

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH**  
*(through web-based vide conferencing platform)*

CA No.287 of 2019  
In  
CP(IB) No.35/Chd/HP/2018  
(Admitted)  
Under Section 30 (6) of the  
Insolvency and Bankruptcy Code,  
2016

**In the matter of:-**

Phoenix ARC Private Limited

...Financial Creditor

Versus

GPI Textiles Limited

...Corporate Debtor

**And in the matter of:-**

CA Jalesh Kumar Grover, Resolution Professional  
In the matter of GPI Textiles Limited  
SCO 131, 2<sup>nd</sup> Floor, Sector 5, MDC, Panchkula  
Haryana- 134114

...Applicant/Resolution Professional

Order delivered on 24.05.2022

**Coram: HON'BLE SHRI HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE SHRI SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present through Video Conferencing :-**

For the Applicant/Resolution Professional	:-	Mr. Abhishek Anand, Advocate Mr. Viren Sharma, Advocate
For the Resolution Applicant	:-	Mr. Atul Sood, Advocate
For Phoenix Arc Private Limited (Member of the Committee of creditors)	:-	Mr. Manish Jain, Advocate Ms. Divya Sharma, Advocate
For the Income Tax Department	:-	Mr. Yogesh Putney, Advocate

**PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)****ORDER****IA No.287/2019**

This application has been filed by the Resolution Professional, under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (for short the

'Code') read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016, (for short the '**Regulations**') for approval of Resolution Plan by this Adjudicating Authority, as approved by the Committee of Creditors (for short the '**CoC**') and for issuance of necessary directions to the corporate debtor, employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan to abide by the Resolution Plan.

2. Brief facts necessary for adjudication of the present application are that M/s Phoenix Arc Private Limited ('**financial creditor**') had filed an application under Section 7 of the Code before this Tribunal for initiation of Corporation Insolvency Resolution Process ('**CIRP**') against M/s GPI Textiles Limited '**corporate debtor**'). This Tribunal vide its judgment dated 06.07.2018 admitted the petition filed by the financial creditor and kept the matter for 12.07.2018 for appointment of Interim Resolution Professional. Vide order dated 12.07.2018, Mr. Jalesh Kumar Grover was appointed as Interim Resolution Professional ('**IRP**'). Thereafter, IRP made a public announcement in Form A as required under Regulation 6 of Regulations in 'Amar Ujala' (Hindi) and 'Financial Express' (English) for intimation of the commencement of the Corporate Insolvency Resolution Process of the corporate debtor and for calling the creditors to submit their claims along with the proof in the prescribed format. Subsequently, CoC of the corporate debtor was constituted by the IRP on 01.08.2018, comprising of Phoenix ARC Limited and State Bank of India, constituting 92.55% and 7.45% voting share, respectively.

3. In the 6<sup>th</sup> Meeting of the CoC, convened by the Resolution Professional on 17.12.2018, it was discussed to apply for extension of the CIRP period beyond 180

days in the matter of GPI Textiles Limited. The Resolution Professional informed the CoC that the CIRP period in the matter of GPI Textiles Limited was expiring on 07.01.2019 i.e. 180 days from the CIRP date. Therefore, it was decided by the CoC members that in the interest of revival of the corporate debtor, the CIRP period must be extended for a period of 90 days. It was further discussed that the extension is necessary also because the CoC members will need at least a month's time to evaluate and get the Resolution Plan approved from the sanctioning authority. Accordingly, Resolution Professional had moved an application before this Tribunal and this Tribunal, vide order dated 10.01.2019 extended the CIRP period by 90 days.

