

**Before the National Company Law Tribunal,
Chandigarh Bench
Corporate Bhawan, Plot No.4B, Sector 27-B, Madhya Marg,
Chandigarh.**

No: NCLT/CHD/Reg/2214

Date: 12-7-19

CA Nos. 363/2018 & 521/2018

In

CP (IB) No. 104/Chd/Hry/2017

In the matter of:

Punjab National Bank

...Non-Petitioner/Financial Creditor

Vs

Dinesh Polytubes Pvt. Ltd.

...Non-Respondent/ Corporate Debtor

CA No. 521/2018

And in the matter of:

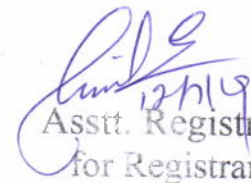
Jalesh Kumar Grover

...Applicant/Resolution Professional

To

Mr. Jalesh Kumar Grover, RP
R/o Flat No. 202, GH-40,
Sector-20, Panchkula-134116

Please find enclosed herewith a certified copy of order dated 12.07.2019,
for your information and necessary action.


Asstt. Registrar
for Registrar

NCLT, Chandigarh Bench

IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"

CA Nos. 363/2018 & 521/2018
IN
CP (IB) No.104/Chd/Hry/2017

Under Section 31 of the
Insolvency and Bankruptcy
Code, 2016.

In the matter of:

Punjab National Bank.
Vs.
Dinesh Polytubes Pvt. Ltd.

... Non-Petitioner/Financial Creditor.
... Non-Respondent/Corporate Debtor

CA No.521/2018

And in the matter of:

Jalesh Kumar Grover
R/o Flat No.202, GH-40,
Sector-20, Panchkula-134116

... Applicant/Resolution Professional.

Order delivered on: 12.07.2019

**Coram: Hon'ble Mr. M.K. Shrawat, Member(Judicial).
Hon'ble Mr. Pradeep R. Sethi, Member(Technical).**

For the Resolution Professional: 1.Mr.G.S. Sarin, Practising Company Secretary.
2.Mr. Jalesh Kumar Grover, RP, in person.

For the Resolution Applicant: Mr. N.P.S. Chawla, Advocate.

Per: Pradeep.R. Sethi, Member(Technical)

ORDER

CA No.363/2018

CA No.363 of 2018 was filed seeking approval of resolution plan submitted by two individuals jointly namely Shri Sanjay Satrodia and Shri Anoop



Singh. Vide order dated 06.09.2018, it was directed that the members of Committee of Creditors (**CoC**) be heard on the resolution plan. It is noted in the order dated 17.10.2018 that the representative of Punjab National Bank states that the Bank is not to say anything apart from the decision of the CoC. Order dated 14.11.2018 notes that amended application CA No.521/2018 is filed after removal of omissions in the original application. CA No.363 of 2018 was accordingly disposed of.

2. CA No.521/2018 is filed by the Resolution Professional (**RP**) under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **Code**) read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the **Regulations**) seeking sanction of resolution plan as approved in the meeting of the CoC held on 31.07.2018.

3. It has been submitted that the insolvency petition was filed by the financial creditor i.e. Punjab National Bank under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Dinesh Polyubes Pvt. Ltd. (hereinafter referred to as **Corporate Debtor**) and the same was admitted vide order 11.12.2017 and the CIRP of the corporate debtor was initiated. It is submitted that the applicant was appointed as Interim Resolution Professional (**IRP**) vide order dated 20.12.2017 and within three days of the appointment order, the IRP issued a public announcement as per Regulation 6 of the Regulations read with Section 15 of the Code in Form A in two newspapers i.e. Dainik Jagran, a Hindi newspaper dated 21.12.2017 and Business Standard (English), Chandigarh Edition on 21.12.2017 thereby inviting claims from the creditors of the corporate debtor as envisaged in the Code.



4. It is submitted that in pursuance of the public announcement, only one claim was received from the financial creditor i.e. Punjab National Bank, which was 100% voting share verified and after collation, the IRP constituted the CoC as per the provisions of Section 21 of the Code.

