

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT NO. II**

**IA No. 1021/AHM/2022
IN
CP (IB) 386/AHM/2020**

Under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016.

IN THE MATTER OF IA No. 1021/AHM/2022

**Mr. Vikash Jain
Resolution Professional of
Shreebhav Polyknits Pvt. Ltd.**

...Applicant

AND

IN THE MATTER OF CP (IB) 386/AHM/2020

State Bank of India

...Financial Creditor

Versus

Shreebhav Polyknits Pvt. Ltd.

...Corporate Debtor

Order Pronounced On: 07/02/2023

**Coram:
DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

IA 1021/AHM/2022

Mr. Vikash Jain

Resolution Professional of Shreebhav Polyknits Pvt. Ltd.

204, Wall Street-1,
Near Gujarat College, Ellisbridge,
Ahmedabad - 380006

...Applicant

Present:

For the Resolution Professional : Mr. Monaal Davawala, Advocate
For the Resolution Applicant : Mr. Ravi Pahwa, Advocate

ORDER

1. This application has been filed by Mr. Vikash Jain, Resolution Professional of the Corporate Debtor Shreebhav Polyknits Pvt. Ltd. under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') for approval of the Resolution Plan approved by Committee of Creditors ('CoC').
2. The facts in brief are that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process ('CIRP') by this Adjudicating Authority vide order dated 27.09.2021, in an application filed by the financial creditor State Bank of India under Section 7 of the Code triggering the moratorium and CA Nirav Tarkas was appointed as Interim Resolution Professional ('IRP'). The IRP made

a public announcement in Form-A on 09.10.2021 and collated claims and constituted a Committee of Creditors ('CoC') of sole financial creditor State Bank of India. Thereafter CoC resolved to replace the IRP by the Applicant herein Mr. Vikash Gautamchand Jain as Resolution Professional and the same was confirmed by this Adjudicating Authority vide order dated 01.04.2022.

3. It is submitted that Form-G was published on 19.04.2022. Pursuant thereto expression of interest from following four prospective resolution applicants ('PRA') were received:
 - a) Novatis Fashion Pvt. Ltd. & Gargi Texofab Pvt. Ltd. (in consortium).
 - b) Vikash Mittal & Hinamshu Mittal
 - c) Ashok Mehta
 - d) Parth Knitex Pvt. Ltd.

4. An application for exclusion of CIRP period was filed by Resolution Professional and vide order dated 05.05.2022 exclusion of 120 days from 05.05.2020 was granted. Relevant part of order dated 05.05.2022 is reproduced below:

“...Be that as it may, since CIRP of the corporate debtor has been undertaken effectively only after 156 days, we grant exclusion, of period of 120 days from the total period, directing the IRP to complete the process within the extended period of 120 days from today. In view of this, IA stands allowed and disposed of.”

Thereafter in view of resolution passed by CoC in its 7th meeting held on 09.08.2022, an application under Section 12 of the Code was filed by Resolution Professional and vide order dated 09.09.2022 extension of 90 days was granted from 03.09.2022, that is till 02.12.2022. The

application for approval of the Resolution plan was filed on 18.11.2022.

5. It is submitted that all the four resolution plans were discussed by CoC in its 5th to 7th meetings and prospective resolution applicants were asked to submit revised resolution plans latest by 07.07.2022. On request from PRAs, the date of submission of final resolution plans was extended to 02.07.2022. The Applicant submits that it received final revised resolution plans from prospective resolution applicants by 30.07.2022 and forwarded the same to CoC by 20.08.2022.
6. It is submitted that the Applicant had apprised the CoC in 8th meeting held on 02.09.2022 that all the resolution plans are in compliance with Regulation 37 and Regulation 38 of CIRP Regulations and fulfil the criteria as mentioned in the EoI. The CoC had approved the resolution plan submitted by Novatis Fashion Pvt. Ltd. & Gargi Texofab Pvt. Ltd. (in consortium) with 100 % voting share.
7. It is noted from Form-H annexed with the Application that the applicant had appointed two separate valuers for valuation of land & building and securities and financial assets and one valuer for valuation of plant & machinery of the Corporate Debtor. As per Form-H the average Fair Value and Liquidation Value of the Corporate Debtor are Rs. 16,50,36,648/- and Rs. 11,11,62,611/-, respectively. The present Resolution Plan offers total amount of Rs. 13,59,88,000/- including CIRP cost of Rs. 31,38,000/-.
8. The letter of intent was issued on 17.10.2022 by Resolution Professional in terms of the Resolution Plan and the same was acknowledged by successful resolution applicant vide letter dated

27.10.2022. The Applicant submits that the Resolution Applicant has given the performance security under sub-regulation (4A) of Regulation 36B of the CIRP Regulations, 2016 amounting to Rs. 67,99,400/- on 25.10.2022 and EMD of Rs. 60,00,000/- on 21.10.2022.

