

(2023) 09 NCLT CK 0022

In the National Company Law Tribunal

Case No : IA No.382 Of 2021 In CP (IB) No.279/Chd/HP/2019

M/s Bansal Traders, A Partnership Firm Vs BBN Foods Hi Tech Processing Pvt. Ltd ?

Date of Decision : 21-09-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 14, 21, 25(2)(h), 29A, 30, 30(4), 30(2), 30(1), 30(6), 31, 31(4), 32A, 33(2), 240A
Income Tax Act, 1961 — Section 32A, 41, 79(2)(c), 139(3), 170(2A), 238
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 35A, 38(1), 38(1A), 38(1B), 38(2), 39(4)

Citation : (2023) 09 NCLT CK 0022

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

Bench : Division Bench

Advocate : Nitin Kant Setia, Yogesh Putney, Niharika Sohal, Shrey Sinha

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

IA No.382/2021

1. The present application has been filed by Mr. Gurdev Bassi, Resolution Professional of BBN Foods Hi-Tech Processing Private Limited Under Section 30 (6) of Insolvency and Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of the resolution plan in respect of the BBN Foods Hi-Tech Processing Private Limited ("the corporate debtor"). The applicant-Resolution Professional filed the present application on 02.08.2021 for approval of the resolution plan, which was approved with a 96.68% voting share of the Committee of Creditors (COC), in its 12th meeting which was held on 27.04.2021.

2. The Company Petition CP (IB) No.279/Chd/HP/2019 was filed by the

Operational Creditor M/s Bansal Traders against the corporate debtor, which was admitted into the Corporate Insolvency Resolution Process ('CIRP') vide order dated 17.12.2019.

3. Mr. Gurdev Bassi was appointed as Interim Resolution Professional ('IRP') vide Order dated 17.12.2019, and the public announcement as per Regulation 6 of the CIRP Regulations in Form A, as prescribed under the schedule, was made on 19.12.2019 in two newspapers, Financial Express(English) and Amar Ujala (Hindi) newspapers, 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 in terms of Section 21 of the Code comprising of with the following voting share:-

Name of the financial creditor

Amount claimed

Amount admitted

Percentage of voting share (%)

Bank of Baroda

Rs. 4,57,91,963.30

Rs. 4,57,91,963.30

94.43%

Shashi Sharma

Rs. 10,96,564

Rs. 10,96,564

2.25%

Shimla Hills Offerings Private Limited

Rs. 16,10,000

Rs. 16,10,000

3.32%

5. The Committee of Creditors (CoC) confirmed the appointment of Interim Professional Resolution as the Resolution Professional with 100% voting. The Applicant had convened 20 CoC meetings in the matter of the Corporate Debtor, wherein the CoC in its 12th CoC meeting approved the Resolution Plan submitted by Shri. Dinesh Vatsayayan with 96.68% voting share.

6. It is stated by the Applicant that as per Regulation 27 on 22nd January 2020,

the Resolution Professional appointed four registered Valuers i.e. (1) CA Vikas Aggarwal Regd. Valuer with IBBI/RV/O6-2018N0046 and (2) Ganesh Mehta, Regd. Valuer with IBBI – IBBI Regn. no. – IBBI/RV/05/2019/12548 (3) Ar. Arvinder Atwal, Regd. Valuer with IBBI – IBBI Regn. no. – IBBI/RV/02/2019/10591 for determination of the fair value and liquidation value of the Company under Regulation 35. The Fair Value of the Corporate Debtor is Rs. 62.15 lakhs and the Liquidation Value is Rs. 48.27 lakhs.

7. The Applicant has submitted that a total of 20 CoC meetings have been held during the CIRP period, details of the same are as follows:-

Meetings of CoCs Particulars

Date of CoC Meeting

Main Points of discussion

(Item Nos. as per minutes of meeting)

Important decisions taken

1st CoC Meeting

14.01.2020

1. List of claims received and claims admitted.
2. Operations and Financial position of the Corporate Debtor.
3. List of assets and liabilities as on insolvency commencement date.
4. Legal compliances by CD and further action required thereof.
5. Pending statutory dues
6. Actions/ activities by IRP since appointment.
7. Interim finance for expenses relating to CIRP.
8. Ratification of the expenses incurred by IRP.
9. Appointment of RP fixing his remuneration.
10. To reduce period of notice for calling meeting of CoC to 24 hrs.

