

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 178 of 2020 in C.P. (I.B) 08/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 07.08.2020**

Name of the Company: Vikash G Jain RP of Gopala Polyplast Ltd
V/s
Gopala Polyplast Ltd & Ors

Section : 30(6) IBC,2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.		<u>ORDER</u> (through video conferencing)		


Advocates, Mr. Nipun Singhvi and Mr. Vishal Dave appeared along with advocate, Ms. Rashmi Jain for the Applicant.

Learned lawyer, Mr. Arjun Sheth appeared on behalf of Successful Resolution Applicant.

The Order is pronounced in the open court vide separate sheet.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 7th day of August, 2020


MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

**I.A. No. 178 of 2020
in
CP(IB) No. 08 of 2019**

In the matter of:

Vikash G Jain
Resolution Professional of
Gopala Polyplast Limited ... Applicant

Versus

Gopala Polyplast Limited ... Respondent

Order delivered on 7th August, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance: Advocate Mr. Nipun Singhvi and Mr. Vishal Dave along with Advocate Ms. Rashmi Jain for Applicant. Advocate Mr. Arjun Sheth for Resolution Applicant.

ORDER

[Per se: Ms. Manorama Kumari, Member (Judicial)]

1. The instant application bearing number as (IA) No. 178 of 2020 in CP(IB)No. 08 of 2019, is filed by the Applicant, the Resolution Professional of M/s. Gopala Polyplast Limited (hereinafter referred to as "Corporate Debtor") under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IB Code") for seeking approval of Resolution Plan.





2. The facts of the case is/are herein under:

2.1 CP(IB)No.08 of 2019 was filed by Operational Creditor viz. M/s. Bonus Plastics Pvt. Ltd., under section 9 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process(hereinafter referred as "CIRP") against the Corporate Debtor which was admitted on 02.05.2019 by this Adjudicating Authority. The Applicant was appointed as Interim Resolution Professional (hereinafter referred as "IRP"). The IRP issued public announcement in form A as per Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 inviting claims from the Creditors of the Corporate Debtor.

2.2 That the last day of submission of claims was 17.05.2019 and on 27.05.2019, IRP submitted the report certifying the constitution of Committee of Creditors (hereinafter referred as "CoC") as per Regulation 17(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016.

2.3 In the 1st CoC meeting held on 31.05.2019, IRP was appointed as the Resolution Professional (hereinafter referred as "RP") with the consent of 90.40% CoC members in favour.





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2.4 Even after the last date of submission of claims i.e. 17.05.2019, IRP received several claims till 03.07.2019. The list of claims are given herein below-

S.No.	Name of Creditor	Voting Right
1.	Agencies (Rajasthan) Private Limited	0.73%
2.	Asahi Songwon	0.35%
3.	Ascent Finechem Pvt Ltd	0.85%
4.	Dena Bank (Bank of Baroda)	82.96%
5.	Dewan Housing Financial Corporation Limited	8.07%
6.	Famy Care Pvt Ltd.	0.05%
7.	Famy Energy Pvt Ltd.	1.37%
8.	IDFC First Bank	0.39%
9.	Indiabulls Consumer Finance Pvt Ltd.	0.04%
10.	OXYZO Financial Services	1.24%
11.	Sagar Powertex Pvt. Ltd.	3.73%
12.	United Petro Finance Limited	0.22%
	TOTAL	100%

2.5 RP invited the Expression of Interest (hereinafter referred as "EoI") on 15.07.2019 and the same was published in two newspapers in Ahmedabad Edition, namely- Business Standard (English) and Divya Bhaskar (Gujarati). The said fact was

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informed by RP in 3rd CoC meeting held on 20.09.2019. In view of the said EoI, RP received 4 EoI from the following-

- i. Plastene India Limited
- ii. Prudent ARC Ltd.
- iii. Amrut Polymers
- iv. Rare Assets Reconstruction Ltd.

Further, RP informed that out of 4, only 2 Resolution Plans was received from Plastene India Limited and Amrut Polymers.

2.6 In the 4th CoC meeting held on 07.10.2019, RP discussed about the Resolution Plans so received from the prospective Resolution Applicants. During the meeting, RP informed the CoC that both the prospective Resolution Applicants are eligible under Section 29A of the IB Code to submit their respective Resolution Plans. The said fact is reflected in the minutes of meeting annexed as **Annexure X** of the application.

2.7 Meanwhile, 180 days of CIRP was getting over on 28.10.2019. RP apprised the same to CoC members and CoC was of the view that since the Resolution Plans received did not meet the expectation, CoC should try to negotiate with the present Resolution Applicants and if not successful, explore more Resolution Plans by inviting fresh EoI. CoC further noted that this process shall take time and therefore, resolved to extend further 90 days beyond 180 days after 28.10.2019 in the 5th CoC meeting.