9. An affidavit dated 07.05.2022 from one Mr. Mahesh Baheti authorized representative of the Successful Resolution Applicants i.e. Novatis Fashion Pvt. Ltd. & Gargi Texofab Pvt. Ltd. (in consortium) declaring the eligibility of the Resolution Applicants under Section 29A of the Code is placed on record.
10. It is submitted by the Applicant that the resolution plan complies with provisions of Code and all the requisite Regulations.
11. The amount provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. lakh)

Sr. No.	Category of Shareholder*	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	NA	NA	NA	NA
		(b) Other than (a) above:	NA	NA	NA	NA

		(i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	4,007.16	4,007.16	1,321.00	32.97%
		Total [(a)+(b)]	4,007.16	4,007.16	1,321.00	32.97%
2	Unsecured Financial Creditors	(a)Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	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	NA NA	NA NA	NA NA	NA NA
		Total[(a)+(b)]	NA	NA	NA	NA
3	Operational Creditors	(a)Related party of the Corporate Debtor	NA	NA	NA	NA
		(b)Other than(a) above: (i) Government (ii) Workmen (iii)Employees (iv) Others	NA NA NA NA	NA NA NA NA	NA NA NA NA	NA NA NA NA
		Total[(a)+(b)]	NA	NA	NA	NA
4	Other debts and dues		NA	NA	NA	NA
5	Contingency	Unsecured Financial Creditor	NA NA	NA NA	0.25 5.00	

		Operational Creditor	NA	NA	2.00	
		Employees & Workmen	NA	NA	0.25	
		Contingent Liability				
	Grand Total	[1+2+3]	4007.16	4007.16	1328.50	33.15%

12. During the hearing of the instant Application on 21.12.2022 the Learned Counsels for Resolution Professional and successful Resolution Applicant undertook to file an affidavit with respect to who shall carry forward, and pursue the applications filed under Section 43 & 66 of Code. In compliance thereof, successful Resolution Applicant filed an affidavit and the same is recorded in order dated 22.12.2022. The relevant extract of order dated 22.12.2022 is reproduced herein below:

“In pursuance of the directions given on 21.12.2022, the authorized representative of the Resolution Applicant has filed an affidavit giving declaration that whatever proceeds are recovered while prosecuting an application under Section 43 being IA 799 of 2022 in this matter or any other application for PUFEE transactions (Preferential, Undervalued, Fraudulent & Extortionate transactions), the proceeds shall go to the CoC. The e-copy of affidavit has come on record.

....

With respect to the prosecution of the said IA 799 of 2022, it is stated by the Learned Counsel for the RP that the mention is made in the Plan about the application to be pursued by the Resolution Professional. The affidavit further mentions that the RP shall continue to prosecute the application after the Resolution Plan is approved, as RP is part of monitoring committee for implementation of the Resolution Plan, and in

case if the monitoring dissolves after Plan being completely implemented, then the sole CoC member will have discretion to continue prosecuting the application.”

13. On perusal of application and documents annexed therewith it is found that the Applicant has failed to place on record the authorization letter / Board resolution of successful resolution applicants authorising Mr. Mahesh Baheti to submit Section 29A affidavit on behalf of both the Companies. Also on perusal on the plan it is noted that resolution plan amount also includes a contingent amount of Rs. 7.5 Lakhs. It is stated that if this amount remains unused for a period of 12 months from the Effective Date, thereafter that, the Corporate Debtor may use the same for its working capital. In respect thereof resolution applicant was asked to file the authorization letter and also an explanation / clarification was sought on 24.01.2023 as to how the resolution plan amount can be used as working capital of the resolved Corporate Debtor.

14. In compliance of the clarification sought on 24.01.2023, the successful resolution applicant through an affidavit on 01.02.2023 placed on record board resolution of successful resolution applicant authorizing Mr. Mahesh Baheti to submit the EoI to the Resolution Professional and take any other action, execution of document, legal process etc. necessary under the provision of the Code. The SRA has also given an explanation vide same affidavit. However, on not being satisfied by the affidavit of SRA, again a clarification on 03.02.2023 was sought and the Learned Counsel for the Resolution Applicant and Learned Counsel for the Resolution Professional submitted that the plan is very much in consonance with the provisions of the Code and there is no bar for such contingent clauses for the benefit of the

claimants and also such contingent amount, if unutilized being then used as working capital of the Corporate Debtor. Learned Counsel for SRA has relied on clause 6.2, 6.3, 6.4, 6.5 of the resolution plan and reiterated the same. It is also submitted that such condition in the resolution plan is not barred under the provisions of the Code as it is the object of the Code to resolve/revive the corporate debtor.

15. 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 repayment of other debts of the corporate debtor.

[Section 30(2)(a)]

- (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) read with

CIRP Regulation 38(1)(a) & 38(1)(b)];

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

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

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

[Section 30(2)(d) read with CIRP Regulation 38(2)(c)];

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

[Section 30(2)(e)];

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

[Section 30(2)(f)]

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 statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors of the corporate debtor.

[CIRP Regulation 38 (1A)]

- (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.

[CIRP Regulation 38 (1B)]

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

[CIRP Regulation 38(2)(a)]

- (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 timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan.