5. It is submitted that the applicant as IRP also appointed two registered valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations and the liquidation value as assessed on the basis of these two reports as per unamended Regulation 35 comes to ₹184.48 lacs (primary as well as collateral securities). Since there was significant difference in the valuation reports of plant and machinery submitted by two valuers, the RP has appointed the 3rd valuer for plant and machinery. The valuation reports submitted by all the appointed valuers along with the 3rd valuer for plant and machinery are at Annexure-D of the paper book.

6. It is stated that in the first meeting of the CoC held on 18.01.2018, the CoC resolved to continue with the IRP and appointed him as RP. The RP made a public announcement for invitation of resolution plan in Form G as prescribed in Regulation 36 (A) of the Regulations by publishing the Form G in Business Standard on 06.02.2018. Further, in the second meeting of the CoC on 20.02.2018, RP informed the members that Information Memorandum could not be submitted as corporate debtor has not provided any relevant data after so many reminders and follow ups and even no relevant data is available on Public Domain. The matter was adjourned for next meeting for further action. Also e-mail was put forward to financial creditors and corporate debtor on 13.02.2018 for submission of resolution plan.



7. In the third meeting of the CoC on 11.04.2018 the RP apprised the CoC that one prospective resolution applicant came forward on a condition of acquisition of all mortgaged properties. The RP also apprised about the application made by Mr. Pawan Kumar (owner of neighbouring land of corporate debtor) for purchase of land of the corporate debtor to extend his area of operation and also for the purchase of non-core assets of the corporate debtor.

8. It is submitted that after publication of Form G on 06.02.2018 a corrigendum to Expression of Interest vide advertisement in Business Standard newspaper dated 24.04.2018 extending last date of submission of resolution plan to 28.04.2018 inviting potential resolution applicants was published by the RP. Copy of the corrigendum published is at Annexure-J of the paper book. Two prospective resolution applicants namely Amit Singhal and Pawan Godara submitted the resolution plan in sealed envelope for consideration of the CoC. It is submitted that all the resolution plans were opened in front of the CoC in the fourth meeting held on 03.05.2018. The resolution plan was declared H-1 and the resolution applicant was asked to submit a detailed plan within seven days.

9. It is stated that in sixth meeting of the CoC held on 05.06.2018 Mr. Amit Singhal informed CoC that he will submit the plan along with two of his partners namely Sanjay Satrodia and Mr. Anoop Singh but due to some personal reasons, Mr. Amit Singhal does not want to work in partnership with Mr. Sanjay Satrodia and Mr. Anoop Singh. Therefore, Mr. Sanjay Satrodia along with Mr. Anoop Singh has submitted the resolution plan.

10. CA No.214 of 2018 was filed by the RP under Section 12(2) of the IBC, 2016 for extension of the CIRP time period by a further period of 90 days and the



same was allowed vide order dated 12.06.2018. A copy of the order is at Annexure-N of the paper book.

11. It is further stated that affidavits of the resolution applicants regarding their eligibility under Section 29A, read with Regulation 38 of IBC, 2016 is at Annexure-Q of the paper book. Also the RP has filed compliance certificate in revised Form H (Annexure-R) as required under I&B Code (Amendment) Ordinance 2018 No.6 of 2018 dated 06.06.2018. Vide Diary No.3415 dated 10.09.2018, the copy of certificate/undertaking that the contents of the resolution plan fulfil all the requirements of the Code and Regulations and that the resolution plan stands duly approved by the CoC was filed as Annexure A-2 and copy of the Form H was filed as Annexure A-3.

12. It is submitted that the CoC while accepting the bid had taken care of all the provisions of the Code and the Regulations. It is prayed that the application may be allowed and the resolution plan as approved by the CoC in the CIRP of the corporate debtor be approved.

13. The learned counsel for the RP submitted that no claim with regard to statutory dues and labour dues have been received. The learned counsel for the resolution professional submitted that as per Form H (Annexure A-3 of Diary No.3415 dated 10.09.2018), all the provisions of the Code and the Regulations were complied with and that the approval of the resolution plan was made by 100% voting share of the financial creditors in the meeting of the CoC held on 31.07.2018 and therefore, the resolution plan submitted by Sanjay Satrodia and Anoop Singh may be approved.