4. It is stated that in the 1<sup>st</sup> Meeting of the CoC held on 10.08.2018, following major discussion were held:-

- a. *Declaration received from financial creditors that they are not related to the corporate debtor.*
- b. *IRP appraised CoC regarding received & admitted claims subject to reconciliation due to unavailability of books of accounts of corporate debtor.*
- c. *IRP appraised CoC regarding Constitution of Committee of Creditors and their voting share.*
- d. *IRP appraised CoC regarding actions taken by him under CIRP including public announcement and taking control of all bank accounts in the name of the corporate debtor.*
- e. *IRP also appraised the CoC about the current working status including cash flows of the corporate debtor, unauthorized payment made to the Executive Director, Mr. Lalan Kumar Singh, high CIRP Cost (Excessive Payment being made to employees of the corporate debtor) as well as fire incident in the premise of the corporate debtor happened in the earlier year and probable recovery of insurance claim in that regard.*
- f. *IRP informed the CoC regarding appeal preferred by the Executive Director, Mr. Lalan Kumar Singh before the Hon'ble National Company Law Appellate Tribunal challenging the admission order of the Hon'ble National Company Law Tribunal Chandigarh Bench in the matter of corporate debtor.*
- g. *CoC resolved to appoint IRP, Mr. Jalesh Grover as the Resolution Professional in the matter of CIRP of GPI Textiles Limited*

*h. CoC also resolved to appoint Transaction Auditor as IRP informed the Committee about suspicious Transaction observed by the IRP after the admission order, but before taking charge by him in the matter of the corporate debtor.”*

5. It is stated in the application that 1st Expression of Interest ('EOI') was published vide advertisement in the newspaper 'Business Standard' and 'Amar Ujala' on 15.09.2018 to invite prospective resolution applicants to submit the resolution plans. In pursuance to the said EOI, ten prospective resolution applicants showed their interests.

6. Accordingly, the Resolution Professional appointed registered Valuers for determining the liquidation value of the corporate debtor as required under Regulation 35 of the Regulations. It is stated that as per the reports submitted by the Valuers, the liquidation value of the corporate debtor was Rs.103.33 Crores and net present value was Rs.78.54 Crores (Annexure -J).

7. It is stated that in the 8th Meeting of the CoC held on 30.01.2019, the Resolution Professional apprised the CoC that in total eight Resolution Plans from six prospective resolution applicants have been received from the Prospective Resolution Applicants in sealed envelopes till the last date of submission of the Resolution Plans. In the 9th Meeting of the CoC held on 05.02.2019, open negotiation with all the Resolution Applicants with CoC members was held for further improvement in the Resolution Plan and after open negotiation ranks were assigned as per the evaluation matrix to the Resolution Applicants and Resolution Applicants were advised to improve their proposal and the following ranks were assigned to them on the basis of their improved proposal:-

<b>S.No.</b>	<b>Name of the Resolution Applicant</b>	<b>Revised proposed amount</b>	<b>Rank as per Evaluation Matrix</b>
1	Aggarsain Spinners Limited	64 Crs.	1
2	Navraj Mittal & others	63.5 Crs.	2
3	Shivani Trendz Pvt. Ltd.	65.5 Crs.	3

8. It is further stated that the Resolution Professional convened the adjourned 9<sup>th</sup> Meeting of the CoC on 13.02.2019, wherein the Resolution Professional explained the legal opinion received on the question raised by the Resolution Applicants in the last meeting. Negotiations were held in two rounds and after completion of the round of negotiation, following ranks were allotted:-

<b>S.No.</b>	<b>Name of the Resolution Applicant</b>	<b>Final Proposed amount</b>	<b>Rank as per Evaluation Matrix</b>
1	Aggarsain Spinners Limited	69.00 Crs.	H1
2.	Shivani Trendz Pvt. Ltd.	74.0 Cr.	H2

In the said meeting, CoC decided to negotiate further to the highest Resolution Applicant- M/s Aggarsain Spinners Limited and the Resolution Applicant increased its proposed amount and concluded the negotiation with the last proposed amount of Rs.70 Crores. Minutes of adjourned 9<sup>th</sup> Meeting of the CoC has been annexed as Annexure T.

