financial creditors within period of 90 days from effective date.



13. All Claims arising out of inquiries, investigations, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, the Company or the affairs of the Company, pending or threatened, present or future and the proceedings (under Section 138 of the Negotiable Instruments Act, 1881), the Operational Creditor Claims and the Tax related Claims or liabilities in relation to any period prior to the Effective Date or on account of acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan, shall be settled at NIL. Notwithstanding anything contained in this Resolution Plan, in no event the total payments by the Resolution Applicant or the Corporate Debtor to its stakeholders, for claims relating to a period prior to the Completion Date (including claims recognised in this Resolution Plan and claims that may arise in future), shall exceed Rs. 0.495 crores.

The indicative implementation of Resolution Plan after approval by Tribunal is given below:

The indicative implementation schedule for this Resolution Plan is set-out below:

Activity	Days
Receipt of Letter of Intent from the CoC	X
Issuance of Performance security in form negotiable instruments	X + 7
Receipt of certified copy of order of Approval from Adjudicating Authority	Y
Handover of Corporate Debtor and bank accounts of the Corporate Debtor (Effective Date)	Z=Y+15
Appointment of Monitoring Agency	Y+7 Days



Payment for CIRP Process Cost	
Payment of upfront amount to:	Z+60Days
(1) Operational Creditors	Z+60 Days
(2) Government Dues	Z+90 Days
(3) Secured Financial Creditors	
Necessary statutory approvals	Within 1 year from X (In accordance with Sec 31(4) of the Code)

14. Compliance with respect of Regulation 36B (4A): Resolution Applicants undertakes to provide the performance security being 5% of the Resolution Plan amount i.e Rs 2,47,500/- as envisage under RFRP in form of bank guarantee within 7days of approval of Resolution Plan by COC.

- a. After the Effective Date, the implementation of the Resolution Plan will be supervised by Management Agency (MA) as formed under clause 7. RA will report the progress of implementation & Supervision of Resolution Plan on quarterly basis as per the formats prescribed/decided by MA.
- b. It is proposed that upon approval of this resolution plan by Hon'ble NCLT the existing Board will be replaced by new Board of Directors constituted with adequate representation from the member of RA Group and independent directors (not involving the ex-directors and management of the Corporate Debtor) as required in compliance with Applicable Laws. It is further proposed that the RA shall appoint two (2) directors and file the prescribed form with concerned Registrar of companies manually for the purpose of filling required documents online with their own digital signatures.



The Registrar of companies shall be directed to accept the same on approval of the resolution plan by Hon'ble NCLT court.

- c. Resolution Applicant shall have the right to replace the existing auditors (Statutory and Internal) of the Company and appoint new auditors as deemed fit upon acquisition of the control over the Company by RA pursuant to the Resolution Plan.
- d. Upon acquisition of the control over the Company by RA in the manner set out in Annexure 2 of the Resolution Plan, RA proposes that the existing employee and workers of the Company will continue to be employed by the Company subject to fitness test of such employees and workers.
- e. The operations of the Company are currently closed down on account of working capital constraints and inadequate funds. To address the aforesaid constraints, the Resolution Applicant proposes to infuse equity /quasi equity/ arrange funds for working capital/startup expenses and Capex. The Resolution Applicant also plans to use its current experienced technical team to help revive and turnaround the operations and refurbishing the of the plant and machinery.
- f. The Resolution Applicant as part of its resolution plan shall be infusing an amount of Rs.100 lakh towards capex and working capital requirement. The Resolution Applicant shall meet out the requisite working capital to run the business of the Corporate Debtor in a smooth manner.
- g. Any claims not received before approval of resolution plan by CoC, shall be extinguished and will not be payable and shall stand to be extinguished subject to payment envisage under this clause. All regulatory compliances will be made by the Resolution Professional as mentioned in the Resolution Plan.



h. The Resolution Applicant confirms that, as on the date of this Resolution Plan and on the basis of the records of the Resolution Applicant, the Resolution Applicant is eligible under Section 29A of the Code to submit the Resolution Plan. Affidavits of all applicants of this Resolution Plan are attached with the Plan.

15. As far as reliefs and concessions claimed by the resolution applicant with respect to the unpaid liabilities after approval of the plan and also the claims that were not filed at all with the RP during the CIRP, the law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021*** in the following words:

86. “.....The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

87. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief.....”