14. During the course of hearing on 20.12.2018, it was contended that the respondent is seeking to carry forward all the losses of the company in terms of



amended provisions of Section 79 of the Income Tax Act, 1961 and therefore, notice was served upon the Income Tax Department to examine the resolution plan.

15. In compliance of the order dated 20.12.2018, the Income Tax Department in its report dated 19.02.2019 (Diary No.970 dated 26.02.2019) has stated that the issue of carry forward of losses under the Code is not found to be a bonafide claim. Therefore, there is no applicability of carry forward/set off of losses in the present case. Further, it has been requested that a sum of ₹7,35,631/- as increased by the amount of interest under Section 220(2) of the Income Tax Act chargeable @ 1% per month upto the date of payment of income tax arrears may be set aside towards the legitimate income tax dues against the company.

16. By order dated 10.05.2019, it was noticed that the assets to be acquired includes the assets in the individual names of promoter/guarantor. Also the resolution applicant withdraws the claim for carrying forward the losses of the company in terms of Section 79 of the Income Tax Act, 1961.

17. Learned authorized representative of the Punjab National Bank filed affidavit dated 29.05.2019 (Diary No.2744 dated 30.05.2019). It is stated that the loan of ₹5.39 crores was secured against the assets of the corporate debtor and mortgage was created on the assets of the promoter/personal guarantor in favour of Punjab National Bank. Details of the immovable properties of the corporate debtor alongwith assets belonging to the personal guarantor and mortgaged with the bank available at the time of approval of resolution plan are mentioned in tabular form (para 5). The competent authority of the bank has approved the proposal for resolution of account vide note dated 20.07.2018. Copy of the approval note and the minutes of the CoC are annexed at Annexure A/1 and A/2.



18. We have carefully considered the submissions of the learned counsel for the RP and the learned Senior Counsel for the resolution applicant and have also perused the record.

19. The corporate debtor was incorporated in June, 2009 and was engaged in the business of manufacturing of PVC pipes of different sizes and as discussed above, the CIRP proceedings were initiated by order delivered on 11.12.2017. The present application is filed for approval of the resolution plan submitted by Sanjay Satrodia and Anoop Singh. The approval has been sought under the provisions of Section 31 (1) of the Code.

20. We may first of all state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditor, the distribution of voting share among them and the position of voting for the resolution plan is as under (para no.5 of Form H – Annexure-Q).

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Punjab National Bank	100%	Voted in favour of the resolution plan submitted by the successful joint Resolution Applicant, Sanjay Satrodia and Anoop Singh.

21. The details of stakeholders under the resolution plan given in para 7 of Form H (Annexure-Q) is as follows:-

(Amount in Rs. Crs)

Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided	Amount Provided to the
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				under the Plan#	Amount Claimed (%)
1	Dissenting Secured Financial Creditors	-	-	-	-
2	Other Secured Financial Creditors	5.78	5.78	2.53	43.77%
3	Dissenting Unsecured Financial Creditors	-	-	-	-
4	Other Unsecured Financial Creditors	-	-	-	-
5	Operational Creditors.	-	-	-	-
	Government	0.79	0.79	-	-
	Workmen	-	-	-	-
	Employees	-	-	-	-
	Trade Payables	0.36	0.36	-	-
6	Other Debts and Dues	-	-	-	-
Total		6.93	6.93	2.53	-

22. The compliance of the resolution plan has been given in para No.9 of Form H (supra) as follows:-

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Since it was a closed and small unit, no such criteria was defined by COC.	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Yes, as per affidavit as page no. 242-243 and as per the minutes of the 6 th COC meeting- Resolution Applicant is eligible to submit Resolution Plan as mentioned on page 181, Minutes of	Yes



