

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

M.A. No. 209/2020

In

CP(IB)No. 3627/MB/C-II/2018

**Application filed under section 30(6), r/w
Regulation 39(4) of the Insolvency and Bankruptcy
Board of India (Insolvency Resolution Process for
Corporate Persons), 2016.**

Filed by

**Mr. Laxman Digambar Pawar,
Resolution Professional**

...Applicant

In the matter of

Cosmos Co-operative Bank Limited

...Financial Creditor

Versus

Parshuram Forge Private Ltd.

...Corporate Debtor

Order Pronounced on: - 07.02.2024

Coram:

**Anil Raj Chellan
Member (Technical)**

**Kuldip Kumar Kareer
Member (Judicial)**

Appearances -

**For the Applicant: - Adv. Chaitanya Nikte a/w Adv. Raina Birla, Adv.
Deepali Jaiswal, Adv. Rohit Giri.**

ORDER

Per: Kuldip Kumar Kareer, Member Judicial

1. The present Interlocutory application is filed by **Mr. Laxman Digambar Pawar** the Applicant, Resolution Professional of **Parshuram Forge Private Limited**, the Corporate Debtor seeking approval of the resolution plan under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (Code) submitted by Prashant Shridhar Vaidya (Suspended Director of the Corporate Debtor). The Plan was duly approved by 100% of the Committee of Creditors (CoC) in its 6th meeting held on 10.01.2020.
2. The Applicant submits that the Financial Creditor, Cosmos Co-operative Bank Ltd., initiated the Corporate Insolvency Resolution process (CIRP) against the Corporate Debtor under Section 7 of the Code on 22.04.2019 and Mr. Laxman Digambar Pawar was appointed as the Interim Resolution Professional (IRP).
3. Pursuant to the initiation of the CIRP, the IRP issued public announcement in Form A dated 26.04.2019 in two newspapers thereby informing the initiation of the CIRP of the Corporate Debtor and inviting for claims from the creditors of the Corporate Debtor. Further, based on the claims received, the IRP called the 1st CoC meeting on 17.05.2019 wherein the CoC also approved the IRP to continue as Resolution Professional (RP).
4. The RP also appointed six Registered Valuers to determine the average liquidation and the fair market value of the Corporate Debtor. The RP prepared and circulated the information memorandum to the members of

the CoC in the 3rd CoC meeting on 07.12.2019. As per the valuation report, the average Fair Market Value of the assets of the Corporate Debtor is Rs. 9,81,22,714/- and Liquidation Value is Rs. 6,88,46,214/-.

5. The RP on 11.10.2019 published Form G in the newspapers inviting Expression of Interest (EoI) for submission of Resolution Plans. In response to the EoI, the Applicant received only one Resolution Plan from Mr. Prashant Vaidya, the suspended director of the Corporate Debtor.
6. The said Resolution Plan was placed before the members of the CoC for their consideration and approval under section 30(3) of the Code. The members of the CoC in the 4th and 5th meeting held on 19.12.2019 and 26.12.2019 respectively discussed the Resolution Plan.
7. The CoC members in their 6th meeting held on 10.01.2020 considered and approved the Resolution Plan with 100% majority in terms of Section 30(4) of the Code.

Brief background of the Resolution Applicant

8. The Successful Resolution Applicant Mr. Prashant Vaidya has over 25 years of experience in various businesses. The Applicant has been dealing pan India across various industries and has vast industrial experience in steel industry. The Applicant deals in open market in all over India.
9. The purpose of the Resolution Plan is to develop and implement a plan that revives the Company and promotes entrepreneurship, availability of credit and balances the interest of all stakeholders. This Resolution Plan seeks revival of the company by implementing the proposal as given in the

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Plan and provides stakeholders with information so that they may be reasonably assured of the likelihood of obtaining a better outcome under Resolution for all stakeholders when compared to liquidation.

Salient features of the approved Resolution Plan

10. The Successful Resolution Applicant i.e. Mr. Prashant Vaidya, based on the relevant information provided with regard to the amount claimed amount admitted and other liabilities of the Corporate Debtor proposes to provide a sum of Rs. 33,98,97,889/- (Rupees Thirty-Three Crores Ninety Eight Lakhs Ninety Seven Thousand Eight Hundred Eighty Nine Only) as the total Resolution Plan amount as under:

(Amounts in Lakhs)

Sr. No	Particulars of Claim	Sub- Category of Creditor	Amount Claimed	Amount Admitted	Amount Provided in the Plan	Amount Provided to the Amount Claimed
1.	CIRP costs	--	14.15	14.15	14.15	100%
1.	Secured Financial Creditors	a. Creditors not having a right to vote under sub-section (2) of section 21	5163.67	5163.67	3319	64.27%
		(b) Other than (a) above :	-	-	-	-
		(i) who did not vote in favour of the Resolution Plan	-	-	-	-