Item No. 7 – Sum of Rs. 10,00,000/- to be raised by RP as interim finance for the CD during period of CIRP @ 12% interest

p.a. from any source and RP authorized to raise the Interim Finance.

Item No. 9- Gurdev Bassi, IRP appointed as RP and fees fixed at Rs. 75,000/- per month

Item No. 10 – Period of notice for calling the meeting of CoC reduced from 5 days to 24 hrs.

All resolutions passed with 100% voting share in favour.

2nd CoC Meeting

03.02.2020

1. List of claims received and claims admitted.
2. Appointment of registered valuers for arriving at fair value and liquidation value of assets of CD.
3. Information Memorandum of CD.
4. Publication of Form G.
5. Expenses to be paid by CD
6. Eligibility criteria for Resolution Applicants.
7. Evaluation matrix for Resolution plans.
8. Attributes of performance security to be obtained from successful resolution applicants.

Voting on all agendas done in 3rd CoC Meeting

3rd CoC Meeting

24.02.2020

1. Information Memorandum of CD.
2. Publication of Form G.
3. Expenses to be paid by CD
4. Eligibility criteria for Resolution Applicants.
5. Evaluation matrix for Resolution plans.
6. Attributes of performance security to be obtained from successful resolution applicants.

Item No. 4- Resolution

w.r.t. eligibility criteria for RA:

1. Preference to those RAs engaged in Flour Mills, Mushroom production & related activity,
2. Should have Rs. 25 lakh net worth

Item No. 6 - Resolved that RA shall provide 25% amount of Resolution Plan as performance security within 7 days when CoC decide the H1 Bidder.

Performance security to be forfeited if successful RA fails to implement the

Plan.

4th CoC Meeting

01.07.2020

1. List of claims received and claims admitted.
2. Expression of interest
3. Valuation report submitted by Regd. Valuers
4. Expenses to be paid by CD
5. Effect of COVID on CIRP.

5th CoC Meeting

11.08.2020

Expression of interest received from the interested RAs.

Cost of CIRP incurred till date of meeting and its arrangement

Issue of seeking extension of time for completion of CIRP.

Republication of EOI or extension of time limes of earlier EOI.

Resolution against republication of Form-G calling for expression of interest.

6th CoC Meeting

26.08.2020

Cost of CIRP incurred till date of meeting and its arrangement.

Extension of period for CIRP or liquidation of CD.

Filing of application before NCLT seeking extension of period of CIRP by 90 days.

RP authorized to :

1. File application for liquidation
2. Explore the prospectus of compromise & arrangements in terms of S-230 of companies act
3. Sale of assets of CD, in case CD cannot be sold as a going concern.
4. Liquidation cost of Rs.

11.30 lakh shall be met as per regulation 2A.

7th CoC Meeting

23.09.2020

Liquidation of CD

Resolved that RP authorized to :

1. File application for liquidation before NCLT.
2. Explore the prospectus of compromise & arrangements in terms of S-230 of companies act
3. Sale of assets of CD, in case CD cannot be sold as a going concern.
4. Liquidation cost of Rs.

11.30 lakh shall be met as per regulation 2A.

8th CoC Meeting

No important decision taken

9th CoC Meeting

No important decision taken

10th CoC Meeting

No important decision taken

11th CoC Meeting

No important decision taken

12th CoC Meeting

27.04.2021

Consideration of Resolution Plan submitted by Dinesh Vatsayayan

Resolution Plan approved by majority of Financial Creditors with 96.68% vote.

13th CoC Meeting

02.07.2021

Decide Resolution Professional's fees as per the directions of Hon'ble NCLAT.

