

(2023) 04 NCLT CK 0045

In the National Company Law Tribunal

Case No : IA No. 452 Of 2023 In CP (IB) No. 35/Chd/HP/2018

Jalesh Kumar Grover Resolution Professional For GPI Textiles Limited Vs

Date of Decision : 27-04-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 21, 29A, 30, 30(1), 30(2), 30(2)(b), 30(4), 30(6), 31, 31(1), 53, 53(1)
Himachal Pradesh Excise Act, 2011 — Section 73
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 6, 27, 35, 36, 39(3)(c), 38, 38(1)(b), 39, 39(1), 39(3), 39(4), 39(4A)

Citation : (2023) 04 NCLT CK 0045

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Abhishek Anand, Viren Sharma, Jalesh Kumar Grover

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

IA No. 452/2023

1. The present application has been filed by Mr. Jalesh Grover, Resolution Professional of GPI Textiles Limited under Section 30(6) read with Section 31 (1) of the Insolvency and Bankruptcy Code, 2016 ('the Code') for approval of the resolution plan in respect of the GPI Textile Limited ("the corporate debtor"). The applicant-Resolution Professional filed the present application on 07.02.2023 for approval of the resolution plan, which was approved with a 100% voting share of the Committee of Creditors (COC), in its 39th meeting which was held on 12.01.2023. The present application was reserved for orders on 16.03.2023.

2. The Company Petition CP (IB) No. 35/Chd/HP/2018 was filed by the Financial creditor Phoenix Arc Private Limited against the corporate debtor, which was admitted into the Corporate Insolvency Resolution Process ('CIRP') vide order dated 06.07.2018

3. Mr Jalesh Grover was appointed as Interim Resolution Professional ('IRP') vide Order dated 12.07.2018, and the public announcement as per Regulation 6 of the CIRP Regulations in Form A, as prescribed under the schedule, was made on 14.07.2018 in two newspapers, in Amar Ujala (Hindi) and Financial Express (English), inviting claims from the creditors of the corporate debtor as envisaged under the Code.

4. Pursuant to the public announcement, the Applicant constituted the Committee of Creditors on 01.08.2018 in terms of Section 21 of the Code comprising of Phoenix ARC Private Limited and State Bank of India, with the following voting share:-

S. No.

Name of Financial Creditors

Voting Share Percentage (%)

1.

Phoenix ARC Private Limited

92.55%

2.

State Bank of India

7.45%

5. The Committee of Creditors (CoC) confirmed the appointment of Mr Jalesh Grover as the Resolution Professional with 100% voting. The Applicant had convened 12 CoC meetings in the matter of the Corporate Debtor, wherein the CoC in its 12th CoC meeting approved the Resolution Plan submitted by M/s Aggarsain Spinners Limited with 92.55% voting share.

6. Pursuant to the above, the Resolution Professional had filed an application bearing C.A. No. 287 of 2019 under Section 30(6) of the Code on 07.04.2019 seeking approval of the Resolution Plan submitted by M/s Aggarsain Spinners Limited. This Hon'ble Adjudicating Authority vide its Order dated 24.05.2022 dismissed the aforesaid Application and has also extended the period of the Corporate Insolvency Resolution Process by 90 days for exploring the possibility of resolution of the corporate debtor in order to avoid the Liquidation

7. The Applicant has submitted that a total of 40 CoC meetings have been held during the CIRP period, details of first 25 meetings are as follows:-

Particulars

Date of CoC Meeting

Main points of discussion

Important Decisions Taken

1st CoC Meeting

10.08.2018

- Discussion regarding declaration to be made by the CoC Members of their relationship with the Corporate Debtor.
 - Discussion and determination of voting rights of the CoC members in proportion to their respective debt due
 - Discussion regarding claims under verification.
 - The COC gave approval to IRP to modify the terms of appointment or changes in the terms of contract of such personnel of Corporate Debtor
 - The COC authorized the IRP to appoint independent auditor to conduct transaction audit of corporate debtor at a maximum fee
 - Discussion regarding actions taken by IRP.
 - Discussion to increase capacity utilization of the Corporate Debtor and reduction of expenses.
 - Discussion about the cash flow of the company.
 - Discussion about the unauthorized payments made and the salary of the Executive Director during CIRP period.
 - Discussion about the fire incidence that happened in the company prior to CIRP and the recoverable insurance claim amount.
 - Discussion about the Appeal filed by the Executive Director challenging the decision of NCLT regarding admission of GPI Textiles Limited.
- of Rs. 400000/- plus applicable taxes.

- The COC approved the appointment of the security agency for the factory premises and registered office of Corporate Debtor for which the payment of services was ratified.
- The COC ratified the fees of the IRP for Rs. 3,00,000/- plus applicable taxes and the expenses for period from 12.07.2018 to 09.08.2018. The COC agreed that the IRP/RP can draw expenses and his fees from the cash flows of the Corporate Debtor.
- The IRP was confirmed as the RP with 100% voting shares.

2nd CoC meeting

11.09.2018

- RP apprised that the Information Memorandum shall be shared with

the members as and when undertaking is received by him. Discussion took place regarding the publication of the invitation of expression of Interest in Form G. CoC recommended that publication be done in Punjab, Haryana, Himachal Pradesh and also in Mumbai edition. CoC further opined that a process advisor be appointed and quotes for same be invited.

- Discussion about Application filed by the RP in NCLT for directions to electricity department to not disconnect the electricity and the order of the NCLT thereby allowing the same.
- RP updated the CoC members regarding the current operations of the plant.
- Discussion about present cash flow and projected cash flow.
- Discussion on the consumption norms and the job work status prior to the CIRP Period.
- The COC ratified the appointment and fees of the valuers by 92.58% voting share of Committee of Creditors.
- The COC ratified the appointment and fees of the Transaction and Forensic auditor by 92.58% voting share of Committee of creditors.
- The COC ratified the fees of the RP for Rs. 2,25,000/- per month plus taxes.
- The COC ratified the travelling, security expenses and other expenses incurred by the RP for the period of 10.08.2018 to 10.09.2018.
- CoC finalized and approved the eligibility criteria and evaluation matrix as defined under Section 25(2)(h) of the Code

3rd CoC Meeting

16.10.2018

- Discussion on the status of valuation reports under Regulation 27 of IBBI (CIRP) Regulation 2016.
- RP apprised CoC members that he shall issue the IM after receiving an undertaking from the CoC members and the prospective resolution applicants.
- Members of Committee were informed that the process of forensic & transaction audit has been completed and report shall be available within a week.

The COC ratified the travelling, and other expenses incurred by the RP for

the period of 11.09.2018 to 15.10.2018.