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2.8 In the 7th CoC meeting held on 02.12.2019, CoC discussed with regard to the existing Resolution Plans and re-issued of EoI. After further discussion, CoC decided that Resolution Plan needs some improvement with respect to maximum realization of assets and therefore, decided to re-issue EoI. After the re-issuance of EoI, prospective Resolution Applicants submitted the revised Resolution Plans with the following improvements:

i. PLASTENE INDIA LIMITED

The prospective Resolution Applicant revised its bidding offer to Rs. 39.60 crores plus interest @ 10% P.A. Moreover, it reduced payment terms to 3 years.

ii. AMRUT POLYMERS

Prospective Resolution Applicant improved its offer to 31 crores.

After reviewing the existing Resolution Plans, CoC was of the opinion that EoI must be open to other bidders as well so that new Resolution Plans can be in consideration along with the existing Resolution Plans.

2.9 In the 8th CoC meeting held on 30.12.2019, RP informed that no further Plan was received and CoC was left with 2 prospective Resolution Applicants namely, Plastene India Limited and Amrut Polymers. Since, Amrut Polymers showed its unwillingness to continue with its Resolution Plan, CoC is left with 1 plan i.e. Plastene India Limited.





2.10 Accordingly, in 9th CoC meeting the Resolution Plan was approved by 91.28% voting while rest of the members remained abstained from voting. However, there so no dissent on the Resolution Plan submitted by the Resolution Applicant.

2.11 The RP confirmed about the eligibility of the Resolution Applicant and can be declared as the successful Resolution Applicant for the Corporate Debtor. Subsequently, Letter of Intent was issued by the Resolution Applicant which is annexed as **Annexure-XVII** in the application.

2.12 The key features of the Resolution Plan are summarized as under:

Resolution Applicant Proposed Amount	Amount (in Rs.)	timeline	Clause of Resolution Plan	Remarks
Payment of CIRP cost				
The outstanding CIRP Cost has been independently	1.20 Crores	As and when incurred	Section 3.1 of the	

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<p>estimated by the Resolution Applicant to be up to Rs. 1.25 crores (Rupees One Crore Twenty Five Lakhs Only). In the event, the CIRP Costs is lower than Rs. 1.20 crores, the excess amount shall be added to the payment being made to the Financial Creditors & if CIRP Costs is more than Rs. 1.20 Crores then RA shall provide additional fund.</p>			Resolution Plan	
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<p>Payment of Workmen & Employees Dues</p> <p>Payment towards discharge of the Operational Creditors being the liabilities pertaining to Workmen and Employees Dues in full and final settlement.</p>	<p>0.30 Crores</p>	<p>Within T+30 Days</p>	<p>Section 3.5 of the Resolution Plan</p>	<p>The RA will infuse Rs. 0.30 Crores</p>
<p>Payment towards the remaining Operational Creditors including Statutory</p>	<p>0.17 Crores</p>	<p>T+30 Days</p>	<p>Section 3.5 of the Resolution Plan</p>	<p>The RA will infuse Rs. 0.17 Crores</p>

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<p>Dues of the Corporate Debtor and Other Creditors (excluding Related Party Creditors) (other than the Workmen and Employment Dues)</p>				
<p>Payment to the Financial Creditors (excluding the Related Party Creditor)</p> <p>Secured Financial Creditors</p>	<p>39.93 Crores</p>	<p>Rs, 7.60 Crores within 30 days of approval of the Resolution Plan. Rs. 10 Crores in second year. Rs. 22.32 Crores in third year.</p>	<p>Section 3.5 of the Resolution Plan</p>	<p>It includes issue of zero-coupon non-convertible debenture of Rs. 1.60 Crores repayable in three years from the date of approval of</p>

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Financial Creditors (Unsecured)	0.46 Crores	T+30 Days	Section 3.5 of the Resolution Plan	RA will infuse the requisite amount
Financial Creditors from Related Parties	Nil	-	-	-
Provision for Contingent Liabilities	0.02 Crores	As and when materialize	-	RA will infuse the requisite amount
TOTAL PAYMENT	42.08 Crores	-	-	-

The RP further proposed the grace period of 60 days for payment over and above 30 days with interest @ 10% in respect of upfront.

3. Heard the Applicant, the present application has been filed for approval of the Resolution Plan under Section 30(6) of the IB Code

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(as amended upto date) submitted by RP in respect of the Corporate Debtor. The Applicant/ the Resolution Professional, deliberating the sequence of events right from calling of EoI up to approval of the Resolution Plan by the CoC in its 9th meeting submitted the Resolution Plan duly approved by the CoC by 91.28% in favour of the Resolution Plan so submitted by Resolution Applicant as the Resolution Plan complies with the requirements as envisaged under Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as well as Section 30 of the Code, and sought for approval of the Resolution Plan by this Adjudicating Authority.

4. In view of that Section 30(2) and 30(4) is applicable in the instant case. For sake of the convenience the amended provision is reproduced herein below-

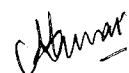
“30. Submission of Resolution Plan

(1) A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;





[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

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(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

5. During the course of arguments, Resolution Applicant filed an addendum dated 20.07.2020 to the Resolution Plan stating the following amendments:

- I. Rate of Interest to be charged 9% instead of 10% proposed in the plan in order to compensate for the additional cost to be incurred by the Company owing to event of Burglary.
- II. Upfront payment shall be allowed to be made in 90 days.
- III. Interest free period of 3 months on the entire outstanding amount payable to Bank of Baroda.