		6 th meeting dated 05.06.2018. The relevant extract is as below: The Chairman informed the members that the resolution applicant is eligible as per provisions of section 29A of Insolvency and Bankruptcy Code, 2016 and as per Section 30(1) to submit a Resolution Plan.	
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes, As per affidavit at page. No 242-243 of application	Yes
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs?	Yes, At page no-229 Point-I Resolution applicant has proposed to pay insolvency resolution process cost amounting to Rs. 0.08 Crores in priority to the repayment of other debts of the corporate debtor.	Yes
	(b) provides for the payment of the debts of operational creditors?	At page no-229 Point III According to the provisions of Section 30 of the IBC read with Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidation value due to operational creditors shall be provided before any payment to financial creditor. In the present case, since the Outstanding dues of workers and liquidation value towards operational creditor is NIL hence this provision is abided by. Yes, At page no-230 Point IV	Yes



		The Resolution Applicants propose to appoint fresh Board of Directors after approval of the Plan by Hon'ble
	c) provides for the management of the affairs of the Corporate debtor?	<p>NCLT. The erstwhile Board is suspended due to initiation of CIRP, the Resolution Plan proposes that the previous board members would resign and the Resolution Applicant would appoint such number of new Board members as it would decide.</p> <p>It is further proposed that resolution applicants viz Sanjay Satrodia and Anoop Singh will be the two directors on the board of the corporate debtor with equal share holding of 50% each</p>
	(d) provides for the implementation and supervision of the resolution plan?	<p>Yes,</p> <p>At page no-230Point -V</p> <p>The Resolution Applicant undertakes that on approval of the Resolution Plan by the Adjudicating Authority, the Resolution Applicant also proposes to appoint a Monitoring and Supervising Professional as would be decided by the Secured Financial Creditor, being the only member of the Committee of Creditors at the cost as decided by the COC.</p> <p>COC had not decided the same in its last meeting held on 31.07.2018. However, later on COC has approved the name of Resolution Professional as Monitoring and supervising agency and issued a certificate regarding appointment of Resolution Professional, Mr. Jalesh Kumar Grover as Monitoring and supervising professional and compliance for the same has been done through diary no. 3581 dated 20.09.2018 CA No. 363/2018 in CP No. 104/chd/hry/2017.</p> <p>No</p>



	(e) contravenes any of the provisions of the law for the time being in force?		
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC?	Yes, At page no-220-221 &194 of the application Under the head means of finance.	Yes
	(b) has been approved by the CoC with 66% voting share?	Yes at page 193 Resolution for approval has been passed by 100% voting share "RESOLVED THAT, the Resolution Plan submitted by Mr. Sanjay Satrodia and Mr. Anup Singh be and hereby approved by COC with 100% voting and resolution professional Mr. Jalesh Kumar Grover hereby authorized to move an application under section 31 for approval of resolution plan from adjudicating authority."	
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Yes, At page no-230 Point -V The Resolution Applicant undertakes that on approval of the Resolution Plan by the Adjudicating Authority, the Resolution Applicant also proposes to appoint a Monitoring and Supervising Professional as would be decided by the Secured Financial Creditor, being the only member of the Committee of Creditors at the cost as decided by the COC. COC had not decided the same in the last meeting held on 31.07.2018. However later on COC has approved the name of the Resolution Professional as Monitoring and supervising agency and issued a certificate regarding appointment of Resolution Professional, Mr. Jalesh Kumar Grover as Monitoring and supervising professional and	Yes



		compliance for the same has been done through diary no. 3581 dated 20.09.2018 CA No. 363/2018 in CP No. 104/chd/hry/2017.	
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	The plant of the Corporate Debtor was a closed unit for last 2 years therefore COC decided not to go ahead with transaction audit	Yes
Regulation 38 (1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the - Insolvency resolution process costs?	Yes, At page no-221 Point-I & 193-194 under the head means of finance	Yes
	liquidation value due to operational creditors?	Liquidation Value due to operational creditor is Nil as explained on page no-229 Point III According to the provisions of Section 30 of the IBC read with Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidation value due to operational creditors shall be provided before any payment to financial creditor. In the present case, since the Outstanding dues of workers and liquidation value towards operational creditor is NIL hence this provision is abided by.	
	Liquidation value due to dissenting financial creditors?	There is only one Financial Creditor hence there is no dissenting financial creditors as mentioned at page 229 Point II According to the provisions of the Insolvency & Bankruptcy Code, 2016, in case the financial creditors representing a minority stake do not consent to the repayments as proposed in the resolution plan, then such creditors would be called as	



