

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.108

IA/673(AHM)2022 in CP(IB) 260 of 2018

Proceedings under Section 30(6) r.w 31 IBC,2016

IN THE MATTER OF:

Nimai Gautam Shah RP For Shubhmangal Exim Pvt. Ltd.Applicant

V/s

Bijal Surendrabhai Shah & AnrRespondent

Order delivered on: 08/02/2023

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)

Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

IA/673(AHM)/2022 in CP (IB) 260 of 2018

IA/673(AHM)/2022

(An application under Section 30 r.w. Section 31 of the Insolvency and Bankruptcy Code, 2016)

Mr. Nimai Gautam Shah

Resolution Professional of;
M/s Shubhmangal Exim Private Limited,
Having an address at;
605-606-607, Silver Oaks, Near
Mahalaxmi Char Rasta,
Paldi, Ahmedabad, Gujarat 380007
advpartners@gmail.com

..... Applicant

Versus

1. Sh. Bijal Surendrabhai Shah

Plot No. I/30/A GIDC, Near Vinzol Crossing Vatva
Ahmedabad, Gujarat- 382445

2. Sh. Nirmal Lunkar

Plot No. I/30/A GIDC, Near Vinzol Crossing Vatva
Ahmedabad, Gujarat- 382445

.....Respondent

In the matter of:

CP (IB) 260 of 2018

(An application under Section 9 of the Insolvency and Bankruptcy Code, 2016)

M/s. Shree Sai Industries Pvt. Ltd.

....Operational Creditor

Versus

M/s. Subhmangal Exim Private Limited

....Corporate Debtor

Order delivered on 08.02.2023

**Coram: Dr. Madan B. Gosavi, Member (Judicial)
Kaushalendra Kumar Singh, Member (Technical)**

Appearance:

Mr. Dheeraj Garg, Ld. Adv for the Applicant.

ORDER

1. This instant application is filed by Mr. Nimai Gautam Shah Resolution Professional of M/s. Subhmangal Exim Pvt. Ltd. under Section 30 r.w. Section 31 of the Insolvency and Bankruptcy Code, 2016 [**‘IB Code’**] r.w regulation 39 (4) of the IBBI (Insolvency Resolution Process for the Corporate Persons) Regulations, 2016 [**CIRP Regulations**] for approval of the Resolution Plan of Rakesh Ramanlal Shah in consortium with Kalpavruksha Worldwide Private Limited.

2. The averments made by the applicant are summarized as under:-

(i) The Corporate Debtor- M/s Subhmangal Exim Pvt. Ltd. was admitted in the Corporate Insolvency Resolution Process [**‘CIRP’**] vide order dated 02.09.2021 passed by this Adjudicating Authority and Mr. Nimai Gautam Shah, bearing registration no. IBBI/IPA-001/IP00154/2017-18/10323 was appointed as an Interim Resolution Professional [**‘IRP’**]. IRP published form-A under Regulation 6 of the CIRP Regulations in “Financial Express” in English and Gujarati newspapers on 29.09.2021 calling for the submission of claims by the creditors under section 15 as required by section 13 (1) (b) of the IB Code.

(ii) In compliance with the provisions of section 21 of the IB Code, IRP constituted the Committee of Creditors [**‘CoC’**] which comprised Bank of Baroda having 28% voting share, Mahip Industries Limited having 31% voting shares and M/s Vulcan Polychem LLP having 41% voting shares. First CoC meeting was conducted on 20.10.2021 wherein

the CoC resolved to appoint the IRP as a Resolution Professional, the applicant herein. The 2nd CoC meeting was held on 25.11.2021 wherein the CoC finalised the eligibility criteria of the Prospective Resolution Applicant [**PRAs**] as per section 25 (2) (h) of the IB Code.

(iii) The applicant published Form-G on 27.11.2021 in “Financial Express” in English and Gujarati newspapers for inviting the Expression of Interest [**EOI**] from the PRAs wherein the last date for submission of the resolution plan was 28.01.2022. The 3rd CoC meeting was held on 07.02.2022 wherein it was discussed that one PRA, namely, M/s Ujaas E-Auto Private Limited had shown its interest in submitting the resolution plan but no resolution plan had been submitted by it.