14TH CoC

Meeting

20.11.2021

Status of approval of Resolution Plan

No important decision taken

15th CoC Meeting

29.12.2021

Status of approval of Resolution Plan

No important decision taken

16th CoC Meeting

02.08.2022

i) Status of approval of Resolution Plan

ii) Payment of CIRP cost

No important decision taken

17th CoC Meeting

CIRP cost till 30.06.2022

No important decision taken

18th CoC Meeting

17.01.2023

i) Issue w.r.t. compliance of Section 32A

ii) Claim of Rs. 54,48,829.76/- of the District Controller, Food Civil Supply and Consumer Affair Dept, Bilaspur.

Current resolution applicant will not gain immunity from acts prior to date of resolution plan in view of Section 32A of IBC.

The said claim pertains to period 2007-08 to 2016-17 and same cannot be settled in the Resolution Plan.

19th

Meeting

CoC

27.01.2023

i) Issue w.r.t. dues of security agency

CoC approved amount of Rs. 1,55,000/- as payment towards dues of security agency.

ii) CIRP cost till December 2022

Expenses of Rs. 26,63,826 ratified towards CIRP costs

20th

meeting

CoC

26.07.2023

i) To discuss and decide the claim of the food civil supplies and consumer affairs, Himachal Pradesh

Claim of food civil supply and consumer affairs, Himachal Pradesh approved to the tune of Rs. 54,48,829.76/-

ii) Successful Resolution Applicant to pay 17.47% of department claim in addition to proposed amount to be paid in the Resolution Plan already approved by the CoC, to the secured Financial Creditors and other claimants is approved and RP is requested to file the revised For,-H before AA.

Resolution passed with 97.75% vote in favour.

8. It is submitted that in the 3rd meeting held on 24.02.2020, the Committee of Creditors has discussed and decided the minimum eligibility criteria for the prospective Resolution Applicants. The Resolution Professional has published Form G on 27.02.2020 inviting Expressions of Interest(EOI) to submit a resolution plan for the corporate debtor by 13.03.2020. Two prospective Resolution Applicants submitted the Expressions of Interest(EOI) but failed to submit eligibility documents. Due to the economic impact of the COVID-19 pandemic and the location of corporate debtors in a remote area of Himachal Pradesh without plant and machinery, the CoC decided to liquidate the company. After detailed discussions, a resolution for liquidation was passed by CoC in 7th meeting of COC held on 23.09.2020 and the Applicant filed an application for Liquidation of Corporate Debtor under Section 33(2) of the Code by IA No. 639/2020 and Liquidation was commenced by order dated 15.12.2020

9. In the meanwhile, Shri Dinesh Kumar Vatsayayan, suspended director, approached the financial creditor i.e. Bank of Baroda for an OTS of the debt owed. The Suspended Board of Director filed an appeal before Hon'ble NCLAT seeking to set aside the liquidation order and consider his resolution plan. The Hon'ble NCLAT stayed the liquidation proceedings by order dated 18.01.2021. Thereafter, Hon'ble NCLAT by order Dated 22.03.2021 directed the Resolution Professional to consider the proposed resolution plan of the Suspended Director. The Suspended Director submitted the resolution plan and then in 8th meeting held on 25.03.2021 certain discrepancies were pointed by the Resolution Professional.

10. In the 12th meeting of COC held on 27.04.2021, the resolution for approval of the Resolution Plan was passed with 96.68% majority in favour of the approval of the plan.

11. The Resolution Professional has filed an affidavit by diary No.00896/11 dated

21.03.2023 wherein it is stated that the Resolution Professional has made verification and has found that the Corporate Debtor is registered as MSME and the status of MSME is intact as on date and there are no proceedings decided or pending for withdrawal/cancellation of the MSME registration. The Resolution Professional has furnished an affidavit filed by diary No.00896/5 dated 06.09.2022 deposing that Dinesh Kumar Vatsayayan, Successful Resolution Applicant of the Corporate Debtor has filed its affidavit on 24.03.2021 along with an undertaking under Section 29A of IBC, and after verification, the eligibility of Successful Resolution Applicant under Section 29A of the IBC meets all the requirements under the requisite law.

