

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

IA/1562/2022 In C.P.(IB)/979(MB)2020

*(Under Section 30(6) r/w Section 31 of the
Insolvency and Bankruptcy Code, 2016.)*

**Ajay Joshi, Resolution Professional for M/s.
Indian Steel Corporation Limited**

.....Applicant

In the matter of

India Resurgence ARC Private Limited

.....Financial Creditor

Vs

Indian Steel Corporation Limited

.....Corporate Debtor

Order delivered on: 13.04.2023

CORAM:

**SHRI SHYAM BABU GAUTAM SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (T) HON'BLE MEMBER (J)**

Appearances:

For the SRA: Senior Counsel Ravi Kadam, Meghna Rajadhyaksha,

Kriti Kalyani, Harit Lakhani

i/b Shardul Amarchand mangaldas & Co.

For the RP: Mr. Ajay Joshi (RP present in person)

Adv. Deep Roy & Adv. Prajjwal Tiwari for RP

For the CoC: Senior Advocate Soli Cooper a/w Adv. Shahezad Kazi,

Adv. Tripti Sharma & Utkarsh Trivedi i/b S&R Associates.

ORDER

Per- Coram

It is an application filed under Section 30(6) read with Section 31 of the Insolvency & Bankruptcy Code, 2016 (“**the Code**”) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process Corporate Persons) Regulations, 2016 for approval of the Resolution Plan by this Bench based on the approval already given by the Committee of Creditors (“**CoC**”) in its 7th Meeting with requisite majority of 100% u/s 30(4) of the Code.

2. Looking at the application moved by the Resolution Professional, it reveals that Indian Steel Corporation Limited (“Corporate Debtor”) was admitted into corporate insolvency resolution process (“CIRP”) vide an order dated 06.10.2021 of this Tribunal, pursuant to an application under section 7 of the Insolvency and Bankruptcy Code, 2016 filed by India Resurgence ARC Private Limited. Pursuant to the Admission Order, Ajay Joshi, having IBBI registration no. IBBI/IPA-003/IP-N00019/2017-2018/10166 was appointed as the interim resolution professional (“IRP”). The IRP was subsequently confirmed as the resolution professional to conduct the CIRP of the Corporate Debtor (“RP”) at the 1st meeting of the committee of creditors of the Corporate Debtor (“CoC”) held on 05.11.2021. Further, the RP appointed RBSA for valuation of all asset classes, Kunal Kantilal Vikamsey for valuation of land & building and plant and machinery, and Dharmesh Lalitkumar Trivedi for valuation of securities and financial assets, as the registered valuers for the purpose of

determining the fair value and liquidation value of the assets of the Corporate Debtor in accordance with regulation 35 of the CIRP Regulations and appointed Grant Thornton as transaction auditor of the Corporate Debtor.

The RP published the Form G in the Business Standard (English), being the all-India Edition, Navshakti (Marathi) in Mumbai, Business Standard (Hindi) in Indore and Financial Express (English and Gujarati) in Gujarat on 20.12.2021. In pursuance to the Form G, the RP has also made available the detailed terms and conditions governing the submission of the expression of interest on the website of the Corporate Debtor. The last date for submission of resolution plans was 15.03.2022. The extension of CIRP period was granted for 90 days by this Tribunal on the application filed by RP. The period for completion of CIRP of the Corporate Debtor was extended until 03.07.2022. Meanwhile, the RP received resolution plans from 2 (two) prospective resolution applicants, i.e. Khandwala Finstock Private Limited and AM Mining India Private Limited on 15.03.2022.

3. Upon receipt of the resolution plans from the prospective resolution applicants, the resolution plans were presented to the CoC in the 7th meeting of the CoC dated 19.04.2022 (reconvened on April 27, 2022), wherein the CoC discussed and deliberated on the resolution plan. Pursuant to the discussions held in the 7th meeting of the CoC, the prospective resolution applicants submitted the amended resolution plans on 27.04.2022. The CoC deliberated upon the feasibility and viability of amended and restated resolution plans submitted

by the prospective resolution applicants in the 7th Meeting of the CoC and subsequently the resolution plans were put for e-voting. The CoC, pursuant to the e-voting, has approved the amended and restated resolution plan dated April 27.04.2022 submitted by AM Mining India Private Limited (“Successful Resolution Applicant/SRA”) by a vote of 100% (one hundred percent) of the voting share of the CoC.