(iv) The 4th CoC meeting was held on 09.03.2022, the applicant apprised the CoC that the period of 180 days is going to be expired on 19.03.2022. Therefore, the CoC resolved to file an application for an extension of the CIRP period by 90 days beyond 180 days. This Adjudicating Authority vide order dated 21.03.2022 in IA 256 of 2022 allowed the 90 days extension from 19.03.2022. The CoC in its 5th meeting dated 23.03.2022 resolved to republish Form- G inviting the EOI from the Prospective Resolution Applicants. The Applicant republished form-G on 31.03.2022 in “Financial Express” in English and Gujarati Newspapers. In response to the said publication for submission of EOIs, two EOIs were received from the Prospective Resolution Applicants viz. Rakesh Ramanlal Shah and Tejash Shah. The applicant released the provisional and final list of PRAs on 18.04.2022 and 24.04.2022 respectively. Mr. Rakesh Ramanlal Shah submitted his resolution plan on 19.05.2022 and Mr. Tejas Shah submitted his resolution plan on 24.05.2022.

(v) The discussion took place in the 6th meeting of the CoC dated 31.05.2022 wherein the CoC asked the Resolution Applicants to enhance their financial proposal in the resolution plan. Thereafter, the resolution applicant-Mr. Rakesh Ramanlal Shah submitted his revised resolution

plan with an enhanced offer from 1.12 crores to 1.55 crores on 10.06.2022. However, Mr. Tejas Shah had not enhanced the value of the resolution plan.

(vi) The 7th CoC meeting was conducted on 13.06.2022 wherein the CoC resolved to extend the CIRP period by 30 days. This Adjudicating Authority extended the CIRP by 30 days vide order dated 29.06.2022 in IA 548 of 2022.

(vii) The CoC in its 8th meeting dated 22.07.2022 had resolved to approve the resolution plan of Mr. Rakesh Ramanlal Shah in consortium with M/s Kalpavruksha Worldwide Private Limited [**Successful Resolution Applicant**] without any modification. The amount proposed under the resolution plan is as under;

Financial Proposal

(amount in INR)

<i>CIRP Cost</i>	<i>At actuals are to be paid as upfront payment within 30 days from NCLT approval.</i>
<i>Upfront Cash amount to the secured financial creditors (within 30 days from NCLT approval date)</i>	<i>INR 153 Lacs</i>
<i>Upfront Cash Amount to be unsecured financial creditors (within 30 days from NCLT approval date)</i>	<i>INR 1.75 lacs plus partly paid debentures as per this plan</i>
<i>Upfront Cash Amount to Operational Creditors (Including Statutory claims) within 30 days from the NCLT approval date)</i>	<i>INR 0.25 lacs plus partly paid debentures as per this plan.</i>
Total payment to all stakeholders	Rs. 1,55,00,000/-

3. Heard the Ld. Counsel of the applicant and perused the material on record. It is noted that the Corporate Debtor was admitted in the CIRP on

02.09.2021, and Mr. Nimai Gautam Shah-the present Applicant was appointed as an IRP. The CoC in its first CoC meeting dated 20.10.2021 resolved to appoint the IRP as an RP. The CoC in its 8th meeting dated 22.07.2022 resolved to approve the resolution plan of Mr. Rakesh Ramanlal Shah consortium with M/s Kalpavruksha Worldwide Private Limited –the Successful Resolution Applicant with 100% vote. The Successful Resolution Applicant is not ineligible to submit the resolution plan under section 29A of the IB Code. The Copy of the affidavit given by the Successful Resolution Applicant under section 29A of the IB Code is on record. As per form H (compliance certificate under regulation 39 of CIRP Regulations) both the fair and liquidation value of the Corporate Debtor is Nil. The Successful Resolution Applicant has proposed to pay an amount of Rs. 1.53 crores to the secured financial creditor against the admitted debt of Rs. 6,01,09,692/- which shall be paid within a period of 30 days from the date of approval of the plan by this Adjudicating Authority. Upon the payment of the proposed amount to the secured financial creditor, the right to enforce any claim of any nature against the personal guarantor (s) (Mr. Sumit Mehta) who tendered his/her personal assets as Security Interest shall get assigned to the Successful Resolution Applicant or its nominees or affiliates and the right to claim or enforce the security interest of the secured financial creditor shall be released or extinguished forever. The personal guarantee given by the other old directors will continue to be held by the secured financial creditor and the secured financial creditors shall have the right to continue and proceed against the erstwhile directors.