9. It is averred that 10<sup>th</sup> Meeting of the CoC was held on 21.02.2019, wherein the main agenda for the meeting was further negotiation on the amount proposed by the Resolution Applicants for improving the financial proposal of the plan submitted by the Resolution Applicants as the last proposed amount of Resolution Applicant, Aggarsain Spinner Limited was not acceptable, being much lower than the liquidation value and directed the Resolution Professional to call another CoC Meeting to invite all the four

Resolution Applicants, who participated in the negotiation process. Based on the proposal given by the prospective resolution applicants, all the four eligible were called for further negotiation and ranking is stated to be as under:-

<b>S.No.</b>	<b>Name of the Prospective Resolution Applicant</b>	<b>Rank as per Evaluation Matrix</b>
1.	Aggarsain Spinners Limited	H1
2.	Shivani Trendz Pvt. Limited	H2
3.	Navraj Mittal & Others	H3
4.	Pankaj Bhatia & Shreeji Cofab	H4

10. In the 11<sup>th</sup> Meeting of the CoC, held on 06.03.2019, the main agenda was further negotiation on the amount proposed by the Resolution Applicants for improving the financial proposal of the plan submitted by the Resolution Applicants. It is stated that discussions were held with all the three resolution applicants and only one resolution applicant increase the amount was offered through the following breakup:-

Resolution Applicant	Navraj Mittal & Others
Total Offered amount	74.75 Cr.
Financial Creditors	69.02 Cr.
Operational Creditors	4.73
CIRP Cost	1 Cr.

It is stated that as the proposed amount under the Resolution Plan was much lower than the liquidation value, the CoC decided to further negotiate with the Resolution Applicant on the proposed amount of the Resolution Plan through E-negotiation, which was held on 12.03.2018 and M/s Aggarsain Spinners Limited was identified as H1 Resolution Applicant with the highest pay out to all the stakeholders of the corporate debtor.

11. The Resolution Professional also apprised the CoC that there were total of four highest resolution applicants, who were invited for the final negotiation round in the CoC Meeting held on 06.03.2019, but due to absence of one Resolution Applicant in the meeting, CoC decided to conduct further negotiations through electronic means on 12.03.2018. Thereafter, the Resolution Professional informed that after the completion of successful E-negotiation process, M/s Aggarsain Spinners Limited was identified as H1 Resolution Applicant with the highest pay out to all the stakeholders of the corporate debtor. Accordingly, fully compliant Resolution plan was placed before the CoC for approval. It is submitted by the Resolution Professional that Financial Creditor, Phoenix ARC Limited having 92.55% voting share voted in favour of the plan and State Bank of India forming 7.45% of CoC voted against Resolution Plan as the consideration ought to be received by them in the proposed plan was much lessor than what they would have received in the event of Liquidation of the Corporate Debtor, hence plan submitted by Aggarsain Spinners Limited got approved by COC with 92.55% voting share with addendum to the Resolution plan containing the changes in the percentage pay out of the shares proposed to the workers, employees and operational creditors, which is reproduced as under: -

<b>Particulars</b>	<b>Amount Admitted</b>	<b>Amount Proposed</b>	<b>Revised Pay-out % on Claim Admitted (Approx.)</b>	<b>Revised Pay-out % on principal</b>
CIRP Cost	-	1.00	-	-
FC - State Bank of India	23.05	5.81	56.35%	25.21%
FC- Phoenix ARC Private Ltd.	286.48	72.21	55.97%	25.21%
Workers	2.23	2.23	100%	100%
ESI	0.48	0.27	56.25%	56.25%

EPFO	1.25	0.70	56.00%	56.00%
Employees	2.28	0.46	20.18%	20.18%
Trade Payable	43.97	.51	1.16%	1.16%
Excise Duty	5.89	.25	4.23%	4.23%
Electricity	7.26	.31	4.23%	4.23%
<b>Total</b>	<b>372.89</b>	<b>82.75</b>		

Consequently, Resolution Plan was put for voting for the CoC members through ballot paper and the Resolution Professional announced the following result:-

<b>Member of COC</b>	<b>% Voting Share</b>	<b>Assent/Dissent</b>
Phoenix ARC Limited	92.55%	Assent
State Bank of India	7.45%	Dissent

Thus, the Resolution Plan was approved by 92.55% voting share.