- The COC approved that the RP can draw the expenses from the cash flows of the corporate debtor.
- Discussion on status of Applications filed with Hon'ble NCLT.
- CoC members were apprised regarding the expression of interest received from prospective resolution applicants.
- Discussion regarding seeking more quotations for appointment of process advisor.
- RP updated the COC regarding the current operations of the plant.
- Discussion about the interim finance for the operations & maintenance of the plant of Corporate Debtor.
- Discussion on the requirements of virtual data room for the record of CIRP of the Corporate Debtor.
- Queries raised by Mr. LK Sing (suspended director) were addressed.
- RP apprised the CoC regarding the communication with Numetal regarding outstanding to be received from Arcelor Mittal

4th CoC Meeting

06.11.2018

- RP apprised the CoC about the caveat filed in NCLT, Ahmedabad in the matter of approval of Resolution Plan of AMIPL for the revival of ESIL.
- Discussion about the Application filed by the Himachal Pradesh State Electricity Board for the directions in response to the order passed by the Himachal Pollution Board for disconnection of electricity of the Corporate Debtor.
- Discussion about the reconciliation of land ownership of the Corporate Debtor.
- The COC approved shorter notice for the future meetings and further decided that notice shall not be for less than two working days for upcoming meetings.
- The COC members having voting share of 92.58% approved filing of application before NCLT, Ahmedabad in matter of clearance of dues by AMIPL.
- The COC ratified the travelling, and other expenses incurred by the RP for the period of 16.10.2018 to 05.11.2018.
- The COC ratified the expenses of Rs. 5,40,000/- regarding the application filed before Hon'ble NCLT by a voting share of 92.58%.

- The COC authorized the RP to file an application before Hon'ble NCLT against HSBC and to take further action in this regard.

5th COC Meeting

22.11.2018

- Discussions about Application filed before Hon'ble NCLT, Ahmedabad for clearance of dues by Arcelor Mittal (Resolution Applicant in the matter of Essar Steels Ltd) to become eligible resolution applicant.
- Discussion about the receipt of draft report of forensic and transaction audit.
- Discussion about the quotations received to examine the process of receiving and scrutinizing the Resolution Plan.
- Discussion about the writ petition filed by Mr. L.K. Singh (suspended director) against RBI, HSBC and RP of GPI Textiles Limited.
- Discussion about various emails sent by RP to RBI seeking information regarding the receipt of amount of Rs. Eighty-One Crore approximately by HSBC.

6th CoC Meeting

17.12.2018

- Representatives of E&Y were invited by RP to give presentation on their findings during the Forensic and Transactional Audit.
- The RP informed the COC that he has placed on record before the Hon'ble NCLT, Ahmedabad an affidavit with the final decision of COC members which is to not take any further action for recovery of outstanding amount from AMIPL.
- The COC requested the RP to present in the next meeting the audited Balance Sheets along with Audit Reports of the Corporate Debtor for the financial year 2016-17 and 2017-18.

7th CoC Meeting

10.01.2019

- Discussion on seven fresh expressions of interest received after re-publication of Form-G in the matter of GPI Textiles Limited under CIRP.
- The RP presented the audited balance sheets along with the audit reports of GPI Textiles Limited under CIRP for financial year 2016-17 & 2017-18.
- The RP presented the CIRP Cost Sheet of Corporate Debtor before the COC.

- RP apprised the COC, that Hon'ble NCLT, Chandigarh has approved the extension of ninety days to conduct the CIRP of the Corporate Debtor.

8th CoC Meeting

30.01.2019

- The RP opened and announced the major terms of all the Resolution Plans in the presence of all CoC members and all the prospective Resolution Applicants and the RP informed that the compliant Resolution Plan will be presented before the COC in the next meeting.
- RP informed that reply to the questionnaire has been submitted by Mr. L.K. Singh, Director (Powers Suspended) of Corporate Debtor, and has been shared with the Forensic & Transaction Auditor and the COC further directed Mr. L.K. Singh to reply to the same.

9th CoC Meeting

13.02.2019

- The RP explained all the objections and legal opinion received for the compliant Resolution Plan and discussed the matter with CoC members before initiation of Negotiation Process with the Resolution Applicants.
- The Forensic & Transaction Auditor informed that there is sufficient evidence to prove the existence of preferential, undervalued and fraudulent transactions, the RP requested them to provide summary of transactions under specific head so as to file application with Hon'ble NCLT.

10th CoC Meeting

21.02.2019

- The COC informed that the last proposed amount i.e. Rs. 74.5 Cr. of H1 Resolution Applicant is not accepted and directed the RP to invite prospective Resolution Applicants for further negotiation.
- The COC informed that due to constraint in timelines, the re-publication of Form G may not lead to better compliant Resolution Plan for the Corporate Debtor and decided to further negotiate with the existing Resolution Applicants.
- RP informed that the Application filed by the Job Work Supplier of the Corporate Debtor and a Resolution Applicant has been disposed off by the Hon'ble NCLT, Chandigarh with a liberty to file a detailed representation before the RP with necessary documents.

11th CoC Meeting

06.03.2019

- RP informed that prospective Resolution Applicants were invited to participate in further negotiations on the proposed amount of their respective Resolution Plans.
- RP informed the COC about the appeal filed by Mr. L.K. Singh, Director (Powers Suspended) of the Corporate Debtor before the Hon'ble Supreme Court of India challenging the initiation of CIRP order passed by Learned NCLT, Chandigarh.

The COC ratified the travelling, and other expenses incurred by the RP for the period of 31.01.2019 to 25.02.2019.

12th CoC Meeting

27.03.2019

- The RP informed, Resolution Plan has been approved by the COC
- The COC ratified the travelling, and other expenses incurred by the holding 92.55% voting rights and there is no requirement to discuss or propose the liquidation of the Corporate Debtor.
- Discussion on status of Forensic report and filing of the relevant Application before the Hon'ble NCLT by RP.
- Discussion on the status of the Application filed by the Resolution Applicant against HSBC for seeking directions in the matter of recovery of Rs. 81.67 Cr. along with 12% interest before the Hon'ble NCLT.
- RP received a mail from one of the Resolution Applicant offering an amount of Rs. 132.69 Cr. The condition to the plan was that receivable amount from HSBC be assigned to them and then the payout under resolution plan shall be 132.69 Cr. Else the total payout offered was Rs. 66.38 Cr.

RP for the period of 31.01.2019 to 25.02.2019.

- Resolution Plan submitted by M/s Aggarsain Spinners Ltd was approved in compliance with the provisions of section 30(4) of the Insolvency and Bankruptcy Code 2016 read with regulations 39 (3) of CIRP Regulations, 2016.
- COC authorized RP to move an application under section 31 on behalf of the COC for approval of resolution plan from the adjudicating authority.
- The COC with 92.55% voting share approved the appointment of Mr. J.K Grover (RP) as monitoring and supervising professional for the supervision and implementation of the Resolution Plan after approval of the Adjudicating Authority.

13th CoC Meeting

03.06.2019

- RP updated the COC on the current status of the operations of the Corporate Debtor.
- Discussion on various Applications filed in Hon'ble NCLT in the matter of GPI Textiles Limited.
- RP informed that the insurance claim amount has been used for the repair and maintenance of the Factory Mills to run the 16000 spindles, which were not working earlier with the approval of COC members.
- RP informed the COC that the financial closure of the Resolution Applicant Aggarsain Spinners Limited has not been received yet.
- RP gave status update about the disputed land of the Corporate Debtor.

14th CoC Meeting

27.06.2019

- The RP presented the cash flow statement for the CIRP period and projected cash flow for the period of July, August and September, 2019.
- The COC approved the resolution with 92.575% voting share to raise the interim finance amount upto Rs. 1.50 Cr. to keep the company a going concern.

15th CoC Meeting

19.07.2019

- Discussion on the current status of operations of the Corporate Debtor.
- RP informed the COC that the application for early hearing in respect of approval of Resolution Plan has been dismissed by the Adjudicating Authority.
- Discussion on email sent by the Executive Director (Powers suspended) containing queries related to the Resolution plan.
- Discussion regarding the share of dissenting Financial Creditor.