4. The Successful Resolution Applicant, on taking into consideration the previous year's balance sheet of the Corporate Debtor also proposed to pay an amount Rs. 1,75,000/-to the unsecured financial creditor as it was appearing that many of the unsecured financial creditors may not have filed their claim, and against the balance amount of unsecured financial creditors, the RA proposed to allot partly paid unsecured debentures having face value of Rs.10/- each with a paid-up value of Rs. 5/- each. The Corporate Debtor shall have a right in his sole discretion, to call the balance amount of Rs. 5/- each per debenture (unsecured) at any time. In the event of failure of such

debenture holders (Unsecured) to pay the called-up amount within such time period as mentioned by the Corporate Debtor, such debentures shall be liable to be forfeited and shall be dealt with in the manner provided under the Companies Act, 2013 including re-issuance of the same to any other person at such other price as the corporate debtor may deem fit or transfer the forfeited amount to Capital Reserve.

5. The resolution applicant has proposed an amount of Rs. 25,000/- to the operational creditor including the Government dues also. The amount proposed under the resolution plan for the operational creditors is on the basis of the dues of a previous years' balance sheet. However, as per Form-H total dues of the operational creditor is Rs. 264 lacs (88 lacs Government dues + 176 lacs for the other creditors). Against the balance amount of the Operational Creditors (other than Statutory Dues), they will be allotted partly paid unsecured debentures having a face value of Rs. 10/- each with a paid-up value of INR 5/- each. The Corporate Debtor/ Resolution Applicant shall have the right in its sole discretion, to call for the balance amount of INR 5/- each per debenture (unsecured) at any time. In the event of failure of such debenture holders to pay the called-up amount within a such time period as mentioned by the Corporate Debtor, such debentures shall be liable to be forfeited and shall be dealt with in the manner provided under the Companies Act, 2013.

6. For those Operational Creditors and unsecured financial creditors whose dues are appearing in the balance sheet but the claim has not been filed with the RP, a private trust would be set up by the RA which will hold such debentures and other entitlement in trust for such creditors. In absence of any claim for one year from the date of approval of this Adjudicating Authority, the trust shall automatically be dissolved and the benefits therein would accrue to the RA or his nominee. The amount payable to the operational creditors from the upfront cash under this resolution plan shall be given in priority in payment over the financial creditors. The amount proposed to be paid to the creditors and the amount admitted are as under;

The amount provided for the stakeholders under the Resolution plan is as under; (amount in Rs. Lakhs)

Sr. No.	Category Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21				
		(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	601	601	153	25.5
		Total [(a) + (b)]	601	601	153	25.5
2.	(a) Unsecured Financial Creditor	(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	1580	1569	1.75	0.1
		Total (a+b)	1580	1569	1.75	0.1
3.	Operational Creditors	(a) Related party of Corporate Debtor				
		(b) Other than (a) above				
		(i) Government	88	88	0.08	0.1
		(ii) Worker				
		(iii) Employees				
		(iv) Other creditors	176	176	0.17	0.1
4	Other debt and dues					
		Grand total	2445	2434	155	6.4

7. This Adjudicating Authority vide order dated 26.09.2022 directed/requested the RP and CoC to consider the statutory dues in light of the recent judgment of the Hon'ble Supreme in the case of "*State Tax Officer Vs. Rainbow Papers Ltd., (Civil Appeal No. 1661 of 2020)*". The RP filed an affidavit dated 14.11.2022 wherein it is categorically stated that the GST Department had filed a claim of Rs. 6,35,820/- on 23.09.2022 after approval of the Resolution Plan by the CoC and even otherwise section 82 of the GST Act, is subservient to the provision of IB Code. Thus, the ratio decidendi of the judgment of the Hon'ble Supreme Court in the matter of *Rainbow Papers (Supra)* does not apply to other GST dues. For ready reference we reproduce section 82 of the GST Act as under:

*"82. Tax to be first charge on property-Notwithstanding anything to the contrary contained in any law for the time being in force, **save as otherwise provided in the Insolvency and Bankruptcy Code, 2016**, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person".*

The Applicant further stated that an amount of Rs. 88,05,470/- of the Income Tax Department has been taken into consideration based on the Books of Accounts and other records of the Corporate Debtor and as per the best of knowledge there is no existing attachment made by the Income Tax Department over the properties of the Corporate Debtor. Recently, the Coordinating Bench NCLT, Chandigarh in the matter of "***Excise and Taxation Commissioner, Haryana through Excise and Taxation vs. Mr. Anup Sood, Resolution Professional of M/s. Anand Tex India Pvt. Ltd.***" has taken the following views which are reproduced hereunder;

"8. Before parting with this order, we may take note of the recent judgement of the Hon'ble Supreme Court in State Tax Officer (1) Versus Rainbow Papers Limited in Civil Appeal No 1661 of 2020 with Civil Appeal NO. 2568 of 2020 order dated case citation: (2020) ibclaw.in 107 SC, wherein it is held that the definition of a secured creditor in the IBC does not exclude any Government or Governmental Authority. However,

in this case, it is nowhere pleaded or argued that the claimant has any secured interest. Thus the claim under dispute is that of an operational creditor, not that of a secured creditor as defined under section 3 (30) read with section 3 (31) of the IB Code. Therefore, the ratio in the above mentioned case is not applicable to this case”

9. In view of the above, we hold that the applicant has failed to show due diligence in submitting the claim before the Resolution Professional. We therefore, cannot accede to the request for issuing direction for the acceptance of the claim regarding statutory dues by the Resolution Professional.”

The provisions of section 178 of the Income Tax Act, 1961 are subjected to the provisions of the IB Code. For ready reference we reproduce section 178 of the Income Tax as under;

“(1) Every person –

(a) who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise; or

(b) who has been appointed the receiver of any assets of a company, (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the 1a[Assessing Officer] who is entitled to assess the income of the company.

(2) The Assessing Officer shall, after making such inquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Assessing Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

(3) The liquidator –

(a) shall not, without the leave of the 1c[1[Principal Chief Commissioner or Chief Commissioner] or 2[Principal Commissioner or Commissioner], part with any of the assets of the company or the properties in his hands until he has been notified by the Assessing Officer under sub-section (2); and

(b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands:

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Principal Chief Commissioner or Chief Commissioner or 2 Principal Commissioner or Commissioner reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax which the company would be liable to pay:

Provided that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this subsection shall be to the extent of such amount.]

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force 3[except the provisions of the Insolvency and Bankruptcy Code, 2016]”.

Both sections [section 82 of GST Act and section 178 of Income Tax Act] are clearly showing that the judgement of the ***Rainbow papers (Supra)*** is not applicable in the present matter. Moreover, the Hon’ble Supreme Court has stated that Section 3 (30) of the IB Code defines a secured creditor means a creditor in favour of whom security interest is created. Such security interest could be created by the operation of law. With respect to the claim of the GST Department and Income Tax Department in this matter, nothing is on record to suggest that the GST Department or Income Tax Department has initiated to create the security interest or created security interest on the properties of the Corporate Debtor.

8. The following reliefs and concessions as claimed by the Resolution Applicant are under:

- (i) All Government Authorities shall waive the non-compliances if any not done by the Corporate Debtor prior to the appointed date without levying any fee, penalty or additional duty. Upon approval of the resolution plan by this Adjudicating Authority, all action which was taken against the corporate debtors including action taken by SFIO, CBI, Income Tax Department, and PF authorities shall stand released on the approval of the resolution plan. All action against the properties of the Corporate Debtor in relation to an offence shall include the attachment, seizure, detention or confiscation of such property under such law as may be applicable shall stand released.