12. Thereafter, the Resolution Professional was appointed as Monitoring and Supervising Agency for supervising the implementation of the Resolution Plan at a monthly fee of Rs.2,25,000/- plus taxes. The Resolution Professional also apprised the members about the application to be moved by the Resolution Applicant against HSBC for the recovery of approximately Rs.82 Crores plus interest.

13. As per the Code, the Resolution Professional submitted compliance certificate in Form H, which is annexed as Annexure – A-3 to this application.

14. It is submitted that the Resolution Applicant proposes an amount of Rs.83.75 Crores to settle all the claims (whether admitted or not admitted or under verification as on the date of submission of this Resolution Plan) of financial creditors, operational creditors (including workmen and employees), statutory dues and the estimated CIRP Cost of Rs.1 Crore (as per information provided, out of estimated CIRP Cost of Rs.1 Crore, Rs. 0.50 Crores has been paid on actual basis, the remaining Rs. 0.50 Crores



shall be paid). It is further stated that the Resolution Applicant had already deposited an amount of Rs.25 Lacs as EMD with the Resolution Professional vide a DD No. 105788 dated 25.01.2019 issued by Bank of Maharashtra payable at Chandigarh, as per the conditions of the eligibility criteria prescribed by the Resolution Professional for participating in the bidding process of the Corporate Debtor. After final approval of Resolution Plan by the Adjudicating Authority, the EMD amount shall be adjusted with the final proposed amount to the Financial Creditors within 60 days from the Effective Date or from the date of satisfaction of Conditions Precedents, whichever is later. It is also stated that the Resolution Applicant also proposes to infuse funds to meet the working capital requirement and upgradation and modernization of obsolete plant and machinery of the corporate debtor in addition to the proposed amount of Rs.83.75 Crores. The total estimated cost as proposed under the resolution plan is for Rs.113.75 Crores, the details of the projected cost is as under:-

<b>Sr.No.</b>	<b>Cost of Plan</b>	<b>Amount (Rs. in crores)</b>
	Payment proposed under the plan	
1.	Insolvency Resolution Process Cost	1.00
2.	Payment to Financial Creditors	78.02
3.	Payment to Operational Creditors	
a.)	Workmen Dues (100% of claim admitted)	2.23
b.)	Employees Dues (20.18% of claim admitted)	0.46
c.)	Suppliers of goods & services (1.16% of claim admitted)	0.51
d.)	Statutory Dues- Provident Fund, ESI (56% of claim admitted)	0.97
e.)	Statutory Dues- Sale Tax & Excise (4.23% of claim admitted)	0.25
f.)	Other operational creditor- HPSEB (4.23% of claim admitted)	0.30
	<b>Total payments proposed under resolution plan</b>	<b>83.75</b>
	Estimated capital expenditure	10.00
	Estimated working capital requirement	20.00
	<b>Total Project Cost</b>	<b>113.75</b>

15. It is stated in the application that total payment under this resolution plan shall be made within 60 days from the effective date or from the date of satisfaction of conditions precedent, whichever is later. It is further stated that the total proposed amount under the resolution plan is Rs.113.75 Crores including CIRP Cost. The summary of claims, proposed payment and percentage of claim admitted under the resolution plan by the resolution applicant is as under:-

(Amount in Rs. Crores)

Category of Creditors	Claim Filed	Claim Admitted	Proposed Amount	% of claim admitted
<b>Secured Financial Creditors</b>				
SBI	23.05	23.05	5.81	25.21% of claim admitted. 56.35% of principal amount of debt
Phoenix ARC Private Limited	286.48	286.48	72.21	25.21% of Claim admitted. 55.97% of principal amount of debt.
<b>Unsecured Financial Creditors</b>	195.74	20.25	NIL	NIL
<b>Operational Creditors</b>				
Dues of workmen	2.23	2.23	2.23	100%
Dues of Employees	3.30	2.28	0.46	20.18%
Dues related to Trade Payables	61.94	43.97	0.51	1.16%
Statutory Dues-PF-ESI	1.73	1.73	0.97	56%
Statutory Dues-Excise	5.89	5.89	0.25	4.23%
Dues of Electricity Department	11.04	7.26	0.31	4.23%
<b>Total</b>	<b>591.13</b>	<b>393.13</b>	<b>82.75</b>	

16. It is submitted that Section 30(6) of the Code mandates the applicant as a Resolution Professional to submit the resolution plan as approved by the Committee of Creditors to the Adjudicating Authority for approval under Section 31(1) of the Code.