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		(ii) who voted in favour of the Resolution Plan	-	-	-	-
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	-	-	-	-
3.	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) other than (a) above	210.39	210.39	65.82	31.29%
		(i) Government (ii) Workmen (iii) Workmen	-	-	-	
		Grand Total	5388.21	5388.21	3398.97	63.08%

A. Constitution of the Corporate Debtor :-

- a) The authorized share capital of the Corporate Debtor is Rs. 5,00,00,000/- out of which an amount of Rs. 1,90,00,000/- is the paid-up share capital. The Corporate Debtor has only one class of Equity having a par value of Rs. 10 per share.
- b) As per the Reserve Bank of India Guidelines, the general principal of any restructuring/compromise is that the shareholders bear the first loss rather than the debt holder. In the present case, as the Financial Creditor as well the Operational Creditors are going to make substantial sacrifice, therefore the first loss ought to be borne by the existing shareholders.
- c) The Corporate Debtor as on date is a loss making entity and upon the Resolution Plan becoming effective, the entire shareholding of the Corporate Debtor, including the non-related entities shall be reorganized by writing off the accumulated losses of the Corporate Debtor against the entire share capital of the Corporate Debtor. Further, there are contingent liabilities. The entire equity of all shareholders, including that of the related parties shall be written off and as such all the existing shareholders shall lose all the economic benefits derived from the Corporate Debtor.
- d) The Company shall be kept as a Private Limited Company, with Shri. Prashant Vaidya as a shareholder, and Shri. Prashant Vaidya shall transfer one percent (or any such percentage, as he may deem fit) shares to other person, duly compliant as per the provisions of IBC 2016, if required, in order to comply with the Companies Act, 2013. The change of this shareholding in the corporate debtor as contemplated here-in-above is an integral part

of this resolution plan, which shall be treated as in accordance with the relevant laws including the Companies Act, 2013, Income Tax Act 1961 and Stamp Acts, MIDC Act without any cost, tax, premium of whatsoever nature and this will not attract loss of benefit which the CD may be entitled to.

- e) That upon the present Resolution Plan having been approved, the order of the Adjudicating Authority shall be deemed to be an order under the relevant provisions of the Companies Act, 2013 and other laws, as applicable, and accordingly no separate resolution / approval / consent shall be necessary.
- f) Upon the Resolution Plan having been approved, the order of the Adjudicating Authority shall be considered as an approval for the continuing as private limited company. Any permission, which is required to be taken from the existing equity shareholders, authorities, shall be deemed to have been taken.
- g) The Resolution Applicant upon the approval of the Resolution Plan shall infuse an amount of Rs.50,00,000/- (Rupees Fifty Lakhs Only), if required, in the Private Limited Liability Company, as a fixed / working capital, more particularly elaborated in the table mentioned elsewhere.
- h) The Resolution Applicant upon the approval of the Resolution Plan shall be granted full control of the assets and the management of the Corporate Debtor, under the supervision of the Shri Prashant Vaidya, who is Resolution Applicant and resident of Nagpur.

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In this manner as stated above, an amount of Rs. 33,98,97,889/- (Rupees Thirty-Three Crores Ninety-Eight Lakhs Ninety-Seven Thousand Eight Hundred Eighty-nine only) shall be infused into the Corporate Debtor for the repayment of the existing debts as per the table mentioned herein.

B. Mobilization of Funds:

The Resolution Applicant proposes to mobilise a total of Rs. 33,98,97,889/- (Rupees Thirty Three Crores Ninety Eight Lakhs Ninety Seven Thousand Eight Hundred Eighty Nine Only) for the purpose of implementing the proposed Resolution Plan as summarized in the following table :-

Particulars	Amount
Amounts from Fixed Infusion	50,00,000
Amount from availing Financial Assistance and fresh infusion of funds by the Resolution Applicant	33,48,97,889
Total	33,98,97,889

C. Payment Schedule :

Particulars	Rs.
Cost of CIRP to be paid/reimbursed within 30 days from the date of receipt of Certified True Copy of Order of NCLT approving the Resolution Plan,	14,15,344

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and handing over the charge to the Resolution Applicant.	
Payment to Operational Creditors on or before 31.03.2022 but within two years from the date of receipt of the Certified True Copy of Order of NCLT approving the Resolution Plan whichever is later.	45,68,945
Payment to Operational Creditor to be paid on or before 31.03.2023 but within three years from the date of receipt of Certified True Copy of the Order of NCLT approving the Resolution Plan whichever is later.	20,13,600
First instalment of Rs. 2 Crore on or before 31.03.2020 of approving the Resolution Plan and handing over the charge to the Resolution Applicant after payment of Rs. 1 Crore out of the instalment	2,00,00,000
Next four instalment as follows:- <ul style="list-style-type: none">• Rs. 1.25 Crores on or before 30.06.2020• Rs. 1.50 Crores on or before 30.09.2020• Rs. 1.75 Crores on or before 31.12.2020	6,50,00,000