- (ii) Since the commencement of CIRP, while the resolution professional is putting its efforts to control and manage the business of the Corporate Debtor, there are chances that certain business permits of the Corporate Debtor may be lapsed, expired, suspended, cancelled, revoked, terminated or Corporate Debtor has not complied in relation thereof. Accordingly, all the Government Authorities to provide a reasonable time period after the appointment date in order to access the business permits and all applicable laws without initiating any investigation, actions or proceedings in relation to such non-compliance.
- (iii) Upon the approval of the resolution plan by this Adjudicating Authority, the Income Tax Department shall be deemed to have waived the Corporate Debtor from levy or payment of income tax on waiver of principal and interest by Banks/ Institutions.
- (iv) Upon approval of the resolution plan, all beneficiaries of the guarantees issued by the Company and all the liabilities of the Corporate Debtor with respect to such guarantees shall stand extinguished and such recipient shall not thereafter be entitled to raise any claims against the Corporate Debtor.
- (v) Upon the approval of the resolution plan by this Adjudicating Authority, all the matters pending before the labour authorities shall be disposed of, and the Corporate Debtor/ Resolution Applicant shall not be liable to make any payment including any penalty, damages costs or otherwise.
- (vi) Changes in the shareholding of the Corporate Debtor shall not lapse the brought forward loss of the Corporate Debtor.
- (vii) The Central Board of Direct Tax [**CBDT**], Central Board of Indirect Taxes [**CBIC**], Customs, Value Added Taxes Authorities, State Government Tax Authority, to grant reliefs/ exemptions/

waivers from the applicability of section 41, 79, 170 and any other relevant provisions of the Income Tax Act, 1961. The resolution applicant be allowed to file the previous Income Tax Return under the Income Tax Act, 1961 which has not been filled till the approval of the resolution plan by this Adjudicating Authority without being subject to any tax or interest or penalty or penal liability, if any, under any applicable laws.

(viii) The CBIC to grant GST credit to the Corporate Debtor filed through the transitional form without any adjustments made during the CIRP period.

(ix) The Corporate Debtor and/ or Resolution Applicant and its affiliates shall not in any manner be implicated in, or in any manner be adversely affected by, or have any liability in relation to any investigation, proceedings, orders or any matter whether known or unknown, relating to the past management or the promoter group or holding companies, associate companies and /or group companies of the Corporate Debtor and the assets and properties of the Corporate Debtor be attached pursuant to any such investigation.

(x) Income Tax Department to quash assessment or re-assessment in consequent to special audit or any other proceedings against the Corporate Debtor post initiation of CIRP against the Corporate Debtor and consequently, all pending assessments and re-assessments u/s 147, 153-A and other relevant provisions of the Income Tax Act shall be deemed to be completed and dropped.

(xi) The Central Board of Direct Taxes (CBDT) and GST Department shall give exemptions for the applicability of payment of all taxes including MAT and GST liability which may arise for the acquisition of the Corporate Debtor under the IB Code, and allow the company to enjoy all future tax.

(xii) All the government authorities to grant relief/ concessions from payment of taxes, levies, a fee, charges, transfer premiums, stamp duty, and registration fees (including a fee payable to the jurisdictional ROC) for the various action contemplated under the resolution plan.

(xiii) The Collector of Stamps, Revenue Department of State Government & Ministry of Corporate Affairs provide the exemption(s) from the levy of stamp duty and fee in relation to this resolution plan.

(xiv) This Adjudicating Authority be pleased to give necessary direction to the MCA to exempt or waiver for non-compliance with the applicable provisions of the Companies Act, 2013.

9. It is to be noted that for getting the approval of the Adjudicating Authority the resolution plan should adhere to the following requirements as per section 30(2) of the Code read with CIRP Regulations:

(i) It should provide for the payment of insolvency resolution process costs in priority to the payment of other debts of the Corporate Debtor.