16th CoC Meeting

24.09.2019

- The RP informed the COC that the CD was running on low capacity due to

which it was difficult to bear the operational cost of the Company. The same was discussed at length with the CoC and the SRA. And sought financial closure required for approval of the Resolution Plan from the Hon'ble NCLT.

- Discussion about various Applications filed before Hon'ble NCLT.
- RP apprised about the latest amendments in IBC, 2016 and their impact on the Resolution Plan.

17th CoC Meeting

23.12.2019

- RP updated the CoC about the current status of operations of the Corporate Debtor.
- Discussion about the requirements for submission of the Financial Closure.
- RP informed the COC that since review petition filed by Phoenix ARC is pending in the Hon'ble Supreme Court, therefore, all other matters in NCLT will be taken up after the order from Hon'ble Supreme Court.

18th CoC Meeting

24.01.2020

- RP updated the CoC about the current status of operations of the Corporate Debtor and informed them that in revised proposal from RA it was stated that loss up to Rs. 20 lakhs shall be part of CIRP cost and in excess of Rs. 20 lakhs will be borne by RA.

19th CoC Meeting

06.03.2020

- Discussion on the current status of operations of the Corporate Debtor. COC decided that Aggarsain Spinners will work as a job work contractor till next 90 days or till the outcome of the Hon'ble Supreme Court order in respect to review petition, whichever is earlier.
- Discussion on Technical Evaluation of the Machineries of the Corporate Debtor. RP informed that at present the repair and maintenance of the machineries of the Corporate Debtor are being done on need basis only.
- Discussion on status of various Application filed in the Hon'ble NCLT in the matter of GPI Textiles Limited.
- RP informed the COC that the RA has still not submitted the Financial Closure.

20th CoC Meeting

28.04.2020

- Discussion on the current status of operations of the Corporate Debtor and appropriate steps to be taken during the Lock down period.
- RP discussed that the intention of the RA is that if the company is not a going concern, he may opt to back out since he submitted the Resolution Plan for a going concern unit and the RP requested the COC to decide whether to run the unit in loss or to close the unit with the risk of the back step of the RA.

21st CoC Meeting

21.05.2020

- Discussion on the current status of operations of the Corporate Debtor and brief about the operations started by the Job Work Contractor after approval of Resolution Plan in 12th CoC Meeting.
- The Representative of Phoenix ARC Private Limited suggested the RP to publish an invitation to submit the quotation to run the factory and that there shall be open negotiation between all the interested parties.

22nd CoC Meeting

22.05.2020

- Discussion on selection of the Job Work Contractor to run the factory of the Corporate Debtor and it was decided that final negotiation with both the parties shall be done and the H1 Party shall be asked to run the factory at zero losses since COC is not ready to bear any further loss.

23rd CoC Meeting

03.06.2020

- Discussion and Negotiation with the interested Job Work Contractor in respect of operations of the Corporate Debtor.
- The COC stated that for further negotiations and more transparency, both the parties should be physically present in the meeting and shall have to give the advance of Rs. 1 crore either through RTGS or by the Demand draft before the start of negotiations.

24th CoC Meeting

05.06.2020

- Discussion and Negotiation with the interested Job Work Contractor in respect of operations of the Corporate Debtor.
- A Fresh Job Work Agreement containing the final job work rates, final

fixed amount of expenses and terms and conditions was agreed and signed by both the Job Work Parties.

25th CoC Meeting

13.06.2020

· Discussion on the operations of GPI Textiles Limited as the H1 Job Work Contractor, Aggarsain Spinners Limited has sent a mail for cancellation of contract and asked for refund of Rs. 1 Crore. RP has already discussed with H2 party to run the operations at the rates of H1.

8. It is stated by the Applicant that as per the valuation reports, the fair value of the corporate debtor was assessed in terms of Regulation 35 of the CIRP Regulations which is given below:-

S. NO.

NAME OF VALUER

FAIR VALUE

LIQUIDATION VALUE

AVERAGE

FAIR VALUE

LIQUIDATION VALUE

A.

Land & Building

1.

Vastu Group

86,12,70,687

64,59,53,015

92,60,36,272

74,40,67,297

2.

M/s Creative Consortium

99,08,01,856

84,21,81,578

3.

Sachin Goel

2,00,01,49,5

38

1,47,44,00,000

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B.

Plant & Machinery

4.

Mr. Ankit Goel

29,80,00,000

22,35,00,000

40,26,18,500

28,92,83,000

5.

ITCOT Consultancy Services Pvt Ltd

50,72,37,000

35,50,66,000

C.

Stock

6.

Sanjeev Sharma & Associate

5,91,88,792

4,14,32,154

3,57,45,016

NA

7.

Naveen Soni & Associate

1,23,01,240

75,94,992

Total Value

1,36,43,99,788

1,03,33,50,297

9. It is submitted that in the 26th meeting of CoC held on 01.06.2022 (Annexure A-6 of the application), the members have resolved to publish a fresh FORM-G in order to invite fresh resolution plans for the Corporate Debtor and it was decided to publish the FORM G in two newspapers namely "Indian Express- all India edition" and "Amar Ujala". The last date of submission of EOI as per Form G was 17.06.2022. In the 28th meeting which was convened on 16.06.2022 (Annexure A-9 of the application), the CoC approved the Evaluation Matrix and the Request for Resolution Plan (RFRP). After the publication of Form G, It was apprised by the applicant in 29th meeting held on 01.07.2022, 18 Expression of Interest were received till the last date of submission i.e. 17.06.2022 and the last date for submission of resolution plan was fixed as 19.07.2022.

10. In the 30th meeting of the Committee of Creditors was convened on 20.07.2022, the Applicant apprised that 11 Resolution Plans has been received till the last date of submission of the resolution plan i.e. on 19.07.2022. All the eligible Prospective Resolution applicants in accordance with Section 29A of the Code were invited to the meeting and their Resolution Plans were presented before COC members. All PRA's were invited separately to discuss and negotiate with the COC members in the 31st meeting of CoC held on 27.07.2022. The negotiations were deferred in view of the appeal filed by Aggarsains Spinners.

11. After the dismissal of appeal, the negotiations with PRA'S were held in the 34th meeting of the COC on 20.09.2022, wherein the negotiation was held. In the said meeting, a total of 27 rounds of negotiations were conducted with different PRAs and during different rounds of negotiations some PRA's requested for withdrawal from the negotiation process.

12. Meanwhile, in compliance of our order dated 10.10.2022, the Resolution applicant shall seek an affidavit under Section 29A of the Code along with undertaking under Regulation 36 of the IBBI (CIRP) Regulations, 2016 from earlier resolution applicants namely Navraj Mittal and Others (H2); M/s Shivani Trendz Private Limited (H3); and Pankaj Bhatia & Shreeji Cotfab (H4) and after that, they shall also be invited for negotiations in compliance of the above order. Despite various reminders, the aforesaid earlier resolution applicants neither submitted the EMD nor submitted the documents as requested.

13. It is pertinent to mention here that the order dated 24.05.2022 in CA No. 287/2019 has been challenged by the erstwhile Resolution Applicant of M/s Aggarsain Spinners Limited before Hon'ble NCLAT, New Delhi in Company Appeal (AT)(Insolvency) No. 635 and 636 of 2022 and the same has been dismissed by order dated 14.09.2022. The erstwhile Resolution Applicant has preferred an appeal before the Hon'ble Supreme Court in Civil Appeal No. 7015 and 7016 of 2022 in which the Resolution Applicant was given liberty to submit a fresh Resolution Plan with a fresh bank guarantee and further directions were given to

return the bank guarantees and earnest money back to the appellant.