Accordingly, as the resolution plan submitted by the resolution applicants has been duly approved by the members of the Committee of Creditors by a voting share of 92.55% which is more than the requisite voting share required i.e. 66%, the Resolution Professional has thus, filed the present for approval of the resolution plan before this Adjudicating Authority.

17. It is also submitted that Committee of Creditors while accepting the bid had taken care of all the provision and regulation of the Code. Thus, it is prayed that the instant application for approval of resolution plan, as approved by the Committee of Creditors, in the matter of corporate debtor be approved.

18. The learned counsel for the Resolution Professional has also submitted that as per Revised Form H, filed vide Diary No.00977/5 dated 15.06.2021, all the provisions of the Code and Regulations were complied with and the resolution plan has been approved by 92.55% voting share and thus, the resolution plan submitted by M/s Aggarsain Spinners Limited, as approved by the committee of creditors, be approved by this Adjudicating Authority.

19. We have heard Mr. Abhishek Anand, learned counsel for the applicant/Resolution Professional, Mr. Atul Sood, learned counsel for the Resolution Applicant and Mr. Manish Jain, learned counsel for Phoenix ARC Limited (Member of the Committee of Creditors). We have also gone through the record before us and have carefully considered the submissions made by learned counsel for the parties.

20. The CIRP proceedings under Section 7 of the Code, against the corporate debtor were initiated vide order dated 06.07.2018 and Committee of Creditors was constituted on 10.08.2018. The Resolution Plan includes a statement under Regulation 38(1A) of the CIRP Regulations as to how it has dealt with interests of all

stakeholders in compliance with the Code and Regulations made thereunder. The amounts provided for the stakeholders under the Resolution Plan, as given in Para 7 of Revised Form H, is as under:-

(Amount in Rs. Lacs)

Sr.No.	Category of Stakeholder	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	0	0	0	
		(b) Other than (a) above:				
		(i) who did not vote in favour of the Resolution Plan	2305.03	2305.03	581.00	25.21%
		(ii) who voted in favour of the Resolution Plan	28648.31	28648.31	7221.00	25.21%
		Total [(a) + (b)]				
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote	18503.56	2024.73	0.00	0.00%

		under sub-section (2) of Section 21				
		(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				
		Total [(a) + (b)]				
3.	Operational Creditors	(a) Related party of corporate debtor	0.00	0.00	0.00	0.00
		(b) Other than (a) above:				
		(i) Government	762.26	762.26	122.00	16.01%
		(ii) Workmen	222.97	222.77	222.77	99.91%
		(iii) Employees	303.35	227.8	46.00	15.16%
		(iv) Operational Creditors	7298.26	5123.08	82.00	1.12%
		Total [(a)+(b)]	58043.74	39313.98	8274.77	14.26%

4.	Other debts and dues	Creditors (other than financial creditors and operational creditors)	0	0	0	0
<b>Grand Total</b>			<b>58043.74</b>	<b>39313.98</b>	<b>8274.77</b>	<b>14.26%</b>

21. The compliance of resolution plan has been given in Para 9 of the Form H, which is as under:-

Section of the Code/Regulation No.	Requirement with respect to the 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?	Financial capability and stability of the Resolution Applicant (Page No.23-25 of the Resolution Plan attached as Annexure Y, relevant Page No.445-457 of the Application)	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?	Eligibility as per the provisions of the IBC, 2016	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes, as per affidavit on Page No.518-523 of the main application	Yes
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process	Glimpse of Resolution Plan Clause/ Para-Payment of CIRP cost in priority to other debts, at	Yes