		<p>dissenting creditors. Dissenting creditors would be eligible for payment of such amount as they would get, in the event of liquidation of the Corporate Debtor and further such amount shall be paid to the dissenting creditors in priority to any payment being made to financial creditors who voted in favour of the resolution plan.</p> <p>Since in the present case, there is only one financial creditor, there need not be any dissenting creditor to be treated separately.</p>	
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	<p>Yes, At page no-230-231 Point VI</p> <p>The proposed Resolution plan has been prepared taking in consideration the Interest of all the stakeholders and the same can be justified as under –</p> <ol style="list-style-type: none"> 1. As there are no outstanding payments towards workmen and employees of the corporate debtor up to 11th December 2017 , the CIRP date , no amount is required to be paid to workmen and employees of the corporate debtor 2. The secured financial creditor namely Punjab National Bank is being paid an amount of Rs. 2.53 Crores. Corporate Debtor will be a going concern and will generate employment in the local region. 3. The Resolution Applicants proposes an amount of Rs. 2.61 crores inclusive of CIRP cost under the Resolution Plan. Since the proposed amount is not even sufficient to pay off the entire dues of Financial Creditors (PNB) , hence the liquidation value available to other creditors is Nil as per the provisions of section 53 of IBC,2016. 	Yes
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p>	<p>Yes At page no-231Point VII</p>	Yes



		The term of plan and its implementation schedule is 3 months from the approval of the plan from adjudicating Authority	
	(b) for the management and control of the business of the corporate debtor during its term?	<p>Yes,</p> <p>At page no-230</p> <p>The Resolution Applicants propose to appoint fresh Board of Directors after approval of the Plan by Hon'ble NCLT. The erstwhile Board is suspended due to initiation of CIRP, the Resolution Plan proposes that the previous board members would resign and the Resolution Applicant would appoint such number of new Board members as it would decide.</p> <p>It is further proposed that resolution applicants viz Sanjay Satrodia - and Anoop Singh will be the two directors on the board of the corporate debtor with equal share holding of 50% each</p>	<p>Yes</p> <p>Yes</p>
	(c) adequate means for supervising its implementation?	<p>Yes,</p> <p>At page no-230 Point -V</p> <p>The Resolution Applicant undertakes that on approval of the Resolution Plan by the Adjudicating Authority, the Resolution Applicant also proposes to appoint a Monitoring and Supervising Professional as would be decided by the Secured Financial Creditor, being the only member of the Committee of Creditors at the cost as decided by the COC.</p> <p>COC had not decided the same in the last meeting held on 31.07.2018. However later on COC has approved the name of the Resolution Professional as Monitoring and supervising agency and issued a certificate regarding appointment of Resolution Professional, Mr. Jalesh Kumar Grover as Monitoring and supervising professional and compliance for the same has been done through diary no. 3581 dated</p>	



		20.09.2018 CA No. 363/2018 in CP No. 104/chd/hry/2017.	
38(3)	Whether the resolution plan demonstrates that –		Yes
	(a) it addresses the cause of default?	The resolution plan does not specifically address the cause of default	
	(b) it is feasible and viable?	Yes, At page no-220-221 & 193-194 Under the head means of finance.	Yes Yes
	(c) it has provisions for its effective implementation?	Yes at page no. 231 under the head term of plan and its implementation schedule Point No vii	
	(d) it has provisions for approvals required and the timeline for the same?	No approvals required (Since not applicable in present case)	
	(e) the resolution applicant has the capability to implement the resolution plan?	At page no-200 Under the head Brief background of the Resolution Applicant	
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	The plant of the Corporate Debtor was a closed unit for last 2 years therefore COC decided not to go ahead with transaction audit	Yes

23. The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading as follows:-

If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding

CA Nos. 363/2018 & 521/2018 IN
CP (IB) No.104/Chd/Hry/2017



on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

24. The conditions provided for in Section 31(1) of the Code for approval of resolution plan are therefore:-

- (a) *The Resolution Plan is approved by the CoC under Section 30(4) of the Code;*
- (b) *The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*
- (c) *The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

25. It is submitted by the RP that the resolution plan has been approved by a vote of 100% of voting share of the financial creditor and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

26. The provisions of Section 30(2) of the Code are as follows:-

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 repayment of other debts of the corporate debtor;*
- (b) *provides for the payment of the 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 section 53;*
- (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) confirms to such other requirements as may be specified by the Board.

