



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

MA. No. 4059/2019

In

CP(IB)No. 128/MB/C-II/2018

**Application filed under Section 30(6)
and 60(5) of the Insolvency and
Bankruptcy Code, 2016 r/w
Regulation 39(4) of the Insolvency and
Bankruptcy Board of India (Insolvency
Resolution Process for Corporate
Persons) Regulations, 2016.**

Filed by

Mr. Kailash Shah,

Resolution Professional

of Unique Sugars Limited

...Applicant

In the matter of

Agarwal Coal Corporation Pvt Ltd.

...Operational Creditor

Versus

Unique Sugar Ltd

...Corporate Debtor

Order Pronounced on: - 16/10/2024

Coram:

Anil Raj Chellan

Member (Technical)

Kuldip Kumar Kareer

Member (Judicial)



Appearances:

For the Applicant/Resolution Professional:- Adv. Aniruth Purusothaman
a/w Adv. Aditya Sharma

ORDER

Per: Kuldip Kumar Kareer, Member Judicial

1. The present Interlocutory Application is filed by Mr. Kailash Shah, the Resolution Professional of Unique Sugars Limited seeking approval of the Resolution Plan submitted by Rawalwasia Yarn Dyeing Private Limited under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation ("the CIRP Regulations"). The Resolution Plan was approved by 67.18% of the Committee of Creditors (CoC) in the 7th meeting held on 06.12.2019.
2. The Applicant submits that Agarwal Coal Corporation Pvt. Ltd., the Operational Creditor initiated the Corporate Insolvency Resolution Process ('CIRP') against Unique Sugar Ltd. (hereinafter called 'the Corporate Debtor') under Section 9 of the Code. This Tribunal vide order dated 28.02.2019 initiated CIRP against the Corporate Debtor and appointed Mr. Javadsha Vasa as the Interim Resolution Professional (IRP). The IRP constituted the Committee of Creditors consisting of all operational creditors, one representative of workmen and one representative of employees in accordance with Regulation 16 of the CIRP Regulations as the Corporate Debtor has no financial creditors. The IRP convened the first meeting of the



Committee of Creditors (CoC) on 05.04.2019 wherein the IRP was resolved to be appointed as Resolution Professional (RP).

3. In the 3rd CoC meeting held on 31.07.2019, the members of the CoC decided to seek extension of the (CIRP) and also exclusion of certain period. Pursuant to the resolution passed by the CoC, the Applicant filed application for extension and exclusion of certain period and the same was allowed by this Tribunal vide its Order dated 09.09.2019 and the last date of the CIRP was on 01.12.2019.
4. In the 4th CoC meeting held on 21.08.2019, the members of the CoC resolved to replace Mr. Javadsha Vasa, RP with Mr. Kailash Shah. This Tribunal vide its Order dated 30.09.2019 appointed Mr. Kailash Shah as the RP of the Corporate Debtor.
5. The RP published Form G inviting Expression of Interest (EoI) on 23.08.2019. However, no Prospective Resolution Applicants (PRAs) submitted the EoI and hence the members of the CoC resolved to issue Form-G once again in its 6th CoC meeting. Accordingly, Form-G was once again issued on 16.11.2019 wherein the last date for submission of EOI was mentioned as 02.12.2019.
6. Pursuant to the invitation of EoI, the Applicant had received a Resolution Plan on 02.12.2019 from Rawalwasia Yarn Dyeing Private Limited and the same was put forth before the members of the CoC in the 7th CoC meeting held on 06.12.2019 for their consideration and discussion.
7. The Applicant brought to the knowledge of the members of the CoC that as per the valuation reports submitted by the valuers, the average liquidation value of the assets of the Corporate Debtor is Rs. 22,51,50,000/- (Rupees



Twenty-Two Crores Fifty-One Lakh and Fifty Thousand Only) whereas the total value of the Resolution Plan as submitted by the Resolution Applicant is Rs. 15,15,15,151/- (Rupees Fifteen Crores Fifteen Lakh Fifteen Thousand One Hundred and Fifty-One Only) which is less than the average liquidation value. The Applicant drew attention of the members of the CoC to the provisions of Section 30 (2) (b) of the Code which provides the payments of the debts to be paid to the Operational Creditors shall not be less than the amount that would have been paid to such Creditors in the event of liquidation of the Corporate Debtor under Section 53 of the Code or 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.