[Section 30(2)(a) of IB Code];

(ii) The repayment of the debts of operational creditors and dissenting financial creditors should not be less than the amount to be paid to such respective creditors in the event of liquidation of the corporate debtor under section 53 of the Code. Moreover, the payment to the operational creditor is to be made in priority over the financial creditor; and the payment to dissenting financial creditor is to be made in priority to the consenting financial creditors.

[Section 30(2)(b) of the IB Code read with regulation 38(1)(a) & 38(1)(b) CIRP Regulations];

(iii) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan.

[Section 30(2)(c) of the IB Code read with regulations 38(2)(b) CIRP Regulations];

- (iv) The implementation and supervision of the resolution plan.

[Section 30(2)(d) of the IB Code read with 38(2)(c) CIRP Regulations];

- (v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e) of the IB Code];

- (vi) It conforms to such other requirements as may be specified by the Board.

[Section 30(2)(f) of the IB Code]

Such other requirements of the resolution plan as detailed in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 which are not covered above, are as under:

- (a) The resolution plan should include a statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors of the Corporate Debtor.

[38 (1A) of CIRP Regulations]

- (b) The resolution plan should include a statement giving details as to whether the resolution applicant or any of its related parties has at any time failed to implement or caused to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority.

[38 (1B) of CIRP Regulations]

- (c) The resolution plan should provide the term of the plan and its implementation schedule.

[Regulation 38(2)(a) of CIRP Regulations]

- (d) The resolution plan should also demonstrate that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; has provisions for approvals required and the timeline for the same. Further that the

resolution applicant has the capability to implement the resolution plan.

[38(3) CIRP Regulations]

10. In view of the above provisions of the IB Code, the resolution plan submitted before us has been examined as follows:

(i) On perusal of the resolution plan, we observed that clause 10.1 (CIRP costs) of the resolution plan provides that the CIRP costs are to be paid in priority to any other creditor of the Corporate Debtor. It is also provided that any unpaid or outstanding CIRP cost shall be paid from the money infused in the Corporate Debtor by RA. It is also provided therein that the CIRP cost shall be paid on an actual basis and within 30 days from the approval by this Adjudicating Authority; and that the CIRP costs at actual shall be adjusted from the proposed payment to the secured financial creditor to keep the proposed plan amount intact. Thereby, the resolution plan complies with section 30 (2) (a) of the IB Code.

(ii) As per Form-H, the liquidation value of the Corporate Debtor is NIL. There are no dissenting Financial Creditors. The amount payable to the Operational Creditors in the event of liquidation under section 53 or the amount that would have be payable to the Operational Crditors as per the plan, if distribution was made in order of priority under section 53 is also NIL. Nevertheless, the Resolution Applicant has proposed to pay the Operational Creditors an amount Rs. 25,000/- , though that is a very meager amount. Further, clause 10.4.8 of the resolution plan states that the amount payable to the Operational Creditors from the upfront cash under this resolution plan shall be given priority in payment over the financial creditors. Hence, the resolution plan complies with section 30 (2) (b) of the IB Code read with the regulation 38(1) (a) & 38 (1) (b) of CIRP Regulations, 2016.

(iii) Clause 4 of the resolution plan states that on and from the approval date until the transfer date, the Monitoring Committee comprising three members being one nominated by the resolution applicant, one by the CoC and the Resolution Professional shall supervise the implementation of the resolution plan and shall require and entitled to do all such acts, deeds, matters and things as may be necessary. Hence, the resolution plan complies with section 30 (2) (c) of the IB Code read with Regulation 38 (2) (b) of the CIRP Regulations.

(iv) Upon the approval of the resolution plan by this Adjudicating Authority, the implementation of the resolution plan shall be supervised by the monitoring committee consisting of one representative from the financial creditor, one representative from the Resolution Applicant, and the Resolution Professional. Thereby the resolution plan complies with section 30 (2) (d) of the IB Code read with regulations 38 (2) (c) of the CIRP Regulations.

(v) The resolution plan states that the resolution plan is not in contravention of provisions of the applicable law for time being in force. Thereby it complies with section 30 (2) (e) IB Code.