27. The compliance of Section 30(2) of the Code is given in para No.9 of Form H (*supra*). The same is being further examined as under:-

Section 30(2)(a): The resolution plan (page 229 of the application) states that payment of insolvency resolution process cost amounting to ₹0.08 crore shall in priority to the repayment of other debts of corporate debtor;

Section 30(2)(b): It is stated in Form H that the liquidation value is ₹1.84 crores. It is stated that as the liquidation value towards operational creditors is NIL, hence this provision is abided by. In view of the debts of the secured financial creditors being ₹5.78 crores, the liquidation value available for the operational creditor would be NIL. The resolution plan therefore, does not provide for any amount for statutory dues and labour dues. We may add that as regards statutory dues, the same would be dealt with by the respective Government Department.

Section 30(2)(c) & (d): At page 230 of the resolution plan (page 250 of the application), it is stated that The Resolution Applicants propose to appoint fresh Board of Directors after approval of the Plan by Hon'ble NCLT. The erstwhile Board is suspended due to initiation of CIRP, the Resolution Plan proposes that the previous board members would resign and the Resolution Applicant would appoint such number of new Board members as it would decide.

Further, it is proposed that the two resolution applicants viz Sanjay Satrodia and Anoop Singh will be the two directors on the board of the corporate debtor with equal share holding of 50% each. The Resolution Applicant also undertakes that on approval of the Resolution Plan by the Adjudicating Authority, the Resolution Applicant proposes to appoint a Monitoring and Supervising



Professional as would be decided by the Secured Financial Creditor, being the only member of the Committee of Creditors at the cost as decided by the COC.

It is also stated in Form H (para 9) that although the CoC in its last meeting held on 31.07.2018 had not decided the same but, later on CoC has approved the name of Resolution Professional as Monitoring and supervising agency and issued a certificate regarding appointment of Resolution Professional, Mr. Jalesh Kumar Grover as Monitoring and supervising professional and compliance for the same has been done through diary no. 3581 dated 20.09.2018 CA No. 363/2018 in CP No. 104/Chd/Hry/2017.

Section 30(2) (e) : In Form H (*supra*) (para No.4), the RP has certified that the resolution plan complies with the provisions of the Code and Regulations and does not contravene any of the provisions of law for the time being in force.

28. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan states that the resolution applicant undertakes that on approval of the resolution plan by the Adjudicating Authority, the resolution applicant also proposes to appoint a Monitoring and Supervising Professional as would be decided by the Secured Financial Creditor, being the only member of the CoC at the cost as decided by the COC. It is submitted that the CoC in a meeting held on 31.07.2018 has approved the name of RP as Monitoring and Supervising Agency and issued a certificate regarding appointment of RP, Shri Jalesh Kumar Grover as Monitoring and Supervising Professional. The terms of the plan and its implementation schedule is stated to be three months from the approval of the plan by the Adjudicating Authority. As regards the means of finance, it is stated in the resolution plan (page 221 of the application) that out of the total amount proposed under the



resolution plan ₹2.61 crores, an amount of ₹10.00 lacs is already paid vide FDR dated 13.06.2018 and that the resolution applicant proposes to pay the balance amount by way of sale of land owned by the resolution applicants Shri Sanjay Satrodia and Shri Anoop Singh. Land in Hisar is stated to be owned by Shri Sanjay Satrodia as well as Shri Anoop Singh. It is stated that the amount would be given by way of unsecured loan at 0% rate of interest. It is submitted that the corporate debtor currently is not in operation and the resolution plan may diversify the product line as the machinery is in dilapidated condition. As per the resolution plan (page No.227 of the application) the resolution applicants have proposed to infuse capital to the extent of ₹0.25 crore to restart the similar operations after making some repairs on the machinery and that the resolution applicant will employ an experienced professional, if required, to run the unit after having acquired the same.