12. It is submitted that clause 7.19.4 at page 29 of the Resolution Plan states that the Resolution Applicant would take over the Company as a going concern and operation and management of the company would be run in the normal course of business upon implementation of the plan.

13. Compliance with section 25(2)(h), 29A, 30(2) of the Code and mandatory contents of the Resolution Plan in terms of Regulation 37, 38 & 39(4) of CIRP Regulations

I. Section 25(2)(h), 29A, 30(2) of the Code alongwith Regulation 37, 38 & 39(4) is stated as under:-

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?

RA meets the criteria as approved by CoC in its 3rd meeting

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?

The Corporate Debtor is a MSME company bearing registration number MSME Certificate no.02/008/12/00243/Micro Dated 20.03.2014. In

terms of section 240A of the Code clauses c and h of Section 29A would not apply to the Resolution Applicant who takes over a concern which

is a MSME, as is the present case.

This resolution plan was submitted to COC on the directions of Hon'ble NCLAT, so no list of resolution applicants was prepared.

Yes

Section 30(1)

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

Clause 7.12

Affidavit attached with resolution plan.

Yes

Section 30(2)

Whether the Resolution Plan-

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

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

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

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

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

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

Clause 3.2

Clause 3.3

Clause 3.4

Clause 5 and 6

Clause 5.1.1 and 6.1

Clause 7.9

Yes

Section 30(4)

Whether the Resolution Plan

is feasible and viable, according to the CoC?

(b) has been approved by the CoC with 66% voting share?

Minutes of 12th COC Meeting.

Yes

Yes approval with 96.68% voting shares

Section 31(1)

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

Clause 5.1.1 and 6.1

Yes

Regulation 35A

Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?

Clause 4.3

As the CD was not functional for the last 3 years before the commencement of CIRP and no

transactions were transacted which would have attracted sections 43,

45, 50 and

66 of IBC, 2016.

Regulation 38 (1)

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

Clause 3.3

Yes

Regulation 38(1A)

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

Clause 3.5

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.

(ii) If so, whether the Resolution Applicant has submitted the statement

giving details of such non-implementation?

Clause 4.2

Clause 4.2

Yes

Regulation 38(2)

Whether the Resolution Plan provides:

the term of the plan and its implementation schedule?

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

(c) adequate means for supervising its implementation?

Clause 4.1 and clause 4.3, Clause 6.1

Clause 5.1.1

Clause 5 and

Clause 6.1

Yes

38(3)

Whether the resolution plan demonstrates that –

it addresses the cause of default? it is feasible and viable?

(c) it has provisions for its effective implementation?

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

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

Table under Clause 7.19.6 Table under Clause 7.19.6 Clause 6.1

Clause 4.3, 4.4

Section B of the Resolution plan (RA is the suspended member of the Board of Directors of CD)

Yes

39(2)

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

No

Yes

Regulation 39(4)

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

Deposited DD for Rs.

26.00 Lakhs as performance security with Bank of Baroda, major Financial creditors

Yes

II. Regulation 37 is stated as under:-

Regulation 37 (a) & (b)

Transfer/ Sale Of All Or Part Of The Assets Of The Company To One Or More Person;

The Resolution Plan Does Not Envisage Transfer Or Sale Of Any Of The Assets Of The Company Upto Settlement Date However, Post Settlement Date, RA May Carry Out Transfers/ Sale During The Normal Course Of Business.

Regulation 37 (ba)

Restructuring of the corporate debtor, by way of merge amalgamation and demerger.

Provides for Annexure 2, structure for acquisition and control, page 38-39 of Resolution Plan (page 135-136 of IA 382 of 2021)

Regulation 37 (c)

The Substantial Acquisition Of Shares Of The Corporate Debtor, Or The Merger Or Consolidation Of The Corporate Debtor With One More Person.

Provides for Annexure 2, structure for acquisition and control, page 38-39 of Resolution Plan (page 135-136 of IA 382 of 2021)

Regulation (Ca)

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

Provides for Annexure 2, structure for acquisition and control, page 38-39 of Resolution Plan (page 135-136 of IA 382 of 2021)

Regulation 37 (d)

Satisfaction Or Modification Of Any Security Interest.