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IV. Terms of repayment to be increased from 3 years to 4 years for secured financial creditors.

The changes so made in the respective clauses of the Resolution Plan pursuant to the above amendments are given in detail in the addendum, which was passed in the 11th CoC meeting with 90.34% voting.

FINDINGS:

6. Looking to the entire facts of the case, it is found that the COC has approved the plan with 91.28% voting in favour of the approval of the plan. More so, the Resolution Applicant fulfils the mandatory contents of the Resolution Plan as provided under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. Regulation 38 is reproduced herein under-

“38. Mandatory contents of the resolution plan.

(1) A resolution plan shall identify specific sources of funds that will be used to pay the –

(a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;

(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and

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(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

["(1A) A resolution plan shall 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."]

(2) A resolution plan shall provide:

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

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

(c) adequate means for supervising its implementation."

The said objective of the Resolution Plan is affirmed in the decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors.** The Supreme Court has observed that National Company Law Tribunal has no jurisdiction and authority to analyze or evaluate the commercial decision of the Committee of Creditors (CoC) to enquire into the justness of the rejection of the Resolution Plan by the dissenting Financial Creditors.

Keeping in view such object behind the enactment of the Code, intention of the Legislature, that the priority is to be given to the resolution than liquidation in the larger interests of the public, workmen, stakeholders and the other employees of the corporate debtors in the interest of justice and in order to achieve the object of

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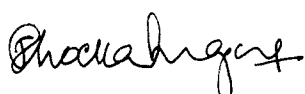
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the Code and liquidation of a company can be only as a last resort, wherein, all efforts for bringing Resolution Plan were failed or it cannot be found workable in the larger public interest. Hence, now the approval of Resolution Plan by this Adjudicating Authority is rule as per the apex court's decision in the matter of **K. Sashidhar Vs. Indian Overseas Bank & Ors** as discussed above.

The Hon'ble Supreme Court in its recent judgment in Civil Appeal No. 10673 of 2018 in **K. Sashidhar Vs. Indian Overseas Bank & Ors.** comprising of Hon'ble Justice A.M. Khanwilkar and Hon'ble Justice Ajay Rastogi observed that Adjudicating Authority has no jurisdiction to interfere with the commercial wisdom of the CoC.

On the backdrop of the decision taken by Hon'ble Supreme Court, it is pertinent to note herein that in the instant case, there is no interference with commercial wisdom of CoC with regard to the implementation of the Resolution Plan.

7. However, with regards to the **Concession and Relief** sought for, by the Corporate Debtor, the Adjudicating Authority is of the opinion that the Resolution Applicant may approach/ have all liberty to approach the concerned statutory/competent authority for any concession, waiver or exemption as per prevailing law(s) of the land or as the case may be. It is needless to mention herein that approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the




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Company/Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/own jurisdiction to pass any appropriate order as the case may be. The Resolution Applicant(s) on approval of the Plan may approach those Competent Authorities/Courts/Legal Forums/Offices- Govt, or Semi Govt. / State or Central Govt, for appropriate relief(s) sought for in “Annexure 2” of the Resolution Plan.

8. Thus, not allowing the above said Annexure 2 i.e. **Concession, Relief and Dispensation**, sought for in the Resolution Plan, is not going to make any hindrance for proper implementation of the Resolution Plan as those are the subject matter of the concerned/appropriate Competent Authorities. The Resolution Applicant(s) has/have liberty to approach Competent Authorities for any concession, relief or dispensation as the case may be as when required for proper and effective implementation of the Plan.

9. Apart from the above observations and directions, it is further directed/ observed that:

- i. The approved Resolution Plan shall come into force with immediate effect.
- ii. The Resolution Plan shall be subject to the various existing laws in force and shall also conform to such other requirements specified by the Board and other Statutory/Competent Authorities as the case may be.

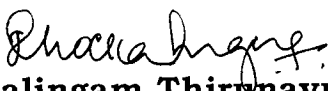





- iii. The Resolution Applicant(s) shall pursuant to the Resolution Plan approved under section 31(1) of the Code, obtain the necessary approvals required under any laws for the time being in force within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority under section 31(1) or within such period as provided for in such law, whichever is later or as the case may be.
- iv. 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 on its database.

10. Under such facts and circumstances, we, the Adjudicating Authority, is of the considered opinion and also being satisfied that the Resolution Plan as approved by the Committee of Creditors (CoC) meets the requirements as referred to under section 30(2) of the Code.

11. Accordingly, IA 178 of 2020 is allowed with the above said observations and directions and stands disposed of in view of the above order.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member(Technical)


Manorama Kumari
Adjudicating Authority
Member(Judicial)