14. In the 38th meeting of the COC on 09.12.2022, the COC members discussed about the Hon'ble Supreme Court order dated 09.12.2022 in the matter of M/s Aggarsain Spinners Ltd Vs. GPI Textiles Limited wherein, Performance Bank Guarantee (PBG) & EMD was required to be returned back to M/s Aggarsain Spinners Ltd. It was further permitted by Hon'ble Supreme Court to Aggarsain Spinners Ltd to submit a Resolution Plan for the revival of the Corporate Debtor, within 30 days' time period. Aggarsain Spinners Ltd submitted an affidavit under Section 29A of the Code along with undertaking under Regulation 36 of the CIRP Regulations on 06.01.2023 and 30 days expired on 08.01.2023 and no resolution plan from Aggarsain Spinners Limited has been received till 08.01.2023.

15. In terms of Regulation 39(3)(c) of the CIRP Regulations, 2016, the compliant resolution plans shall be placed before the Committee of Creditors for its approval/rejection. The Committee of Creditors also discussed and approved the Tie-Breaker formula. The Applicant placed the Reports under Section 29A of the Code and accordingly, placed the nine (9) Resolution Plans for voting in the 39th meeting of the CoC held on 12.01.2023. In the same meeting, the applicant placed the resolution for approval of Resolution plans and to liquidate the Corporate Debtor before the CoC for voting.

16. The Resolutions were placed for e-voting, which commenced on 15th January, 2023 to 31st January. After the conclusion of the e-voting, the Resolution Plan of Mr Anil Sharma & Mr Satvinder Singh has been approved by 100% voting share of the Committee of Creditors. A copy of the Resolution Plan along with Addendum is attached as Annexure A-27 of the application.

17. In pursuance to the approval of the Resolution Plan by the CoC, the Applicant issued a Letter of Intent dated 31.01.2023 to the Resolution Applicant. The successful resolution applicant conveyed its unconditional acceptance on 01.02.2023. The successful resolution applicant has also submitted the Performance Bank Guarantee required under sub-regulation (4A) of Regulation 39 to the tune of Rs.16,50,00,000/- (Rupees Sixteen Crore Fifty Lakhs Only). Copy of Letter of Intent dated 31.01.2023 which signed and unconditionally accepted by the Resolution Applicant along with Performance Bank Guarantee is attached as Annexure A-28 of the application.

18. The Resolution Applicant has submitted undertakings and affidavits stating that the Resolution Applicant is eligible under Section 29A of the Code. Copy of undertaking submitted by the Resolution Applicants under Section 29A of the Code and Regulation 39(1) of the CIRP Regulations, 2016 are attached as Annexure A-31 of the application.

19. The Successful Resolution Applicant has filed an affidavit through its Power of Attorney Holder stating that an amount of Rs. 124.90 lakhs and 48.46 lakhs of EPFO, Shimla (claim for Provident Fund) and ESIC (claim for ESI) is admitted by the Resolution Professional and the resolution plan provides for 100% payment

of claims to EPFO, Shimla and ESIC within 30 days from the effective date. As per judgment passed by the Hon'ble NCLAT in the matter of "Sikander Singh Jamuwal Vs. Vinay Talwar Resolution Professional" Company Appeal(AT) (Ins)No. 483 of 2019 dated 11.03.2022. It is also undertaken by the Resolution Applicant that if any order is passed in terms of the provisions of Employees Provident Fund and Miscellaneous Provident Fund, 1952 and Payment of Gratuity Act, 1962 assessing the dues on or before the approval of the resolution plan and the SRA will comply with the payment of PF and gratuity dues in case of Sikander Singh Jamuwal Vs. Vinay Talwar Resolution Professional (Supra). The aforesaid affidavit furnished by SRA has been filed as Annexure A-7 of the Diary No. 00456/01 dated 20.02.2023.

20. The Resolution Professional of the Corporate Debtor has also filed an affidavit deposing that the Sales Tax and Excise Department has submitted a claim amounting to Rs. 9.63 crores and an amount of Rs. 5.89 crores has been verified. As per Section 73 of the Himachal Pradesh Excise Act, 2011, Excise revenue Department will have the first and recoverable as arrears of land revenue on the account of the judgement dated 06.09.2022 passed by Hon'ble Supreme Court of India in the matter of State Tax Officer (1) Vs. Rainbow Papers Limited in Civil Appeal No.1661 Of 2020 With With Civil Appeal No.2568 OF 2020 order dated 06.09.2022 Case citation: (2022) ibclaw.in 107 SC. After the discussion of the same in the 39th meeting held on 12.01.2023, it is decided that a total secured amount of Rs. 4.09 crores shall be paid to the State Tax & Excise Department as a Secured Creditor in accordance with the State Tax Officer Vs Rainbow Papers Limited judgement (Supra) in proportion to other secured financial creditors. The resolution plan considers the claims of statutory authorities where a security interest is created by law, as secured creditors for distribution under Section 53(1) of the Code. The aforesaid affidavit furnished by Resolution Professional has been filed as Annexure A-8 of the Diary No. 00456/01 dated 20.02.2023.

21. The Resolution Professional has also filed a compliance affidavit under Section 30(2)(b) The Resolution Professional has furnished another affidavit deposing that IDBI Bank Limited has filed its claim against the Corporate Debtor after the completion of CIRP Process with a delay of 502 days from the initiation of CIRP and 238 days from approval of Resolution Plan. The claim has been rejected by the Resolution Professional in terms of the provisions of the Code and underlying regulation and the same has been intimated to the IDBI by email dated 30.11.2019. The IDBI has approached this Hon'ble Tribunal by way of application on 21.09.2021 after almost two years from the date of rejection of claim and this Adjudication Authority by order dated 24.05.2022 has rejected the application filed by the IDBI Bank. However, when the resolution plan was rejected by order dated 24.05.2022 and CIRP was extended for 90 days, IDBI Bank limited once again requested Resolution Professional to consider their claims as creditor and the same has been rejected on the ground that Resolution Professional is unable to process the claim. The aforesaid affidavit furnished by

Resolution Professional has been filed as Annexure A-9 of Diary No. 00456/01 dated 20.02.2023.

22. The Resolution Professional has also submitted a report submitted by the independent professional checking the eligibility of the Successful Resolution Applicant in terms of Section 29A of the IB Code, 2016 which is attached as Annexure A12 of the Diary No. 00456/01 dated 20.02.2023.

23. The Resolution Professional has filed and compliance affidavit vide Diary No. 00456/02 dated 22.02.2023 wherein it has been stated that the distribution of the amount offered in the Resolution Plan as approved by the CoC with 100% voting share is in compliance with Section 30(2)(b) of the Code. The amount proposed under the Resolution Plan for payment to operational creditors in the matter of Corporate Debtor is not less than the amount to be paid to such creditors in the event of liquidation of the Corporate Debtor under Section 53 of the Code of than the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan had been distributed in accordance with priority under Section 53(1) of the Code.

24. The relevant information with regard to the amount claimed, amount admitted, and the amount proposed to be paid by the Resolution Applicant under the said resolution plan as mentioned in Form H filed at Annexure A-29 of the application which is reproduced as below:-

(Amount In Lakhs)

Sl. No.