Provides for Annexure 2, structure for acquisition and control, page 38-39

of Resolution Plan (page 135-136 of IA 382 of 2021)

Regulation 37 (e)

Curing Or Waving Of Any Breach Of Terms Of Any Debt Due From The Company.

Provides for Annexure 2, structure for acquisition and control, page 38-39 of Resolution Plan (page 135-136 of IA 382 of 2021)

Regulation (f)

Reduction In The Amount Payable To The Creditors.

Provides for Section 3.5 Of The Resolution Plan. Page 15 of the Resolution plan (page 112-113 of IA 382 of 2021)

Regulation (g)

Extension Of A Maturity Date Or A Change In Interest Rate Or Other Terms Of A Debt Due From The Company.

Provides for Annexure 2, structure for acquisition and control, page 38-39 of Resolution Plan (page 135-136 of IA 382 of 2021)

Regulation (h)

Amendment of the constitutional documents of the company.

Constitutional documents of company are proposed to be amended appropriately as per requirements of resolution Plan.

Regulation 37 (i)

Issuance of securities of the company, for cash, property, securities, or in exchange for claims or interest or other appropriate purpose.

Share of any kind as permitted under the law shall be issued.

Regulation 37 (j)

Change in portfolio of goods or services produced or rendered by the corporate debtor.

The Resolution Plan does not envisage any change in portfolio of goods or services produced or rendered by the corporate debtor. Post submission and approval of the resolution plan, the RA shall have the right to make change in portfolio of goods or services produced in any manner as they desire.

Regulation 37 (k)

Change in technology used by the corporate debtor.

The Resolution Plan does not envisage any change in technology used by the corporate debtor post submission and approval of the resolution plan, the RA shall have the right to make change in technology used which may be deemed more beneficial for the company by them.

Regulation 37 (I)

Obtaining necessary approvals from the central and state governments and other authorities.

Requisite approvals/ licenses, if any shall be obtained by RA from Central / State Government and / or other authorities, seeking help of the / monitoring Agency, as is required to be obtained under law.

14. The relevant information with regard to the amount claimed, the amount admitted, and the amount proposed to be paid by the Resolution Applicant under the said resolution plan as mentioned in revised Form H filed with the addendum which is reproduced as below:-

Sl.

No.

Category of Stakeholder*

Sub-Category of Stakeholder

Amount Claimed

(Rs.in lakhs)

Amount Admitted

(Rs.in lakhs)

Amount Provided under the Plan (Rs.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 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 NA

457.92

457.92

80.00

17.47

Total[(a) + (b)]

457.92

457.92

80.00

17.47

2Unsecured Financial Creditors

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

(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

16.10

10.91

16.10

10.91

2.82

1.91

17.47

17.47

Total[(a) + (b)]

27.01

27.01

4.73

17.47

3Operational Creditors

(a) Related Party of Corporate Debtor NA

(b) Other than (a) above: (i)Government (ii)Workmen (iii)Employees

(iv) Others

63.92* NIL NIL 16.78

63.92

16.78

11.17

2.93

17.47

17.47

Total[(a) + (b)]

80.70

80.70

14.10

17.47

4Other debts and dues

NA

Grand Total

565.63

565.63

98.82

17.47

**Under the operational creditors category of stakeholders:- It includes two

claims (1) Food Civil Supplies and Consumer Affairs, Himachal Pradesh (FCSCA) (2) Income Tax Department (statutory dues) Rs. 54.49 and 9.43 respectively, in which the SRA agreed to pay 17.47% of the admitted claim of FCSCA and Income Tax Department.

15. The following table summarizes the proposed offer as part of the Resolution Plan to all the stakeholders of the Corporate Debtor under the Code :

Particulars

Amount

(Rs in Lacs)

Time Frame #

Recovery as % of Admitted

Debt

CIRP Process Cost

10.11*

Within 30 days

Actual

Payments of the Secured Financial Creditors

80.00

Within 60 days

17.47%

Payment of Other Financial Creditors

4.73

Within 60 days

17.47%

Payment of Operational Creditors

12.45

As per Regulation 38 (Within 59 days)

17.47%

CAPEX & Working Capital

25.00

Within 6 months

TOTAL

132.29

16. It is submitted that there are no PUF Transactions filed by RP under Regulation 35A. The resolution professional has not appointed a forensic auditor, and no transaction audit or forensic audit was undertaken during CIRP.

