

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

**I. A. No. 592 of 2021
In
C.P. No. 99/IB/2019**

In the matter of an Application under Section 30(6), Section 31 and Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

In the matter of
Buzz Events

... Operational Creditor

V/s.

Varron Aluminum Private Limited

... Corporate Debtor

I.A. No. 592/2021

Mr. Avil Jerome Menezes

...Applicant/Resolution

Professional

Order delivered on: 19.01.2022

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance: For the Applicant/RP: Mr. Chetan Kapaida, Advocate a/w
Mr. Aniruth Puroshothaman, Advocate
For the Resolution Applicant: Mr. Shyam Kapadia, Advocate

Per: Shri H. V. Subba Rao, Member (Judicial)

ORDER

1. This is an Application under Section 30(6), Section 31 and Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (the Code) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant, which is approved by 100% of

the voting share of the members of the Committee of Creditors (hereinafter referred to as 'CoC').

2. The facts leading to the Application are as under:

- i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 06.11.2019 under section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Ms. Tanuja Jalan was appointed as Interim Resolution Professional. The IRP published a public announcement on 03.12.2019 in "Free Press Journal" (Mumbai Edition - English Language) and "Nav Shakti" (Mumbai Edition - Marathi Language) inviting claims from the creditors of the Corporate Debtor.
- ii. The CoC in its 1st meeting held on 27.01.2020 decided to replace the IRP with Mr. Avil Jerome Menezes (hereinafter referred to as 'Applicant') as the Resolution Professional (RP). This Tribunal by order dated 02.03.2020 confirmed the appointment of the Applicant as the RP.
- iii. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

3. The Applicant states that in the 2nd CoC meeting held on 20.02.2020, valuers and transaction auditor were appointed Ms. Rajshree Padia and Mr. Vishnu Upadhyaya for valuation of financial assets; Mr. Kedar Arvind Chikodi and Mr. Karan Mody for valuation of Plant & Machinery; Mr. Kedar Chikodi and Mr. Dinesh Warade for valuation of Land & Building and M/s. Amit Ray and Company as the Transaction Auditors of the Corporate Debtor. The Applicant states that the liquidation value and fair value as per the valuation reports submitted by the valuers is as under:

INR in Crores	Valuer 1	Valuer 2	Valuer 3

	Fair Value	Liquidated Value	Fair Value	Liquidated Value	Fair Value	Liquidated Value
Land	3.36	3.23	4.56	3.19	3.96	3.21
Building	28.34	14.47	25.17	15.07	26.73	14.77
Plant & Machinery	13.08	7.62	14.71	7.35	13.90	7.49
Financial Assets	1.1	1.03	1.36	0.83	1.23	0.93
Total	45.88	26.35	45.75	26.44	45.82	26.40

4. Average Liquidation Value of the Corporate Debtor is Rs. 26.40 Crore and the average Fair Value is Rs. 45.82 Crore.

5. During the period of CIRP the RP issued Form-G on 26.03.2020, 26.04.2020 and 03.06.2020 inviting expressions of interest (EOI) in “Free Press Journal” (Mumbai Edition – English Language) and “Nav Shakti” (Mumbai Edition – Marathi Language) for prospective resolution applicants (PRAs). The last date for receiving the expression of interest was 25.04.2020, 02.06.2020 and 30.06.2020 respectively. The Applicant received EOIs from 2 Prospective Resolution Applicants (PRAs) within the stipulated time period but however a formal EOI and supporting documents as per the detailed EOI was only received from only one PRA. The Applicant issued a Request of Resolution Plan (hereinafter referred to as ‘RFRP’) along with the Evaluation Matrix on 15.07.2020 and the last date for submission of binding Resolution Plan by PRA was 14.08.2020 but, with the consent of the CoC the last date for submission of resolution plan was extended till 31.08.2020. The Applicant received resolution plans from the Cian Agro Industries and Infrastructure Limited (hereinafter referred to as ‘CIAN’) (the prospective resolution applicant).

6. The Applicant stated that on 25.08.2020, the Applicant received resolution plan form CIAN (Resolution Applicant) and further informed the members that the Resolution Plan submitted is not in compliance of the IBC 2016 and that

it has not submitted the Earnest Money Deposit (hereinafter referred to as 'EMD') of Rs. 50 Lakhs. Accordingly, the resolution applicant submitted its resolution plan and submitted the revised plan on 25.01.2021. Accordingly, the Applicant/ RP at the 17th meeting of the CoC held on 27.01.2021 placed revised plan before the CoC members, in which detailed deliberations and discussions were carried out on the resolution plan of Cian Agro Industries and Infrastructure Limited.