29. Vide order dated 20.12.2018, it was noted that the resolution applicant is seeking to carry forward all the losses of the corporate debtor in terms of amended provisions of Section 79 of the Income Tax Act, 1961 which requires opportunity to be afforded to the jurisdictional Principal Commissioner or Commissioner of Income Tax. Notice was thereupon directed to be issued to the Income Tax Department through the Nodal Officer - Principal Chief Commissioner of Income Tax, NWR, Ayakar Bhawan, Sector 17-E, Chandigarh. The report of the Income Tax Department was filed by Diary No.970 dated 26.02.2019 stating that the issue of carry forward of losses under the Code in the light of amendment of Section 79 of the Income Tax Act, 1961 is not found to be a bonafide claim. As noted in order dated 10.05.2019, the learned counsel for resolution applicant withdrew the claim for carrying forward the losses of the company in terms of the provisions of Section 79 of Income Tax Act, 1961.



30. Vide order dated 10.05.2019, it was noted that the resolution plan states that the assets to be acquired include the assets in the individual names of promoter/director and that the sole financial creditor Punjab National Bank be heard on this issue. Affidavit was filed by Punjab National Bank (Diary No.2744 dated 30.05.2019). The affidavit was filed by the Chief Manager of Punjab National Bank stating that the CoC approved the RP based on the calculations below:-

O/s in the account as on 31.03.18	Claim Amount	Recoverable Dues as on 31.03.18	Memoranda dues as on 31.03.18	Provision as on 31.03.18	NPRV	Resolution Amount
308.66	577.71	451.29	578.63	123.46	245.51	261.00 Including IRP Cost

It is further stated that the resolution plan has been approved at a value above the NPRV of ₹245.51 lacs by the CoC.

31. Another affidavit (Diary No.3004 dated 13.06.2019) has been filed stating that the loan of ₹5.39 crores as on 30.06.2017 was secured against the assets of the corporate debtor and additionally, mortgage was created on the assets of promoters/personal guarantors in favour of Punjab National Bank. The details of the immovable properties of the corporate debtor alongwith the assets belonging to the personal guarantors and mortgaged with the bank available at the time of approval of resolution plan are stated to have a distress value of ₹288.83 lacs and net present realisable value of ₹245.51 lacs. It is stated in para No.7 of the affidavit that all the above mentioned properties and personal guarantees shall be released on receipt of full payment as per resolution plan. We note that the decision taken by Punjab National Bank is based on its commercial and banking wisdom and is therefore, not being interfered with.



32. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No.3 of Form H (*supra*) the RP has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that the joint resolution applicant Sanjay Satordia and Anoop Singh has submitted affidavit dated 06.08.2018 pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The RP has submitted that the resolution plan has been approved by the CoC with 100% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations. The final consideration payable by the resolution applicant Sanjay Satordia and Anoop Singh is up front payment of ₹2.61 crores towards insolvency resolution process costs and secured financial creditors within the period and for the purpose discussed above. It is also stated that Punjab National Bank being the only financial creditor has approved the plan and no objections are filed.

33. In view of the above discussion, the resolution plan submitted by Sanjay Satordia and Anoop Singh as approved by the CoC under Section 30 (4) of the Code is approved subject to comments in para No.27 regarding statutory dues. The resolution so approved shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

34. Under the provisions of Section 31 (3) of the Code, we also direct as

under:-



CA Nos. 363/2018 & 521/2018 IN
CP (IB) No. 104/Chd/Hry/2017

- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 11.12.2017 shall cease to have effect; and
- b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

CA No.521/2018 is disposed of.

— Sol —
(M.K. Shrawat)
Member (Judicial)

July 12, 2019
arora

Provisioned
in open court
Arora
12.7.2019

— Sol —
(Pradeep R. Sethi)
Member (Technical)



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