17. The Income Tax Department has also filed a reply by diary No.0896/2 dated 17.12.2021 stating that the Resolution Professional is not entitled to the approvals/waivers/extinguishment as mentioned in Section D of the Resolution Plan. It is further stated that the carryforward and set off of losses and unabsorbed depreciation cannot be granted to the Resolution Applicant for the reason that it has not filed the Return of Income for the Assessment Year 2016-17 and the time period to file the same Return of Income has lapsed. It is also stated that for claiming carry forward of losses the filing of Return of Income under Section 139 (3) of the Income Tax Act, 1961 is a Sine qua non. It is further stated that in the Return of Income for Assessment Year 2015,16, no loss/unabsorbed depreciation was claimed. It is submitted that there was a demand outstanding against the corporate debtor, as well as its Directors. It is also submitted that this Adjudicating Authority has not been conferred with any power to issue directions to grant waiver/exemptions under a Special Statute i.e. the Income Tax Act, 1961. Reliance is placed by the Income Tax Department on the judgments of the Hon'ble Supreme Court in the case of "Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors." reported as 2019 (17) SCALE 37, the decision of the Hon'ble National Company Law Appellate Tribunal, in the case of Company Appeal (AT) (Insolvency) No.821/2019 titled as "Dada Dhuniwale Khandwa Power Ltd. Liquidator Vs. Commissioner of Income Tax (Appeals)-1", decision of the Hon'ble National Company Law Appellate Tribunal, in the cases of Company Appeal (AT) (Insolvency) No.467/2019 titled as "JSW Steel Limited Vs. Ashok Kumar Gulla and Ors" and in CA No.490/2019 in CP (IB) No.2/Chd/Chd/2018 titled as "Allahabad Bank Vs. Vardhman Chemtech Limited".

18. A response to the above has been filed by the Resolution Applicant by diary No.00896/3 dated 27.04.2022. It is stated in the reply that the Income Tax Department has not filed any claim with respect to its outstanding statutory dues. The legislative intent behind the code is that once the resolution plan is approved by a Committee of Creditors, all the claim stands crystallised and the resolution applicant ought to be allowed to take over the Corporate Debtor with a clean slate. The amended provision of Section 79(2)(c) of Income Tax Act provides that this Tribunal has jurisdiction to waive, allow, direct for carry forward or setting off of losses in case of approval of a Plan. Reliance is placed on the judgments of the case of Civil Appeal no.8129/2019 with WP (Civil) No.1177/2020 titled as "Ghanshyam Mishra & Sons Pvt. Ltd. through Authorized Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors and in the case of judgment passed by the Hon'ble Supreme Court in Civil Appeal No.447/-448/2013 titled as "Ruchi Soya Industries Ltd. Vs. Union

of India & Ors”.

19. Subsequently, written submission has been filed by the Income Tax Department by diary No.0896/7 dated 24.11.2022. In addition to contentions made in the reply as above, it is stated that the provision of Section 238 of the Income Tax Act, 1961 as relied upon by the resolution applicant, would not apply in the wake of the insertion of subsection (2A) to section 170 and Section 170A of the Income Tax Act, 1961 by the Finance Act, 2020 to w.e.f 01.04.2022. This insertion makes the legislative intent clear that the Income Tax Department has the right to initiate and frame an assessment or reassessment of the corporate debtor, which is undergoing a resolution process, and the assessment or reassessment so framed would be binding on the Successful Resolution Applicant. Hence, the provision of Section 238 of the Income Tax Act, 1961 would not affect the rights of the Income Tax Department in any manner whatsoever. Similarly, no benefit of Section 32-A of the Income Tax Act, 1961 can be claimed. The Department has also relied upon the provision of Section 41 of the Income Tax Act, 1961, according to which the amount outstanding against the operational creditors in the books of accounts shall be deemed to be profits and gains of the business and profession and chargeable to tax as income in the hands of the Resolution Applicant.