Category of Stakeholder*

Sub-Category of Stakeholder

Amount Claimed

Amount Admitted

Amount Provided under the Plan(In lakhs)

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 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

30953.33

30953.33

14889

48.10%

Total[(a) + (b)]

30953.33

30953.33

14889

48.10%

2

Unsecured Financial Creditors

(a) Creditors not having a right to vote under sub-section (2) of section 21

23858.85

949.73

0

0.00

(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

Total[(a) + (b)]

23858.85

949.73

0.00

0.00

3

Operational Creditors

(a) Related Party of Corporate Debtor

(b) Other than (a) above:

(i) Government dues

(a) State and Excise dept

Secured claim

408.56

153.80

196.50

48.10%

Unsecured claim

554.19

435.10

0

0

(b) Provident Fund

124.90

124.90

124.90

100%

(c) ESIC

48.46

48.46

48.46

100%

(d) Other Govt Dues

1104.39

726.06

(i) Total of Govt dues

2240.5

1488.32

369.86

16.50

(ii) Workmen

228.84

226.69

226.69

99.16%

(iii) Employees

297.48

223.89

223.89

75.30%

(iv) Operational Creditors

6872.03

4642.92

51.00

0.74%

Total[(a) + (b)]

9638.85

6581.82

871.44

9.04%

4

Other debts and dues

Creditors (other than Financial Creditors and Operational Creditors)

Grand Total

64451.03

38484.88

15760.44

25. It is submitted that The Resolution Plan shall be implemented as per the following schedule:

Action

Timeline

Earnest Money of Rs. 102.07 lacs

Along with the submission of Resolution plan

Submission of Bank Guarantee of Rs. 16.50 Crores- 10% of the plan value) or bank transfer through normal banking channels

Within 7 business days of approval of resolution plan by CoC

Effective date

X

Formation of Monitoring Agency

X+7

Vacation of the office of suspended directors, appointment of new directors in the board of corporate debtor

X<=30

Extinguishment of all existing shares and issue of fresh shares in f/o new Resolution Applicant or the persons nominated by them

X<=30

Intimation to the statutory authorities, creditors, existing shareholders and other stakeholders of the Company

Within 7 days from the date of final payment

CIRP cost

Rs. 700.00 lacs

100% within 30 days of effective date (without interest)

Financial Creditors

100% within 30 days of effective date (without interest)

Rs. 15000.00 lacs*

Workmen and employee dues 100% within 30 days of effective date (without interest)

Rs. 450.58 lacs*

Operational Creditors dues 100% within 30 days of effective date (without interest)

Rs. 249.42 lacs*

Return of Performance Bank Guarantee to the entity which has provided the same

Within 7 days of last payment to the financial creditors

Refund of EMD of Rs. 102.07 lacs to the remitter

Within 7 days of last payment to the financial creditors

Note : *The Amounts will be as per Form H

26. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations, which a Resolution Plan is required to adhere to, as follows:

Section of the Code/Regulation No.

Requirement with respect to Resolution Plan

Clause of Resolution Plan

Compliance (Yes / No)

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 CD?

Yes, as per the eligibility criteria at Page no. 563 and Page No. 564 of the Main Application

Yes

Section 29A

Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?

Yes, as per Section 29A affidavit filed as ANNEXURE A-31 of the main application submitted by the Successful resolution Applicant.

Further, the successful resolution applicant fulfils the eligibility criteria.

Yes

Section 30(1)

Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?

Yes, as per affidavit as ANNEXURE A-31 of the Main application

Yes

Section 30(2)

Whether the Resolution Plan-

Yes

(a) provides for the payment of insolvency resolution process costs?

a) Yes, at Page No 66 of the Resolution Plan which is attached as Annexure No. A-27 (Relevant page no. 603 of the main application.), Resolution Applicant has stated as follows

“As informed by the Resolution Professional, the unpaid CIRP cost till the approval of the Resolution Plan is estimated at Rs. 700 lacs. The Resolution Applicants agreed to bear the CIRP cost (including any unpaid CIRP cost) up to Rs. 700 lacs in priority to other debts. Any increase or decrease in remaining estimated/expected CIRP cost shall be payable by the secured financial creditors or adjusted with the final amount as mentioned in the Resolution Plan”.

(b) provides for the payment to the operational creditors?

At Page No 51 – 57 of the Resolution Plan which is attached as Annexure No. A-27 (Relevant page no. 580-594) of the main application.

Yes

(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?

At Page No 49 of the Resolution Plan which is attached as Annexure No. A-27 (Relevant page no 585-588) and addendum to the Resolution plan attached as Annexure No. A-27 (Relevant page no 633-634) of the main application, the Resolution Applicant has stated as follows:

“Dissenting financial creditors shall be paid in priority over financial creditors who voted in favour of the plan (Regulation 38(1) (b) of CIRP regulations).

Yes

(vii)

(vi) Section 30(2) (b) of IBC- Dissenting Financial Creditors

RA defines term of payment of Dissenting FC as 24 hours in priority to other financial creditors

For the purpose of this financial proposal, the Resolution Applicants have assumed that there are no Dissenting Financial Creditors. However, if there are any Dissenting Financial Creditors, the amount payable to them shall be paid in priority to the financial creditors who has voted in favour of the plan, in accordance with the code. However, the total payable amount under this clause shall not be more than what has been proposed for the payment of financial creditors under this plan and the said amount shall be accordingly adjusted in the amounts that proposed to be infused as set out in the Resolution Plan.”

(d) provides for the management of the affairs of the corporate debtor?

At Page No 61 of the Resolution Plan which is attached as Annexure No. A-27 (Relevant page no 598-599) of the main application, the Resolution Applicant provides for management of the affairs of the Corporate Debtor

Yes

(ix)

(e) provides for the implementation and supervision of the resolution plan?

Yes at Page No 60 of the Resolution Plan which is attached as Annexure No. A-27 (Relevant page no. 597) of the main application, the Resolution Applicants states as follow:

(xi)

“Implementation: Implementation and supervision of the Resolution Plan shall be done by Resolution Professional in consultation with the COC. Further the Resolution Applicants also propose to appoint present Resolution Professional as Monitoring and Supervising Professional

at the present fee immediately after the approval of plan by the Hon’ble NCLT.

Upon approval of the Resolution Plan by the Adjudicating Authority, the Resolution Applicants will appoint new board of directors to manage the affairs of Corporate Debtor.”

(xii) (f) Contravene any of the provisions of the law for the time being in force?

Declaration has been made by the Applicant to that effect in the

Resolution Plan at Page 44 of the Resolution Plan which is attached as Annexure No. A-27 (Relevant page no 581) of the main application.

Yes

(xiii)

It says that: "Section 30 (2)

(e) of IBC: The Resolution Applicants have taken utmost care, while preparing the Resolution Plan. The Resolution Applicants confirm that the Resolution Plan does not contravene any provision of applicable law for the time being in force."

Section 30(4)

Whether the Resolution Plan

(xiv) (a) is feasible and viable, according to the CoC?

Yes

Yes

(xv)

by the share?

(b) has been approved CoC with 66% voting

Yes, approved by 100% Voting Share at ANNEXURE A-26 Page No. 501-502 of the main application(E- Voting Results)

Yes

Section 31(1)

Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?