In relation to the SRA, the RP has submitted that the SRA is a part of the joint venture between Arcelor Mittal, Luxembourg, the largest steel company in the world and Nippon Steel Corporation, the largest steel company in Japan. Both companies have a strong track record in the industry and have successfully collaborated for over 30 years. As on March 31, 2021, the authorized share capital of the Resolution Applicant is INR 2,400 crores and the paid up share capital is INR 790.19 crores. The net worth of the Resolution Applicant as of March 31, 2021, as certified by its statutory auditor, is INR 2,425.71 crores. Arcelor Mittal India Private Limited (“AMIPL”) is the parent entity of the Resolution Applicant. AMIPL is a subsidiary of Oakey Holding BV (“Oakey”) having its registered office in Rotterdam, Netherlands. AMNS Luxembourg Holding SA (“AMNSL”) is the parent company of Oakey based out of Luxembourg. AMNSL is a joint venture of ArcelorMittal SA, Luxembourg (60%) and Nippon Steel Corporation, Japan (40%).

4. As regards the Resolution Plan, from Form – H filed by the Resolution Professional, it is evident that average Fair Value is INR 1094 crores and the Liquidation Value is INR 643 crores. It

is also observed that admitted claim value against the debtor company is more than the liquidation value of the company.

Further, it is evident that the total consideration amount under the Resolution Plan will be INR 897 Crores, out of which the Secured Financial Creditors shall receive INR 810 crores, Operational Creditors (including workmen and statutory dues) shall receive INR 12 crores and Equity infusion of INR 75 crores. Further, the CIRP Costs and standstill Period Costs shall be funded from internal accruals and cashflows in priority over other debts of the Corporate Debtor. In case of shortfall, the RA shall pay up to an amount of INR 2 crores. If shortfall exceeds INR 2 Crores, the same shall be met from the upfront cash recovery to the Financial Creditors. Payment outlay is as under:

<i>Financial Creditors</i>	<i>Rs. 810 crores</i>
<i>Operational Creditors (Including Workmen and Statutory Dues)</i>	<i>Rs. 12 crores</i>
<i>Equity infusion by the SRA</i>	<i>Rs. 75 crores</i>
<i>CIRP costs</i>	<i>From internal cashflows of the CD.</i>
<i>Total Resolution Amount</i>	<i>Rs. 897 crores</i>

5. As per the provision of the Code, this Tribunal is duty bound to examine the Resolution Plan as to whether it satisfies the conditions as laid down in Section 30(2) of the Code. A comparison of the mandatory compliance under the Code *vis-à-vis* the same made under the Resolution Plan is tabulated hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN																												
S.30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Resolution Professional in Form-H has certified that the Resolution Applicant has submitted an affidavit.																												
S.30(2)(a) - Payment of insolvency resolution process cost in the manner specified by the Board	Yes, Section IV of Resolution Plan.																												
S. 30(2)(b) -Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Yes, Section IX of Resolution Plan.																												
S. 30(2)(c) - provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Yes, Section IX of Resolution Plan.																												
S.30(2)(d) -Implementation and Supervision of the Resolution Plan.	Yes, Section IX of Resolution Plan.																												
S. 30(2)(e) - Contravene any of the provisions of the law for the time being in force.	Does not contravene any of the provisions of the law for the time being in force.																												
S. 30(4) - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board	<p>The CoC, in its 7th meeting has approved the Resolution Plan in the following voting pattern;</p> <table border="1" data-bbox="858 1350 1430 2018"> <thead> <tr> <th data-bbox="858 1350 922 1435">S. No</th> <th data-bbox="922 1350 1174 1435">Name of Creditor</th> <th data-bbox="1174 1350 1297 1435">Ascent (%)</th> <th data-bbox="1297 1350 1430 1435">Dissent (%)</th> </tr> </thead> <tbody> <tr> <td data-bbox="858 1447 922 1559">1.</td> <td data-bbox="922 1447 1174 1559">India Resurgence ARC Private Limited</td> <td data-bbox="1174 1447 1297 1559">71.78</td> <td data-bbox="1297 1447 1430 1559">-</td> </tr> <tr> <td data-bbox="858 1570 922 1655">2.</td> <td data-bbox="922 1570 1174 1655">Punjab National Bank</td> <td data-bbox="1174 1570 1297 1655">20.11</td> <td data-bbox="1297 1570 1430 1655">-</td> </tr> <tr> <td data-bbox="858 1666 922 1778">3.</td> <td data-bbox="922 1666 1174 1778">Jammu and Kashmir Bank Limited</td> <td data-bbox="1174 1666 1297 1778">6.06</td> <td data-bbox="1297 1666 1430 1778">-</td> </tr> <tr> <td data-bbox="858 1792 922 1877">4.</td> <td data-bbox="922 1792 1174 1877">IDBI Bank Limited</td> <td data-bbox="1174 1792 1297 1877">1.38</td> <td data-bbox="1297 1792 1430 1877">-</td> </tr> <tr> <td data-bbox="858 1888 922 1973">5.</td> <td data-bbox="922 1888 1174 1973">Union Bank of India</td> <td data-bbox="1174 1888 1297 1973">0.67</td> <td data-bbox="1297 1888 1430 1973">-</td> </tr> <tr> <td data-bbox="858 1984 922 2018"></td> <td data-bbox="922 1984 1174 2018">TOTAL</td> <td data-bbox="1174 1984 1297 2018">100</td> <td data-bbox="1297 1984 1430 2018"></td> </tr> </tbody> </table>	S. No	Name of Creditor	Ascent (%)	Dissent (%)	1.	India Resurgence ARC Private Limited	71.78	-	2.	Punjab National Bank	20.11	-	3.	Jammu and Kashmir Bank Limited	6.06	-	4.	IDBI Bank Limited	1.38	-	5.	Union Bank of India	0.67	-		TOTAL	100	
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6. A perusal of Form-H as filed by the Resolution Professional also posits the fact that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code and also the Resolution Applicant has filed an Affidavit to the effect that he is eligible to submit the Resolution Plan taking into consideration Section 29A of the Code. Further, the SRA has submitted a performance guarantee of INR 100,00,00,000/- as stipulated under the request for resolution plans document. In relation to Financial Creditors, the funds for upfront payment will be transferred by the Resolution Applicant into an escrow account maintained by the Corporate Debtor. Further, any cash in any trust and retention account or fixed deposit account or any bank account, after adjusting for CIRP and related costs, shall be released to India Resurgence ARC Private Limited, who shall distribute the same to assenting financial creditors. Further, in relation to Operational Creditors, they shall be paid in the following manner:

- a. 100% of admitted claims of the 311 workmen and employees totaling to INR 2,05,17,237;*
- b. 100% of admitted claims of the 141 out of 151 Operational Creditors who have an admitted claim of less than or equal to INR 50 lakhs;*
- c. Remaining amounts to other Operational Creditors who have admitted claims of more than INR 50 lakhs.*
- d. 100% of (admitted) government dues worth INR 35,79,769 will be paid on the Effective Date.*

The counsel for the RP has submitted while arguing the matter that the SRA has allocated payments to workmen and Operational Creditors, even though the liquidation value for these creditors is NIL.

Further, in relation to the shareholders, no admitted claims as on March 11, 2022. Even if admitted claims after March 11, 2022, the aggregate value of assets of Corporate Debtor is less than its liability, therefore liquidation value would be payable to the shareholders, which will be NIL. Accordingly, no payment is proposed to be made to the existing shareholders and exiting paid up capital, whether equity or preference share, shall be reduced to nil and cancelled and extinguished pursuant to capital reduction. Further, the claims of other creditors (including financial creditors that are related parties), stakeholders and any residual debt to be permanently settled, discharged and extinguished in full and reduced to NIL. If the Corporate Debtor receives any amount of cash by virtue of a judicial order pursuant to an avoidance application, any interest in the recovery or entitlement of recovery or amount or assets shall accrue to the benefit of the Financial Creditors and Operational Creditors in the ratio of admitted claims. All personal and corporate guarantees are being assigned to the Resolution Applicant as part of the Resolution Plan.

7. The Resolution Plan clears that any recovery out of avoidance applications to accrue to the benefit of Financial creditors and Operational Creditors in the ratio of their admitted claim. Further, this Resolution Plan follows the Judgement of Hon'ble Supreme Court in the ***State Tax Officer Vs. Rainbow Papers Limited***. The statutory creditors admitted claims are below INR 50,00,000, so it shall be paid in totality. All amounts due to workmen including gratuity and leave encashment are being paid in full.

8. The Monitoring Committee shall be constituted post approval of Resolution Plan during the Standstill Period and shall be responsible for effective implementation of the Resolution Plan. All powers of the board of directors shall be exercised by the Monitoring Committee. The Monitoring Committee shall comprise - (i) erstwhile Resolution Professional, (ii) 3 representatives of SRA; and (iii) 3 representatives of the Financial Creditors.
9. As to the Reliefs and Concessions stated in Clause 15 of the Resolution Plan, the exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted. As regards the other reliefs and concessions as sought for, which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016 is granted to the Resolution Applicant. With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted. Further in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no

person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan. In view of the same, this plan is hereby **approved**.

10. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise the further line of action required for starting of the operation. Further, on payment of the entire amount to Financial Creditors, Financial Creditors shall unconditionally release all securities/corporate guarantees provided by the Corporate Debtor/collaterals owned by the Corporate Debtor provided as security against the debt availed. Accordingly, the Resolution Plan in **IA/1562/2022** is hereby allowed and approved.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)

Arpan, LRA