20. The contentions made by the Resolution Applicant and the Income Tax Department have been considered while granting the reliefs sort in the subsequent paragraphs.

21. The case was relisted by administrative order dated 15.06.2023 seeking clarification on the payments to be made to the secured creditors.

22. The Successful Resolution Applicant has filed an affidavit by diary No.00540/44 dated 06.12.2022 wherein it is stated that the Income Tax Department and other statutory dues shall be given the same treatment in the discharge of the debt as given to the other Secured Financial Creditors in the Resolution Plan submitted by the SRA.

23. The Successful Resolution Applicant has filed an additional affidavit by diary No.00896/6 dated 07.09.2022 stating that no claim with regard to the payment of provident fund or gratuity is pending and in the event, if any due materialize in future with regard to the above captioned and any other dues, the Resolution Applicant undertakes to settle the same as per the prescribed procedure of law.

24. The term of the Resolution Plan as specified in clause 4.1 of the plan and Implementation and Supervision of the Resolution Plan after the Effective Date as specified in Para 4.3 of the plan are stated as under:-

“4.1.1. The term of the Resolution Plan shall commence on the date of submission of the Resolution Plan to the Resolution Professional and shall remain valid in line with Clause 7.3 of the Resolution Plan.

4.1.2. Notwithstanding anything contained in this Resolution Plan, no part of this Resolution Plan shall become effective or enforceable until the Resolution Plan is approved by the Adjudicating Authority in the manner proposed by the Resolution Applicant and approved by the CC. Upon approval of the Resolution Plan by the Adjudicating Authority, this Resolution Plan shall ipso facto form part of the Adjudicating Authority Order approving the Resolution Plan.

4.1.3.

4.1.4. As a consequence, the Company shall formulate a revised balance sheet in accordance with Applicable Law as on the Effective Date and same will be filed with the relevant authorities.

4.3. Implementation and Supervision of the Resolution Plan after the Effective Date After the Completion Date, the implementation of the Resolution Plan will be supervised by a suitable management team deployed by the Resolution Applicant.

Upon the approval of the Resolution plan, necessary steps will be taken to file for approvals as listed in Section-D with various Governmental Authorities, including tax authorities/departments, other government departments, and before various courts, tribunals and regulatory authorities where proceedings with respect to the Company are pending for disposal of all such proceedings”.

25. It is further mentioned that upon approval of this plan and payment to the stakeholders of the amounts as proposed in the resolution plan, all the secured financial creditor shall relinquish all their charges from the corporate debtors remaining properties existing as on the insolvency commencement date in terms of the decision of the Hon’ble Supreme Court in the 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 and the principle of clean slate under Insolvency and Bankruptcy Code,2016.

26. Details on Management/Implementation and Relief as per Resolution Plan include the following Salient Features:

- a. Management and control of the company.
- b. Implementation and supervision of Resolution plan after effective date
- c. Formation of board
- d. managerial competence and technical abilities
- e. appointment of auditors
- f. action plan for ramping up scale of operation
- g. Action plan for future Sale Arrangements and Raw Material Sourcing Arrangements

h. Business Plan.

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

Sr.

No.

Relief and/or Concessions and Approvals Sought

The observations as regards reliefs/concessions sought as below are:-

1.

Cancellation of existing share capital

Granted as per the provisions of Insolvency and Bankruptcy Code, 2016.

2.

Removal of Board of Directors from record of Company

Granted as per the provisions of Insolvency and Bankruptcy Code, 2016.

3.

No action, investigations or proceeding in relation to non-compliances by Company during period prior to approval of Resolution Plan shall be initiated against the Resolution Applicant

The Resolution Applicant, the Suspended Director will not gain immunity from Acts prior to the date of the Resolution Plan in view of Section 32A of IBC, 2016.

4.

Withdrawal of litigations by Financial Creditor against CD, issue no due certificate in favour of CD in full and final satisfaction of all debts including all guarantees provided by CD.