8. Though it was bought to the knowledge of the members of the CoC that the Resolution Plan was not meeting the conditions, as stipulated under the Code, the members of the CoC approved the Resolution Plan by 67.18% voting rights.

9. **Brief background of the Corporate Debtor:**

The Corporate Debtor is a Public Company incorporated on 10.09.1981. It is classified as Non-government Company and is registered with Registrar of Companies, Mumbai. Its Authorized Share Capital is Rs. 4,00,00,000/- and its Paid-up Capital is Rs. 2,83,24,800. The Corporate Debtor was initially into the business of manufacturing of Maize-starch Powder useful in Pharmaceutical and food industry as binder, thickener etc. The Corporate Debtor was also into the business of Wind Energy for Power generation.



Brief background of the Resolution Applicant:

The Resolution Applicant is a Surat, Gujarat based Private Limited Company incorporated on 29.10.1987 and is involved in the business of spinning, weaving and finishing of textiles. The Promoters are in the business of textiles for last 30 years. The promoters are well qualified and are having vast experience in textile business. The Resolution Applicant registered its operating revenue of Rs. 74.68 Crore in Financial Year 2017-2018. During the Financial year 2018-2019, the Company achieved revenue of Rs. 98.31 Crore and the profitability also improved from 9.26% in Financial year 2017 to 10.67%.

Salient features of the approved Resolution Plan:

11. The Resolution Plan proposes to pay the due of the different categories of creditors in the following manner:

Amount in Lakhs

Sr. No.	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan	Percentage of the amount provided against the admitted amount of the claim
1.	Dissenting Secured Financial Creditors	-	-	-	-

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	Other Secured Financial Creditors	-	-	-	-
3.	Dissenting Unsecured Financial Creditors	-	-	-	-
4.	Other Unsecured Financial Creditors	-	-	-	-
5.	Operational Creditors	19,90,84,434	19,90,84,434	8,15,72,696	40.97%
	a. Government	4,96,18,698	4,96,18,698	4,96,18,698	100%
	b. Workmen	-	-	-	-
	c. Employees	1,03,23,757	1,03,23,757	1,03,23,757	100%
6.	CIRP costs			1,00,00,000	
	Total	25,90,26,889	25,90,26,889	15,15,15,151	

- a. The Successful Resolution Applicant prescribes total amount of Rs. 15,15,15,151/- (Rupees Fifteen Crores Fifteen Lakhs Fifteen Thousand One Hundred and Fifty-One Only) to the stakeholders of the Corporate Debtor.

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b. **Infusion and Sources of Funds :**

Days from the Effective date	Amount of Infusion	Sources of Funds
30 days	1,00,00,000	EMD to be amount of Rs. 76,00,000/- Funds to be received from Debtors/FDR's and Sale proceeds from Fixed Assets Rs. 24,00,000/-.
60 days	1,03,23,757	Funds to be received from Debtors/FDR's and Sale proceeds from Fixed Assets
90 days to 120 days	4,96,18,698	Funds to be received from Debtors/FDR's and Sale proceeds from Fixed Assets
150 days	1,01,96,587	Funds to be received from Debtors/FDR's and Sale proceeds from Fixed Assets