Yes, CoC has approved the appointment of Monitoring Professional Mr. Jalesh Kumar Grover for the implementation of the Resolution Plan in the 39TH CoC Meeting held on 12.01.2023 (ANNEXURE

A-25) at Page No. 461 of the main application (Minutes of the 39TH CoC meeting). Voting Sheet (Page No. ANNEXURE A-26 Page No. 520

Yes

Monitoring shall be done by Monitoring Agency consisting of one representative of the Resolution Applicant, representative of the CoC and the present Resolution Professional;

Regulation 38 (1)

Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?

At Page No 51 – 57 and Page

59 of the Resolution Plan which is attached as Annexure No. 27 (Relevant page no. 588-594) of the main application.

Yes

Regulation 38(1A)

Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?

At Page 59 – 60 of the Resolution Plan which is attached as Annexure No. 27 (Relevant page no. 596-597) of the main application, the Resolution Applicant has mentioned the financial proposal indicating the amount to be paid to each creditor.

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.

At Page 60, of the Resolution plan which is attached as Annexure No. 27 (Relevant page no. 597) of the main application, the Resolution Applicant has declared that neither the Resolution Applicant nor any of its related parties have ever failed to implement or contributed to the failure of implementation of any other resolution plan approved by the NCLT at any time in the past.

No

(xix) (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?

Not Applicable

(xx)

Regulation 38(2)

(b)

Whether the Resolution Plan provides:

(a) the term of the plan and its implementation schedule?

The Resolution Applicant proposes to implement the entire Resolution Plan within a period of 30 days from effective date as mentioned at Page 60 of the Resolution

Yes

Plan which is attached as Annexure No. 27 (Relevant page no. 597) of the main application.

Effective date is defined as "means the date on which the Adjudicating Authority approved the Resolution Plan"

(iii) (b) for the management and control of the business of the corporate debtor during its term?

Page No 61 of the Resolution Plan provides for management of the Corporate Debtor which is attached as Annexure No. 27 (Relevant page no. 598-599) of the main application

Yes

(iv)(c) adequate means for supervising its implementation?

At Page No 61 of the Resolution Plan which is attached as Annexure No. 27 (Relevant page no. 598-599) of the main application, Resolution Applicant provides for supervision of the implementation of resolution plan

(v)

38(3)

Whether the resolution plan demonstrates that –

(a) it addresses the cause of default?

At Page No 62-63 of the Resolution Plan which is attached as Annexure 27 (relevant page no. 599-600) of the main application.

Yes

(vii)

(b) it is feasible and viable?

At Page No 62-63 of the Resolution Plan which is attached as Annexure 27 (Relevant Page no.599-600 of the main application.)

Yes

(viii)

(c) it has provisions for its effective implementation?

At Page No 62-63 of the Resolution Plan which is attached as

Annexure No. 27 (Relevant page no. 599-600 of the main application).

(d) it has provisions for approvals required and the timeline for the same?

At Page No 62-63 of the Resolution Plan which is attached as Annexure No.27 (Relevant Page No. 599-600 of the main application).

(ix)

(e) the resolution applicant has the capability to implement the resolution plan?

At Page No 62-63 of the Resolution Plan which is attached as Annexure 27 (Relevant Page No. 599-600 of the main application).

The Resolution Applicant has claimed to be financially sound and capable of implementing the Resolution plan, which has to be considered by the Committee of Creditors

(x)

39(2)

(c) Whether the RP has filed applications in respect of transactions observed, found or determined by him?

Yes. Vide Diary No. 4370 Application in respect of preferential transactions. Further, after receipt of the Forensic Audit Report, vide diary no. 2512 dated 16.05.2019, RP filed an application in respect of fraudulent, extortionate and undervalued transactions. Further, vide order dated 26.07.2022, Hon'ble Bench was pleased directed to file segregated applications which have been filed vide diary no. 00246/2023 dated 18.01.2023 (under section 45 & 49), Diary No. 00247/2023 dated 18.01.2023 (under Section 66) and Diary No 245/2023 dated 18.01.2023

(under section 50).

Yes

Regulation 39(4)

(d) Provide details of performance security received, as referred to in sub-regulation (4A) of Regulation 36B.

The Successful Resolution applicant has submitted the Performance Bank Guarantee(PBG) of Rs. 16.5 Crore in the favour of financial Creditor, Phoenix ARC Private Limited. Copy of PBG is attached as Annexure No.

28 at Page 640-645 of the main application

Yes

27. It is submitted that the resolution applicant have adequate liquid net worth to fund the plan from their own sources. Additionally, liquid funds are also available in the Companies/ firms and entities controlled/ owned by the RAs. Copies of the net worth certificates of the RAs are submitted separately to the Resolution Professional.

28. Summary of the Payment Schedule under the Resolution Plan is extracted as below:-

Particulars

Amount in Crore

Details of payment

Earnest Money Deposit

1.00

Along with the Resolution Plan vide RTGS No. BOFAR32022071500114504- SATVINDER SINGH- 10207314 dated 15.07.2022

Upfront Contribution, if any, as per the Resolution Plan submitted by the applicant

165.00

Within 30 days of approval of Resolution Plan by NCLT

Performance Security under Regulation 39(4)

Sub Regulation (4A) of Regulation 36B read with Regulation 39(4)

16.50 (10% of the plan value)

Within 7 business days of approval of resolution Plan by CoC vide BG No. 0013NDLG00041023 dated 02.02.2023

29. Measures required for the implementation of the Resolution Plan in terms of Regulation 37 of CIRP Regulations are extracted below:

PROVISION

REQUIREMENT

RELEVANT PARA/PAGE

Regulation CIRP

37(a)

of

Transfer of Corporate Debtor's assets to one or more person.

N.A.

Regulation CIRP

37(b)

of

sale of all or part of the assets whether subject to any security interest or not

N.A.

Regulation CIRP

37(ba)

of

restructuring of the corporate debtor, by way of merger, amalgamation and demerger

NA as no merger, amalgamation or demerger has been proposed during the tenure of plan.

Regulation 37(c) of CIRP

Substantial acquisition of shares or merger or consolidation of corporate debtor with one or more person

Existing shares of the Corporate Debtor shall be extinguished and the RA will issue fresh Shares.

Point no. 1 (Page 63)

Regulation 37(ca) of CIRP

Cancellation or delisting of any shares of the corporate debtor, if applicable

The shares of existing shareholders of the Corporate Debtor will automatically stand cancelled by way of Reduction of Share Capital

upon approval of this Resolution Plan by the Adjudicating Authority.

Point no. 1 (Page 63)

Regulation CIRP

37(d)

of

Satisfaction or security interest

modification of

any

The Security Interest (mortgage/ hypothecation/ pledge/lien/ encumbrance) of any creditor on the assets of the Corporate Debtor will be extinguished upon the approval of this Resolution Plan by the Adjudicating Authority.

Point no. F (page 77)

Regulation 37(e) of CIRP

Curing or waiving of any breach of terms of any debt due from the Corporate Debtor

N.A.

Regulation 37(f) of CIRP

Reduction in creditors

amount payable

to

Point no. 7 (Page 69)

Regulation 37(g) of CIRP

Extension of maturity date or change in interest rate or other terms of a debt due from Corporate Debtor

N.A.

Regulation 37(h) of CIRP

Amendment in Constitutional Document of Corporate Debtor

Point no. 2 (Page 65)

Regulation 37(i) of CIRP

Issuance of securities of Corporate Debtor for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose

100% stake/shares of the Corporate Debtor will be acquired by issuance of fresh Shares.