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

5.

Any and all dues to, liabilities or obligations payable to, claims, counter claims, demands, actions or penalties, made or imposed by the arrears, dividend or obligations shall be deemed to be irrevocably waived and permanently extinguished.

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. However, it is not applicable to those liabilities/obligations under specific statutes for which the Resolution Applicant is to approach the concerned Authorities.

6.

Order approving Resolution plan shall be deemed order upon Financial Creditors to cancel all pledge/lien/other encumbrances upon the issued share capital of the Company to enable corporate action as envisaged in the Resolution Plan.

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

7.

Relinquishment of all/ any promise to pay towards any obligation including corporate guarantee, pledge on share, mortgage or charge on any specific asset, etc. issued by CD in favour of any third party.

This is granted keeping in view the clean slate principle envisaged in Insolvency and Bankruptcy Code, 2016. However, it is not applicable to those liabilities/ obligations under specific statutes for which the Resolution Applicant is to approach the concerned Authorities.

8.

Permitting waiver of all liabilities and taxes arising out of implementation of the transactions contemplated in the Resolution Plan and instructing the relevant authorities concerned.

This is for all concerned authorities to consider, keeping in view the objects of Insolvency and Bankruptcy Code, 2016.

9.

Direction to RP & CoC to provide full access to information, premises and assets to Resolution Applicant.

Granted as per the provisions of Insolvency and Bankruptcy Code, 2016.

10.

Direction allowing CD to use brought forward losses and unabsorbed depreciation, for purpose of Income Tax Act, 1961 and RA should not be liable to pay tax arising out of implementation of

Resolution Plan

This is Income Tax Authority to consider, keeping in view the objects of Insolvency and Bankruptcy Code, 2016.

28. On a perusal of the reliefs etc., sought above, it is seen that the same are claimed under the general reliefs as per the provisions of IBC, under the ratios of various judicial pronouncements. Some of the reliefs sought comes within the jurisdiction of 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.

29. 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.

30. The details of the members of the Monitoring Committee:

The Management Committee shall be constituted comprising of the Resolution Applicant and 1 Representative of the Financial Creditors. The existing directors of the company may be replaced, if deemed fit by the Resolution Applicant on the Effective Date and should ensure filing of the relevant forms for the induction of new directors, if any, as envisaged under the Resolution Plan.

31. In the course of the present proceedings, the resolution professional has filed the addendum to the revised resolution plan by IA No. 1921/2023. The addendum mainly deals with additional payments to be made to the operational creditor over and above was paid in the original resolution plan. It has also inserted the following new clause 3.7.5 at page 17 to be added as:

" 3.7.5- The Resolution Applicant submits that Notwithstanding anything contrary mentioned hereinabove, the Resolution Applicant undertakes to settle the dues of the Income Tax Department or any other Statutory Dues of Government authorities that are or may be classified in future as secured creditors, Shall, considering the rulings of the Hon'ble-Supreme Court in the case of State Tax Officer (1) Vs. Rainbow Papers Limited, bearing Civil Appeal Nos. 1661 and 2568 of 2020, decided on 06.09.2022, be treated for such government dues, pari-passu with secured creditors and shall be settled at 17.47% of the admitted claim ".

32. After hearing the submissions made by the learned counsel for the Resolution Professional and perusing the records, we find that the Resolution Plan along with the addendum dated 27.07.2023, has been approved by the Committee of Creditors on the terms both financial and others as detailed therein.

33. 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.

34. On perusal of the documents on record, we are satisfied that the Resolution Plan, read with the addendum thereto, are 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.

35. Therefore, subject to the observations made in this order, we hereby accord our approval to the Resolution Plan.

36. 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.

36.1. 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.

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

36.3. 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.

36.4. 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. 36.5. 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.

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

37. 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.

38. 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.

39. Additionally, the Registry shall send a copy of this order to the concerned Registrar of Companies.

40. The application bearing IA No. 382 of 2021 in the main Company Petition, i.e., CP (IB) No. 279/Chd/HP/2019, shall stand allowed and disposed of accordingly.

41. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.