In view of the above, all unpaid liabilities and claims that are not filed with the RP before the approval of the resolution plan and those which are not included in the said resolution plan would stand extinguished.

16. We are satisfied that all the requirements of Section 30(2) of IBC, 2016 are complied with. Accordingly, the plan is approved. The order is passed as follows:

ORDER

- I) The approved 'Resolution Plan' is annexed with this order as Annexure-A and shall become effective from the date of passing of this order.
- II) The order of moratorium dated 12.12.2022 passed by this Adjudicating Authority under Section 14 of the IB Code shall cease to have effect from the date of this order.
- III) The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.
- IV) The monitoring committee as proposed in the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan. New Board would be constituted and funds infused as proposed.
- VI) The Resolution Professional, Mr. Rahul Nareshbhai shah, shall be released from the duties of the resolution



professional of the Corporate Debtor as per the provisions of the IB Code and rules/regulations made thereunder.

- VII) The Resolution Professional shall forthwith send a copy of this Order to the participants and the resolution applicant(s).
- VIII) The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.
- IX) As regards various reliefs and concessions which are being sought, we hereby grant the following reliefs and concessions only as against reliefs and concessions claimed by the resolution applicant:
 - a) Corporate Debtor is allowed to file its previous income tax returns under the Income Tax Act, 1961 (which have not been filed till the Successful Resolution Plan is approved by the Adjudicating Authority);
 - b) Tax authorities are directed for waiver from invoking application of GAAR (Chapter X A of the Income Tax Act, 1961) on account of any restructuring steps being undertaken in the Successful Resolution Plan;
 - c) Tax authorities are directed for waiver of all taxes under the Income Tax Act, 1961 effective from the NCLT Approval Date or on account of implementation of the Successful Resolution Plan;
 - d) Tax authorities are directed for waiver of all taxes



under Goods & Service Tax Act, 2017 (GST Act), Central Excise Act 1944, Chapter V of Finance Act 1994 (Service Tax), Customs Act 1962, state commercial taxes, or any other applicable indirect tax laws;

- e) Central Board of Indirect Tax and Customs are directed to allow exemption under Section 81 of the CGST Act, 2017, and to not impose any successor liability on the Resolution Applicant, its shareholders or the Corporate Debtor on and from the NCLT Approval Date;
- f) Relevant tax authorities are directed to exempt income/gain/profits, if any, arising as a result of giving effect to the Successful Resolution Plan;
- g) Exempted from liabilities/ proceedings relating to the past management or the promoter group or holding companies, associate companies and/or group companies of the Corporate Debtor and the assets and properties of the Corporate Debtor shall not be attached pursuant to any such investigations;
- h) Exempted from levy of stamp duty and fees applicable in relation to Successful Resolution Plan and its implementation, including any stamp duty, registration costs and any fees payable to the Registrar of Companies;
- i) Government Authorities are directed (including stamp authorities, Department of Registration and Stamps and Governmental Authorities of Gujarat,



Collector and Additional Superintendent of Stamps of Gujarat, land and revenue departments of Gujarat, registration department of Gujarat) in relation to (i) waiver of stamp duty payments, (ii) grant of Land Approvals, (iii) recordal of the name of the Corporate Debtor as the absolute owner of the Corporate Debtor Lands, (iv) acquisition of Government Lands, (v) conversion of the agricultural lands forming part of the Corporate Debtor Lands to non-agricultural lands and (vi) waiver of liabilities and proceedings for period prior to the NCLT Approval Date; and exemption is granted from compliance with requirements of other laws as per Sec. 238 of the IBC, 2016.

- j) We direct the successful resolution applicant to approach the concerned statutory authority for those reliefs & concessions and the concerned authorities will consider the same as per the provisions of law under the relevant Acts.

17. Accordingly, IA 664 of 2023 is allowed and stands disposed of.

18. The Resolution Professional will convene a meeting of COC including the Successful Resolution Applicant within 1 week of approval of the order and give a list of unpaid payments, if any, due in respect of employees who were in employment from the period of initiation of CIRP of the CD till



date of approval of Resolution Plan for payment. COC will authorise any such payments due.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

Prakash-Steno