Point no. 1 (Page 64)

Regulation 37(j) of CIRP

Change in portfolio of goods or services produced or rendered by Corporate Debtor

Point no. 6 (Page 38)

Regulation CIRP

37(k)

of

Change in technology used by Corporate Debtor

N.A.

Regulation 37(l) of CIRP

Obtaining necessary approvals from Central and State Governments.

Point no. 3 (Page 43)

30. Waivers, Reliefs, and Exemptions sought in the Resolution Plan are extracted below :-

S. No.

Relief and/or Concessions and Approvals Sought

The plan is approved subject to the observations as below made in the column next to the prayer for relief.

1.

1. To grant exemption from the applicability of income tax provisions (including section 41(1) or section 28 of the Income Tax Act) in respect to remission/ cessation of liability, if any, to the Company, for the purpose of implementation of this Resolution Plan.

2. To provide relief to the Company from all past litigation, up to the effective date, pending at different levels and provide waiver from all tax dues, including interest, penalty & prosecution for all historic disclosed tax dues and undisclosed tax dues. All pending notices, assessment orders, pending summons and pending assessments towards the company would be treated as closed. Further, no action would be taken for any action/ transaction carried out before the implementation date. It is clarified that no tax (including interest and penalty) would be paid for any liability or claim raised or non-compliance for the period up to the effective date. Further, any re-assessment, revision or other proceedings under the provision of Income tax act would be deemed to be barred in relation to any period prior to the effective date by virtue of order of Hon'ble NCLT approving this Resolution Plan and the Company and/or the RAs shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

3. The Company be allowed to carry forward losses and depreciation as per provision of the Income Tax Act, 1961 under section 79 of the Income tax Act.

There has been amendment in Income tax Act in the Budget for the year 2018-19 as enumerated below:

After the second proviso, the following proviso shall be inserted, namely:

Nothing contained in sub-section (1) shall apply,— to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (31 of 2016), after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner;

4. To grant waiver to the Company/ RAs from the applicability of Section 281 of the Income Tax Act for the purpose of implementation of the Resolution plan.

5. To provide relief from any tax liability arising on account of section 56 of the Income Tax Act pursuant to the implementation of the Resolution plan.

This is for Income Tax Authorities and other appropriate authorities to Consider, keeping in view the objects of IBC, 2016

2.

1. To provide relief to the Company such that all pending litigation, notices, past and ongoing assessments, past and ongoing investigations, tax demands under all indirect tax statutes towards the company would be treated as closed and no further

action would be taken for any action/ transaction carried out before the effective date. It is clarified that no tax (including any interest or penalty) would be paid for any liability or claim for the period up to effective date.

2. To provide relief to the Company for any non-compliances under all Indirect Tax statutes for the period up to the effective date.

3. To provide relief against any tax dues, along with interest and penalty (including all historic disclosed tax dues and undisclosed tax dues, whether assessed or not, whether a demand has been raised or not, whether claimed or unclaimed, admitted or not, crystalized or not, known or unknown, disputed or undisputed, present or future) under any Indirect tax statute up to the effective date. All such tax dues along with interest and penalty for the period up to the effective date, shall be written off in full and will be deemed to be permanently extinguished and the Company and/or RAs shall at no point of time, be directly or indirectly, held responsible or liable in relation thereto.

4. The Company and/or RAs shall not be liable in any manner whatsoever or otherwise prosecuted (threatened, impleaded or otherwise) as a result of, arising from or in connection with, any transaction, act,

omission, commission, defaults (whether identified or unidentified) of the Company or existing promoters, directors, KMPs, subsidiary/ associate/group companies, for a period up to the effective date.

5. The Company and/or RAs shall not be liable in any manner whatsoever or otherwise prosecuted (threatened, impleaded or otherwise) as a result of any tax not paid or short paid or erroneously refunded or input credit wrongly availed or utilized, any contravention of any provision of any indirect taxes act or rules made thereunder as may be prescribed by the company or existing promoters, directors, KMPs, subsidiary/ associate/group companies, for a period up to the effective date.

6. The Company shall be entitled to carry forward the accumulated input tax credit balances under the Indirect Tax Laws and to utilized such amounts to set off against tax liability arising in future in accordance with the applicable laws.

7. All benefits, exemptions, deductions, rebates, reliefs, credits etc. under any tax laws in India available to the Company shall not lapse pursuant to the Resolution Plan and shall be available post implementation date.

This is for Income Tax Authorities and Custom authorities to Consider, keeping in view the objects of IBC, 2016

3.

RBI to waive all past non-compliances of the Company under FEMA, Reserve Bank of India Act and the regulations, notifications, directions, guidelines, circulars, press release (hereinafter

collectively referred to as "Regulatory Framework") issued thereunder and the Company and/or RAs shall not be liable for any non-compliances under the aforesaid Regulatory Framework for the period prior to the effective date.

These waivers will be subject to the RBI's Regulatory Framework.

4.

1. Existing Equity Share Capital Rs. 8313.09 lacs (comprising 166261848 numbers of shares of Rs. 5/- each) and Preference Share Capital of Rs. 5567.32 lacs (comprising 95886496 number of CRPS-2 and 15460000 number of NCRPS) shall be written off without any implication under Income tax act, 1961 and companies Act, 2013. Further 59900000 number of CRPS-1 (fell due for redemption on 03.09.2015 and now shown under other liabilities in the financial statements of the Corporate Debtor) are also be written off without any implication under Income tax act, 1961.

2. Waiver approval by NCLT for any past liabilities, penalties and any form of payment by way of Late Fees, damages, prosecution etc. which occurred or become due because of any non-compliance related to Companies Act and Rules till the effective date.

3. The Registrar of Companies to take on record upon approval of Resolution Plan from Hon'ble NCLT, without further compliances.

4. Waiver to maintain/ reconstruct past records of the Corporate Debtor, if any, till the approval of plan by NCLT.

5. Waiver to hold past Annual General Meetings of the Corporate Debtor, if any.

This is for the appropriate authorities to consider keeping in view of the clean slate principle envisaged under IBC, 2016.

5.

1. Liberty to change the name of the company and the approval of the State Government without any tax implications

2. Coverage under the incentives offered by State Government for sick industrial units or any other incentives.

3. Time period of twelve months from the effective date to ensure compliance in relation to non-compliance of Applicable laws by the Corporate Debtor to any period up to effective date without any additional interest and penalty.

4. The relevant Government/ Statutory authorities shall not initiate any investigation, action or proceeding against the Resolution Applicant or the new management (upon acquisition of Corporate Debtor) including the Board of Directors, in relation to any non-compliance with Applicable laws by the Corporate Debtor pertaining to any period up to effective date.

5. It is probable that certain of the business permits of the corporate debtor have lapsed, expired, suspended, cancelled, revoked or terminated or the corporate debtor has non compliances in relation thereto. Accordingly, all Government authorities that have issued or granted

such business permits to provide reasonable time period of at least twelve months after the effective date in order to the Resolution Applicant to assess the status of business permits and applicable laws without initiating any investigation, action or proceeding in relation to non-compliance, and to permit the Resolution Applicant to continue to operate the business of the corporate debtor as carried out prior to effective date.

6. 100 % extinguishment of unclaimed amount of all other Central and state Government Authorities (Including dues of Land Revenue

Department (if any) up to effective date.