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180 days	1,01,96,587	Funds to be received from Debtors/ FDR's and Sale proceeds from Fixed Assets
210 days	1,01,96,587	Funds to be received from Debtors/ FDR's and Sale proceeds from Fixed Assets
240 days	1,01,96,587	Funds to be received from Debtors/ FDR's and Sale proceeds from Fixed Assets
270 days	1,01,96,587	Funds to be received from Debtors/ FDR's and Sale proceeds from Fixed Assets
300 days	1,01,96,587	Funds received from Debtors/ FDR's and Sale proceeds from Fixed Assets
330 days	1,01,96,587	Funds to be received from Debtors/ FDR's and Sale

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		proceeds from Fixed Assets
365 days	1,01,96,587	Funds to be received from Debtors/ FDR's and Sale proceeds from Fixed Assets
Total Cash Infusion	15,15,15,151	

c. **Financial Proposal of the Resolution Applicant**

I. **CIRP costs :**

- i. An aggregate amount of Rs. 1,00,00,000/- (Rupees One Crores Only) in total is proposed towards the CIRP costs to be paid in 30 days from the effective date. In case the amount of CIRP costs exceeds Rs. 1,00,00,000/- the RA shall bear the same and in case it is less than Rs. 1,00,00,000/-, the residual amount shall be paid to the operational creditors proportionately.

II. **Payments to the Operational Creditors (excluding statutory authorities and workmen and employees)**

The Resolution Applicant proposes to pay Rs. 8,15,72,696/- i.e. 40.97% to both ascending and



descending Operational Creditors excluding statutory
authorities and workmen and employees.

III. Payment to Workmen and Employees

The Resolution Applicant proposes to pay entire admitted claim of Rs. 1,03,23,757/- to the workmen and employees of the Corporate Debtor.

IV. Payment to Statutory Authorities

- i. The Resolution Applicant proposes to pay an entire admitted amount of Rs. 4,96,18,698/- to the statutory authorities within 90 to 120 days of the approval of the Resolution Plan.

d. Implementation of the Resolution Plan:

The Resolution Applicant has proposed the existing Resolution Professional to be appointed as the Monitoring Official in consultation with the CoC or the Monitoring Committee (if any) to be formed for the purpose of implementation of the Resolution Plan for supervising and for effective implementation of the Plan. The plan further provides that the monitoring official would from time to time report to the CoC about the progress in the implementation of the plan.

e. Performance Security:

In accordance with regulation 36B (4A) of the CIRP Regulations, the Resolution Applicant has provided performance security by way of bank guarantee for a sum of Rs. 76,00,000/-.



f. **Eligibility under section 29A of the Code:**

The Resolution Applicant, as per the requirement of Regulation 39(1)(a) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, has filed an Affidavit dated 02.12.2019 stating its eligibility under section 29-A to submit the Resolution Plan.

Observations of the Adjudicating Authority:

12. We have heard the Applicant and perused the Resolution Plan and the other related documents submitted along with the Application.
13. As per the records, the liquidation value of the Corporate Debtor is Rs. 22.56 Crores and the fair value is Rs. 34.14 Crores. There are no Financial Creditors of the corporate debtor and as a result, the CoC consists of Operational Creditors only. The Resolution Plan provides Rs. 8,15,72,696/- to the Operational Creditors. and Rs. 1,03,23,757/- to the workmen and employees of the Corporate Debtor. An amount of Rs. 4,96,18,698/- is proposed to be paid to the statutory authorities. It is further observed that the Resolution amount under the Resolution Plan is lower than the liquidation value of the Corporate Debtor. However, in this regard, the Counsel for the RP has relied upon *Maharashtra Seamless Limited vs. Padmanabham Venkatesh and Ors. Civil Appeal Nos. 4242 of 2019*, whereby the Hon'ble Supreme Court has held that there is no requirement that the resolution plan should match the maximized asset value of the Corporate Debtor. It was further held that there is no provision in the Code or Regulation under which the bid of any Resolution Applicant has to match liquidation value arrived in the manner provided in



Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016 and the intent to conduct the valuation is only to assist the members of the CoC. It was further held that the CoC in its commercial wisdom has the discretion to approve a plan wherein upfront payment is quoted at an amount lesser than the liquidation value of the Corporate Debtor. In this regard, a further reference has also been made to the law laid down in *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors. (2020) 8 SCC 531* where it was held that there is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the CoC but the decision of the CoC must reflect that it has taken into account maximizing the value of the assets of the Corporate Debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. It was further held that the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the CoC and the limited judicial review available to the Adjudicating Authority is to see that the CoC has taken into account the fact that the Corporate Debtor needs to be maintained as a going concern during the Insolvency Resolution Process.