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• Rs. 2 Crores on or before 31.03.2021	
21 monthly instalment of Rs. 69,00,000 each at the end or before the end of each calendar month starting from 30.04.2021 to 31.12.2022.	14,49,00,000
15 monthly instalments of Rs. 68,00,000 each at the end or before the end of each calendar month starting from 31.01.2023 to 31.03.2024	10,20,00,000

D. Change In The Management

- i) The Resolution Applicant shall ensure that the existing directors of the Corporate Debtor shall be deemed to have ceased from the Directorship of the Corporate Debtor on the acceptance of the Resolution Plan by the Adjudicating Authority. Pursuant thereto, new Directors, if required, shall be put in place as may be deemed necessary by the resolution applicant. The Resolution Applicant shall also endeavour to recruit a management team having sector expertise to manage the affairs of the Corporate Debtor, as may be deemed necessary by the resolution applicant. Necessary changes shall also be affected to the operational management by appointing qualified and experienced professionals to manage functional departments. The Resolution Applicant shall adhere to

all the applicable laws and ensure the highest level of corporate governance and best practices while managing the affairs of the Corporate Debtor.

E. Employees and Workmen :

The existing employees and workmen shall be retained by the Resolution Applicant.

F. Preferential /Fraudulent Transactions :

There are no applications relating to preferential or fraudulent transaction filed or pending against the erstwhile directors or any other party.

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

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

H. Monitoring Committee for Supervision and Implementation of the Plan

Further, for the supervision of the Resolution Plan, it is proposed to be done by the Resolution Applicant himself for the entire period of its implementation. In case of violation of any terms of the Resolution Plan by the Resolution Applicant, the latter will be liable to be penalized for such violation as per the provisions of the Code.

OBSERVATIONS OF THE ADJUDICATING AUTHORITY

11. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.
12. The Resolution Applicant is the suspended director of the Corporate Debtor and is eligible under section 29A to submit the Resolution Plan as the Corporate Debtor is a registered MSME entity.
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 for the time being in force 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, this 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 Resolution Plan by the RA and the CoC as specified u/s 30(2)(d) of the Code.

17. The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code. In terms of Regulation 27 of the Regulations, Liquidation value and Fair Value was ascertained through registered valuers. The average of two valuation of Fair value is Rs. 9,81,22,714/- and Liquidation value is Rs. 6,88,46,214/-.

18. The RP has complied with the requirements of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.

19. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of The Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.
20. The Resolution Plan has been approved by the CoC in the with 100% votes in terms of Section 30(4) of the Code.
21. 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 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.
22. 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 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).”

23. 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

- (i) **The Application MA No. 209 of 2020 in CP 3627 of 2018 be and the same is allowed. The Resolution Plan submitted by Mr. Prashant Vaidya 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) The Resolution Plan envisages the timelines for the payment to the various stakeholders as tabulated above in the Payment Schedule at Clause C which shall be strictly adhered to and shall stand modified calculating the relevant period of payment from the date of approval of the Resolution Plan by this Authority.
- (iii) The Resolution Applicant (RA) shall obtain necessary permissions/ approvals for implementation of the Plan. The renewable/extension/ approvals shall be considered by the respective authorities in accordance and upon compliance with the procedure/formalities stipulated by the authorities.
- (iv) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. Further, any application for renewal or extension or restoration of any license or approval or connection from any authority shall be subject to payment of prescribed fee and/or deposit(s) and adherence to the procedure stipulated by such authority, however such authority shall not refuse/deny approval/extension/restoration merely on ground of previous defaults/noncompliance of the Corporate Debtor.

- (v) The concession sought in relation to the stamp duty, taxes, registration charges, etc for implementation of the approved Resolution Plan is not granted. However, the Resolution Applicant is at liberty to approach the competent authorities for the exemptions, if permitted under the law.
- (vi) As regards the immunity sought for the Resolution Applicant and the Corporate Debtor in accordance with the provisions of Section 32A of the Code, the same is not granted as the Resolution Applicant was in the management and control of the Corporate Debtor before commencement of CIRP.
- (vii) The reliefs and concessions which are not specifically granted or in violation of any law in force shall be construed as not granted.
- (viii) Further, 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)** the Hon'ble Apex Court 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 to a claim which are not a part of the Resolution Plan.
- (ix) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with

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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.

- (x) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (xi) 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.
- (xii) 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)