7. All concerned revenue or stamp authorities to waive penalties for non-registration and inadequate or non-stamping of documents executed by the Company up to the effective date.

8. No liability towards unearned increase, processing fee, extension fee and other fee, charges, dues as may be applicable on account of transfer of leasehold rights pursuant to change in the ownership structure of the Corporate Debtor.

This is for the government authorities to Consider, keeping in view the objects of IBC, 2016,

6.

1. On receipt of the payment of their dues as per this plan, the financial creditors shall release their charge over all the assets of Corporate Debtor, which have been provided as security against the facilities availed from the financial lenders and no amount of any nature shall be payable either by the Resolution Applicants or by the corporate debtor having new management / directors, except as provided for in the resolution plan.

2. The Financial Creditors shall withdraw any suits/ applications related to recovery or any other nature filed against the Corporate Debtor whatsoever pending in any court of law/ tribunal and any effect of suits/applications decided thereafter and related to past events (pre CIRP date) will stand infructuous after the approval of the plan. However, any suits against the guarantors shall remain continued, after approval of plan

3. The Resolution Applicants will have the option to pre pay the dues of the Financial Creditors, without any additional levies;

4. After the implementation of the Resolution Plan all fixed assets and current assets as specifically provided for in the plan (except written off, recovery proceedings of avoidance, fraudulent or undervalued transaction and claim filed by RP against HSBC), will solely remain under the ownership and right of corporate debtor and no other person will have the right on these assets in future. It shall be noted that, secured financial creditors shall be the sole beneficiary (in the ratio of claims admitted) of any future recoveries from amount written off and recoveries made under the application filed by the Resolution Professional under section 60(5)(b) of IBC, 2016.

5. Specific Order to the Financial Creditors to "UPGRADE" the Account of Corporate Debtor with Banks/FI under the CIBIL Mechanism to "Standard Category" from NPA on the completion of the Resolution Plan so as to enable the New Promoters (Resolution Applicants) to revive the business of Corporate Debtor afresh and such action would enable the Resolution

Applicant to quickly turn around the Corporate Debtor.

Relief No. 1 and 2 are granted in terms of the judgement of Hon'ble Supreme Court in case of Ghanshyam Mishra and Sons Private Limited through Authorised Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors. 2021 SCC Online SC 313.

For the other reliefs, those are to be considered by the respective financial institutions keeping in view the objects of the IB Code, 2016.

1. To waive off all the future/subsequent demands/claims/suits etc. against the corporate debtor related to the events up to effective date;
2. To waive off the contingent liability as may arise up to effective date and also which are not captured related to period before approval of Resolution Plan.
3. All claims, rights of existing Promoter/ Promoter group against the Corporate Debtor, unless covered in the Resolution Plan, shall stand irrevocably and unconditionally extinguished and ineffective on approval of Resolution Plan.
4. All Government/ Regulatory Authorities to grant any relief, concession or dispensation as may be required for implementation of the transaction contemplated under the Resolution Plan.
5. Himachal Pradesh State Electricity Board to continue supply the electricity without insisting the old dues. Further, the security deposit of CD with the Electricity Board to continue with the new management of the CD and not to be adjusted against the old dues.
6. The Corporate Debtor and the Resolution Applicant are responsible only for the liabilities specifically mentioned and undertaken by it in the Resolution Plan. To clarify, the Resolution Applicant shall not be responsible for the liabilities not mentioned/ undertaken in the Resolution Plan.
7. No liability on the Corporate Debtor and/or RAs due to failure of the company to get its shares listed on any recognised stock exchange in terms of the modified Scheme of Arrangement approved by the Hon'ble High Court of Himachal Pradesh at Shimla in 2004.

This is for the appropriate authorities to consider keeping in view of the clean slate principle envisaged under IBC, 2016.

31. On a perusal of the reliefs etc sought above, it is seen that the same is claimed mainly under three categories, under different judicial pronouncements, and under powers pertaining to different government authorities/departments. As regards the aforementioned claims under the IBC, it is clarified that this

Adjudicating Authority has powers to decide the reliefs claimed which are directly relatable to the Resolution Process and not over those pertaining to extraneous issues. Regarding the reliefs/waivers pertaining to the domain of various departments/governmental authorities, it is further clarified that this Adjudicating Authority has no power to sanction these waivers, etc. and the Successful Resolution Applicant is at liberty to approach the competent authorities/courts/legal forums/office(s) Government or Semi-Government/State or Central Government for appropriate relief(s) sought in the plan. Approval of the Resolution Plan does not mean automatic waivers.

32. It is directed that any relief sought in the resolution plan, where the contract/agreement/understanding/proceedings/actions/notice etc., is not specifically identified or is for future and contingent liability, is at this moment not acceded to.

33. The Resolution Applicants shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.

34. The Resolution Professional submitted that the following application for Avoidance Transactions are pending and the following information is furnished as to who will pursue those applications and bear expenses on the same :-

S.NO.

Under Section

Diary No. / IA No.

To be pursued by

Expenses Incurred by

1.

45 and 49

Diary No 00246/2023 dated 17.01.2023

Resolution Professional

To be incurred by both FCs in a manner proportionate to their claim

2.

66

Diary No 00247/2023 dated 17.01.2023

Resolution Professional

To be incurred by both FCs in a manner proportionate to their claim

3.

Diary No 00248 dated 17.01.2023

Resolution Professional

To be incurred by both FCs in a manner proportionate to their claim

Findings

35. On hearing the submissions made by the learned counsel for the Resolution Professional and perusing the records, we find that the Resolution Plan has been approved at a total Resolution Value of Rs. 16500 Lacs. The resolution applicant proposes to make payment to secured financial creditors Rs. 14889 Lacs and Rs. 420.86 Lacs to the Operational Creditors(including statutory dues) and Rs. 450.58 Lacs to Workmen/employees.

36. As per the CoC, the Resolution Plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.

37. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the Code and complies with Regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Orders

38. Therefore, subject to the observations made in this order, we hereby accord our approval to the Resolution Plan along with the addendum.

39. It is further directed that the Resolution Applicant, on taking control of the corporate debtor, shall ensure compliance under all applicable laws for the time being in force. As far as the question of granting time to comply with the statutory obligations or 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.

40. The Resolution Plan as approved shall be binding on the corporate debtor and its employees, members, and creditors, including the Central Government, State Government, or Local Authority, to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

41. The Moratorium imposed under Section 14 shall cease to have effect from the date of this order.

42. The Resolution Professional shall stand discharged from his duties with effect from the date of this order. However, he shall perform his duties in terms of the

Resolution Plan as approved by this Adjudicating Authority.

43. The Resolution Professional is further directed to hand over all records and properties to the Resolution Applicant and shall finalize the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Resolution Professional to finalize the further line of action required for starting the operation.

44. In case of non-compliance with this order or withdrawal of the Resolution Plan, the performance security amount already paid by the Resolution Applicant shall be liable to be forfeited, in addition to such further action as may be permitted under the law.

45. Liberty is hereby granted for moving any application if required in connection with the implementation of this Resolution Plan.

46. The Resolution Professional shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

47. The Resolution Professional shall file a copy of this order with the Concerned Registrar of Companies, inter alia, for updating the status of the corporate debtor.

48. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, Punjab and Chandigarh.

49. The application bearing IA No. 452 of 2023 is allowed and the main Company Petition, i.e., CP (IB) No. 35/Chd/Hp/2018, shall stand disposed of accordingly.

50. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.