		Page No.46 of the Resolution Plan, which is attached as Annexure Y, relevant page No.477 of the main application	
	b) provides for the payment to the operational creditors?	Glimpse of Resolution Plan Clause/ Para-Payment to operational creditor at Page No.46-47 of the Resolution Plan, which is attached as Annexure Y, relevant page No.477-478 of the main application	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	[it is apposite to mention here that the resolution plan was approved by the committee of creditors on 27.03.2019 and filed before this Adjudicating Authority on 08.04.2019. However, w.e.f. 16.08.2019, the Insolvency and Bankruptcy Code (Amendment) Act, 2019, by virtue of which Section 30(2)(b)(ii) stand amended and further Section 30(4) stands amended. The Resolution Professional in terms of order dated 11.09.2019 has filed a compliance affidavit with regards to the amendments vide Diary No.5538 dated 14.10.2019.	Yes  (subject to the clarification as provided)
	(d) provides for the management of the affairs of the corporate debtor?	Clause/Para vi: Business plan of Resolution Applicant at Page No.28-32 of the Resolution Plan which is attached as Annexure Y, (relevant Page No.459-463 of the main application)	
	(e) provides for the Implementation and	Glimpse of the Resolution Plan.	

	supervision of the Resolution plan?	Clause/Para v- Management & Control of the Business of the corporate debtor at Page No.49 of the Resolution Plan, which is attached as Annexure Y (relevant Page No.480 of the main application)	
	(f) Contravene any of the provisions of the law for the time being in force?	No	Yes
Section 30(4)	Whether the Resolution Plan		
	(a) is feasible and viable, according to the CoC?	Clause/Para vi: Business plan of Resolution Applicant at Page No.28-32 of the Resolution Plan which is attached as Annexure Y (relevant Page No.459-463 of the main application)	Yes
	(b) has been approved by the CoC with 66% voting share?	Yes, approved by 92.55% voting share at Page No.428-431 of the main application (voting results of Ballot Paper)	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Yes, CoC has approved the monitoring professional Mr. Jalesh Kumar Grover for the implementation of the Resolution Plan in the 12 <sup>th</sup> CoC Meeting held on 27.03.2019, at Page No.425-426 of the main application. (Minutes of the 12 <sup>th</sup> CoC Meeting)	Yes
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, 50 or 66	RP has already filed the application on 12.11.2018, vide Diary No.4370 before this Bench	Yes



	before the one hundred and fifteenth day of insolvency commencement date, under intimation to the Board?		
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Page No.33 of the Resolution Plan which is attached as Annexure Y (relevant Page No.464 of the main application)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Glimpse of Resolution Plan Clause/Para iv-interest of all stakeholders at Page No.47-48 of the Resolution Plan which is attached as Annexure Y (relevant Page No.478-479 of the main application)	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	No	No
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Not Applicable	
Regulation 38(2)	Whether the Resolution Plan provides:		Yes
	(a) the term of the plan and its implementation schedule?	Glimpse of Resolution Plan. Clause/Para- Terms of Resolution Plan and its implementation of Schedule at Page No.46 of the Resolution Plan	

		which is attached as Annexure Y (relevant Page No.477 of the main application)	
	(b) for the management and control of business of the corporate debtor during its term?	Glimpse of Resolution Plan. Clause/Para- Management and Control of the Business of Corporate Debtor during its term at Page No.49 which is attached as Annexure Y (relevant Page No.480 of the main application)	Yes
	(c) adequate means for supervising its implementation?	Glimpse of Resolution Plan. Clause/Para xi-Monitoring Agency for supervising implementation of the resolution plan at Page No.51-54 of the Resolution Plan, which is attached as Annexure Y, (relevant Page No.482-485 of the application)	Yes
38(3)	Whether the resolution plan demonstrates that-		
	(a) it addresses the cause of default?	Clause/Para: Major reason for losses of corporate debtor at Page No.12 of the Resolution Plan, which is attached as Annexure Y (relevant Page No.443 of the main application)	Yes
	(b) it is feasible and viable?	Clause/Para: Business plan of Resolution Applicant at Page No.28-29 of the Resolution Plan which is attached as Annexure Y (relevant Page No.459-460 of the main application)	Yes
	(c) it has provisions for its effective implementation?	Glimpse of Resolution Plan. Clause/Para xi-Monitoring Agency for	