(vi) The plan conforms to section 30 (2) (f) of the IB Code with regard to other requirements as specified by the Board in the CIRP regulations.

Such other requirements of the resolution plan as detailed in CIRP Regulations which are not covered above are as under ;

a) The resolution plan provides the payment to the secured financial creditor, unsecured financial creditor and operational creditor. Hence, the resolution plan complies with Regulation 38 (1A) of CIRP Regulations, 2016.

b) Clause 14 of the resolution plan states that the resolution applicant and /or any of the related parties of the resolution applicant has not failed to implement or contribute to the failure of implementation of any other resolution plan approved by the Adjudicating Authority meaning thereby the resolution plan complies with regulation 38 (1B) of CIRP Regulations.

c) The resolution plan provides that the amount proposed under the resolution plan shall be paid within 30 days (Upfront payment) to all the creditors (Secured financial creditors, unsecured financial creditors and operational creditors). Clause 6 of the resolution plan provides the details of the implementation of the resolution plan. Hence complies with Regulations 38 (2) (a) of the CIRP regulations.

d) Clause 1 (a) of the resolution plan deals with the cause of the default of the Corporate Debtor which was due to the liquidity crunch leading to project delays, stretched receivables leading to cash flow mismatch and working capital gap. The CoC has approved the resolution plan after considering the feasibility and viability of the resolution plan. Clause 1 of the resolution plan states the details and experience of the resolution applicant. Mr. Rakesh Ramanlal Shah is chairman and managing director of GSEC Limited and has 30 years of experience. Hence, considering the position and experience of the resolution applicant it appears that the resolution applicant has the capability to implement the resolution plan. Hence, the resolution plan complies with 38 (3) of the CIRP Regulations.

11. As far as reliefs and concessions claimed by the Resolution Applicant, the law has been well settled by the Hon'ble Supreme Court in the case of ***Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset***

Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021 in the following words:

- (i) “The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable.
- (ii) We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government, or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I & B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief...”

12. In view of the above, we hold that the Resolution Applicant cannot be saddled with any previous claim against the Corporate Debtor prior to the initiation of its CIRP. The permits, licenses, leases, or any other statutory right vested in the Corporate Debtor shall remain with the Corporate Debtor and for the *continuation* of such statutory rights, the Resolution Applicant has to approach the concerned statutory authorities under relevant laws.

13. With respect to the reliefs and concession as claimed under the resolution plan regarding the action taken against the Corporate Debtors including action taken by SFIO, CBI, Income Tax Department and PF authorities and attachment made by the said authorities, if any, (prayed but details have not been provided under the resolution plan) on the assets of the Corporate Debtor, the resolution applicant is required to approach to the concerned authority(s) for releasing of the attached assets of the Corporate Debtor.

14. In view of the above, we are of the considered view that the Resolution Plan has complied with the provision of Section 30(2) of the IB Code and Regulations 38 and 39 (1) of CIRP Regulations. Accordingly, we allowed this present application with the following orders:-

ORDER

- I. Application is allowed.
- II. The resolution plan of M/s. Rakesh Ramanlal Shah consortium with M/s Kalpavruksha Worldwide Private Limited for Corporate Debtor i.e., M/s Subhmangal Exim Private Limited stands allowed as per Section 30(6) of the IBC, 2016.
- III. The approved 'Resolution Plan' shall become effective from the date of passing of this order. A copy of this approved plan is enclosed with this order.
- IV. The order of moratorium dated 02.09.2021 passed by this Adjudicating Authority under Section 14 of the IB Code shall cease to have effect from the date of passing of this order.
- V. The Resolution Professional shall forthwith send a copy of this order to the participants and the Resolution Applicant(s).
- VI. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

VII. Accordingly, **IA/673 (AHM)/2022 in CP(IB) 260 (AHM)/2018** is allowed and stands disposed of in terms of the above directions.

VIII. A certified copy of this order, if applied for, is to be issued to all concerned parties upon compliance with all requisite formalities.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

Ramashish/Shweta Desai -LRA