14. We have thoughtfully considered the above contentions of the Counsel for the RP and have perused the case law. It is a matter of record that the resolution plan in its entirety has not been placed on record despite directions issued by this Authority. Though the RP placed on record an additional affidavit dated 09.07.2024 enclosing a copy of resolution plan as Exhibit (A) but even the said document does not appear to be complete. Apart from that, it has been candidly admitted in the said affidavit itself that the resolution plan submitted by the Resolution Applicant does not comply with the provisions of Section 30 (2) (b) and Regulation 38 (1) of the CIRP



Regulations, 2016 which provide that the payment of the debts of the 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 payment of debts of the Financial Creditors, who do not vote in favour of the resolution plan, in such a 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.

15. It is further worth-mentioning that, as stated above, there being no financial creditor of the Corporate Debtor, the CoC consisted of only the operational creditors, the plan has been approved by a voting percentage of 67.18% only which means that all the operational creditors have not approved the plan and the operational creditors, who have not voted in favour of the plan or have abstained from voting, are not presumably agreeable to the approval of the plan. Despite that, they are being paid less than the liquidation value, contrary to what has been envisaged in Section 30 (2) of the Code. The position would have been different, had the CoC, consisting of operational creditors alone approved the plan alone by 100% voting share. Therefore, the operational creditors who have not voted in favour of the resolution plan, cannot be paid less than what they would have been in the event of liquidation. Therefore, in our considered view, the plan does not meet the requirements of Section 30 (2) of the Code.



As regards the law laid down in *Maharashtra Seamless Limited vs. Padmanabham Venkatesh and Ors. (Supra)*, in our considered view, the same cannot be applied to the facts and circumstances of the present case. In the cited case, the CoC consisted of financial creditors, who in their commercial wisdom, deemed it appropriate to accept a plan of a lesser value than the liquidation value in order to keep the company as a going concern. However, in the said case, it has been observed by the Hon'ble Supreme Court that "while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the CoC, the limited judicial review available is to see that the CoC has taken into account the fact that the Corporate Debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximize the value of its assets; and that the interest of all stakeholders including the operational creditors has been taken care of." It is, therefore, clear that even in the cited judgment, the Hon'ble Supreme Court has observed that the Adjudicating Authority is to ensure that the interest of the operational creditors is to be taken care of meaning that they cannot be paid lesser than they would have been in the event of distribution under Section 53 of the Code. In the instant case, since some of the operational creditors, who have either not voted in favour of the plan or have abstained from voting, are being paid less than what they would have been paid in the event of the liquidation of the Corporate Debtor, the plan is clearly violative of the provision of Section 30 (2) (b) of the Code and, therefore, the same cannot be approved.

17. Though by way of an additional affidavit dated 23.09.2024, the RP clarified that out of the operational creditors who abstained from voting, the Sale Tax Department gave consent affidavit dated 12.09.2024 in favour of the plan but the other two operational creditors namely Jay Enterprises and Shri Sadguru



Traders have not given their consent. Therefore, the fact remains that all the operational creditors have not consented to the plan which means that they are not agreeable to receive less than what they would have received in the event of the liquidation of the company. Therefore, in the light of the mandatory provisions of Section 30 (2) (b) of the Code read with Regulation 31, the plan is liable to be rejected, being non-compliant of the same.

18. As a result of the above discussion, the **MA No. 4059/2019 filed by the RP for the approval of the resolution plan is hereby rejected.** There shall be no order as to costs.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)