		Supervising implementation of the Resolution Plan at Page No.51-54 of the Resolution Plan, which is attached as Annexure Y, (relevant Page No.482-485 of the main application)	
	(d) It has provisions for approvals required and the timeline for the same?	Clause/Para: Business Plan of Resolution Applicant at Page No.28-29 of the Resolution Plan, which is attached as Annexure Y, (relevant Page No.459-460 of the main application)	
	(e) the resolution applicant has the capability to implement the resolution plan?	Yes, at Page No.49 of the Resolution Plan which is attached as Annexure Y, (relevant Page No.480 of the main application) The Resolution Applicant has proposed a payment of INR 237 Crore. The Resolution Applicant has sufficient net worth/sources to pay off the entire consideration.	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes, vide Diary No.dated 12.11.2018, RP has filed one application in respect of preferential transactions and fraudulent transactions. The matter is pending before this Tribunal.	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	The Successful Resolution Applicant has submitted the performance bank guarantee of Rs.8.38 Crores in favour of the financial creditor, Phoenix ARC Private Limited under CIRP and the same has been placed before this	Yes

		Bench, vide an CA No.369 of 2019.	
--	--	-----------------------------------	--

22. The approval of the Resolution Plan has been sought under Section 31 of the Code, which reads as under:-

**31. Approval of resolution plan. -**

*(1) 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 on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] 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.]*

*(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.*

*(3) After the order of approval under sub-section (1), -*

*(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and*

*(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.*

*[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law 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 sub-section (1) or within such period as provided for in such law, whichever is later:*

*Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]*

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

- a. The Resolution Plan is approved by the Committee of Creditors under Section 30(4) of the Code;

- b. The Resolution Plan so approved meets the requirement as referred to in Section 30(2) of the Code;
- c. The Resolution Plan has provisions for its effective implementation.

24. It is submitted by learned counsel for the Resolution Professional that the resolution plan has been approved by a vote of 92.55% voting share of the financial creditors, therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

25. The provisions of Section 30(2) of the Code are as under:-

### **30. Submission of resolution plan**

xxx

xxx

xxx

*“(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*

*(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) confirms 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.]”*

26. Without adverting to the detailed examination of compliance of Section 30(2) of the Code in the Resolution Plan, it is necessary to delve upon the fact whether the Resolution Applicant was eligible at the time of submission of Resolution Plan under Section 29A(f) of the Code. It may be noted that a separate application bearing IA No.348 of 2021 has been filed by the Unsuccessful Resolution Applicant challenging the eligibility of the Resolution Applicant under Section 29(A)(f) of the Code.

27. Vide separate order of even date passed by this Bench in IA No.348 of 2021, Successful Resolution Applicant is held ineligible under Section 29(A)(f) of the Code, at the time of submission of the Resolution Plan. Thus, to sum up, when Resolution Applicant is declared ineligible under Section 29A(f) of the Code, the resolution plan submitted by the Resolution Applicant could not be considered and approved by the committee of creditors under Section 30(4) of the Code. Therefore, Resolution Plan submitted by the Successful Resolution Applicant cannot be considered for approval by this Bench and the same stands rejected. However, to avoid liquidation of the corporate debtor, vide separate order of even date passed in IA No.348 of 2021, period of Corporate Insolvency Resolution Process is extended by 90 days for exploring the

possibility of resolution of the corporate debtor. Accordingly, matter is referred back to the Committee of Creditors, which is ordered to be reinstated and revived to make another attempt for consideration of other resolution plans in accordance with law.

Thus, IA No.287 of 2021 stands dismissed and disposed of accordingly.

Sd/-  
(Subrata Kumar Dash)  
Member (Technical)

Sd/-  
(Harnam Singh Thakur)  
Member (Judicial)

May 24, 2022  
MK