[CIRP Regulation 38(3)]

16. In view of the above provisions of the Code, 2016, the resolution plan submitted before us has been examined as follows:

- (i) The provision towards CIRP costs is made for Rs. 31,38,000/- to be paid within 30 days from the date of approval of the said plan by the Adjudicating Authority, in priority to the payment of other debts of the Corporate Debtor and hence, the provision for payment towards CIRP cost has been made. Thereby, Section 30(2)(a) has been complied with.

In view of sole secured creditor and CoC member the amount is distributed to the said sole secured financial creditor.

- (ii) It is stated in clause 6.5 of resolution plan that as per Information Memorandum there does not exist any claim from Operational Creditors, thus the proportionate liquidation value payable to the operational creditors in accordance with Section 53 is Nil. However, the Resolution Applicant proposes to create a reserve of Rs. 5,00,000/- if required to be paid towards any claims pertaining to operational creditors. It is also stated that the said amount shall remain with the Corporate Debtor for a period of 12 months from the Effective Date (date on which copy of order of approval of resolution plan is received by Resolution Applicant) and after that the Corporate Debtor may use the same for its working capital.

It is noted that there is no dissenting financial creditor.

Thus, the provisions of Section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b) need not be complied with.

- (iii) The clause 7.4 of the resolution plan provides that with effect from the completion date (Effective date + 90 days), the Corporate Debtor shall be managed by professional/resolution applicant/persons nominated by the Resolution Applicant subject to successful resolution applicant complying all terms of plan and fully implementing it. Thus, the provisions of Section 30(2)(c) read with CIRP Regulation 38(2)(b) have been complied with.
- (iv) Clause 7.5 (B) of the resolution plan provides for the formation of Monitoring Committee for supervision and implementation of resolution plan. Thereby, Section 30(2)(d) and Regulation 38(2)(d) of CIRP Regulations, 2016 has been complied with.
- (v) The Resolution Professional has submitted that the plan does not contravene any provisions of the law. We also noted that the plan does not contravene any provisions of the law for the time being in force. Thereby, Section 30(2)(e) of IBC, 2016 has been complied with.
- (vi) The resolution plan also conforms to other IBBI Regulations as given hereunder:
 - (a) The resolution plan contains a statement regarding dealing with the interests of all stakeholders, including financial creditors and operational creditors, of the Corporate Debtor. Thereby, Regulation 38(1A) of CIRP Regulations, 2016 has been complied with.
 - (b) Clause 11.3 of the resolution plan contains a statement that the Resolution Applicant or any of its related parties has not failed to implement or contributed to failure of implementation of any other Resolution Plan approved by the Adjudicating Authority. Thus, statement giving details of

such non-implementation is not applicable under Regulation 38(1B) of CIRP Regulations, 2016.

(c) The term of the resolution plan is for a period of 90 days which shall commence on the date of the approval of the said plan by the Adjudicating Authority. It provides for the implementation schedule for payment to the creditors as envisaged in the resolution plan within a period of 2 months. Thereby, Regulation 38(2)(a) of CIRP Regulations, 2016 has been complied with.

(d) The resolution plan contains the sources of funds; is feasible and viable; has provisions for its effective implementation. Thereby, Regulation 38(3) of CIRP Regulations, 2016 has been complied with.

17. 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:

“86. 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.

87. 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 IB Code and continuing with the proceedings,

has brought out the 2019 amendment so as to cure the said mischief...”

18. In view of the above, all past claims would be extinguished as per law. However, as far as various statutory rights vested with the corporate debtor in form of various licenses, leases, and other alike matter, we make it clear that the successful resolution applicant has to approach the concerned statutory authority for those concessions and those authorities will consider the same as per their established procedure.

19. The proviso to Section 31 of the Insolvency and Bankruptcy Code, 2016, states that before passing an order for approval of the resolution plan the Adjudicating Authority, shall satisfy that the resolution plan has provisions for its effective implementation. We being satisfied approve the resolution plan submitted by Novatis Fashion Pvt. Ltd. & Gargi Texofab Pvt. Ltd. (in consortium) and in addition to the above directions, proceed to pass the following orders:
 - (i) Application is allowed.
 - (ii) The resolution plan of by Novatis Fashion Pvt. Ltd. & Gargi Texofab Pvt. Ltd. (in consortium) for Corporate Debtor i.e. Shreebhav Polyknits Pvt. Ltd., stands allowed as per Section 30(6) of the Code.
 - (iii) The approved ‘Resolution Plan’ shall become effective from the date of passing of this order.
 - (iv) The order of moratorium dated 27.09.2021 passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of passing of this order.

- (vi) As far as right of Financial Creditors against the personal guarantees / corporate guarantees in connection with loan / debt obtained by Corporate Debtor is concerned, such guarantors shall be at liberty to pursue their rights independent of approval of Resolution Plan. We further make it clear that there will not be any right of subrogation of such guarantors qua Corporate Debtor.
- (vii) The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant(s).
- (viii) 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.
- (ix) Accordingly, IA 1021 of 2022 in CP (IB) 386 of 2020 is allowed and stands disposed of in terms of the above directions.
- (x) Certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Mansi J./LRA