7. The RP submits that after due verification of the eligibility of the successful Resolution Applicant in terms of Section 29(A) of the Code, the CoC in its 17th meeting held on 27.01.2021 considered the revised and final Resolution Plan of Cian Agro Industries and Infrastructure Limited and approved the Plan with the voting share of 100%. Accordingly, compliance certificate in Form "H" was issued by the Resolution Professional.

8. **The salient features of the Resolution Plan are as under:**

A. The Resolution Applicant is engaged in the business of processing of Soybean / other seeds, marketing of edible oils in domestic marketing and De-oiled cakes in domestic and international markets. CIAN is dealing in manufacturing and packaging of edible Vegetable Oils and trading of Indian Rice, Sugar, Bio Fertilizers, FMCG products like various Spices and other Edible Oil. They also deal in erection & commissioning of industrial units in different horizon. The Resolution Applicant confirmed that it is eligible to submit Resolution plan as per Section 29A of Insolvency and Bankruptcy Code.

B. As the Corporate Debtor is engaged in manufacturing and supply of Aluminium alloy, Casting Extrusion, Steel Forging, High Pressure Die Casting, Hot Steel Forging/ Machining and Aluminium the Resolution Applicant under this Resolution Plan has proposed that as they already have a Manufacturing unit for aluminium based products/ components, in order to expand

existing business, they have shown interest in the Corporate Debtor.

C. The Resolution Applicant has proposed to takeover the management and ownership control of the Corporate Debtor by acquiring up to 100% shareholding of the Company, the details of the proposal are as follows:

D. The Resolution Plan proposes a total financial proposal of Rs. 30.21 Crores as per the following breakup:

SR. NO.	PARTICULARS	AMOUNT PROPOSED (in Rs.)	REMARKS
1.	Cash consideration to be infused and distributed within 105 days from the effective date.	28,50,00,000/-	
2.	Sacrifice of receivables from Corporate Debtor.	80,58,753/-	The RA proposed to forego the balance amount payable by the CD to the group companies of the Resolution Applicant.
3.	Balance outstanding of subsidy amount to be passed on to the Financial Creditors	90,55,351/-	Subsidy granted by the Directorate of Industries to the CD.
TOTAL		30,21,14,014	

E. The Resolution Applicant proposes to infuse Rs. 5,00,00,000/- (Rupees Five Crores Only) as working capital over & above the total cash consideration of Rs. 28.5 Crores within 6 months of approval.

F. Timeline of infusion of funds by Cian Agro shall be in the following manner:

Number of Days	Amount to be infused (in Rs.)	Source
30 days	2,50,00,000	Equity
105 days	7,50,00,000	Equity/Inter Corporate Deposit
	18,50,00,000	Bank Debt/Inter Corporate Deposit/Equity/Equity Linked Instrument
Total Cash Infusion	28,50,00,000	

G. It is pertinent to mention that an amount of Rs. 30,21,14,014/- (Rupees Thirty Crore Twenty-One Lakhs Fourteen Thousand Fourteen Only) will be paid as full and final settlement of all the liabilities of the Corporate Debtor, out of which estimated insolvency resolution process costs which will be payable at actuals (based on estimation up to 31.03.2021) is 3,36,00,000/- (Rupees Three Crores Thirty-Six Lakh Only) and to the Financial Creditors – Rs. 25,14,00,000/- (Rupees Twenty-Five Crores Fourteen Lakhs only). Therefore, Total Pay-Outs under the Resolution Plan is Rs. 28,50,00,000/-.

9. The details of the proposed payments are as follows:

A) PAYMENT OF INSOLVENCY RESOLUTION PLAN

- (i) The actual Insolvency Resolution Process Cost (hereinafter referred to as 'IRPC') will be intimated to the RA in the course of the acceptance of the Resolution Plan by the NCLT and hence made a provision of Rs. 3,36,00,000/- in total towards CIRP costs.
- (ii) The IRPC remaining unpaid as on the Effective Date shall be paid in full in priority to all the creditors in terms of Section 30(2) of the Code.
- (iii) The IRPC shall be paid at actuals by the Resolution Professional within 30 days from the Effective Date.

B) PAYMENT OF OPERATIONAL CREDITORS (EXCLUDING STATUTORY AUTHORITIES AND WORKMEN AND EMPLOYEES)

The Applicant has submitted the total claim of Rs. 1,72,69,172/- towards the claim of Operational Creditors (Excluding Statutory Authorities and Workmen and Employees) and has further admitted the claims. However in the Resolution Plan proposed to pay NIL amount to the Operational Creditors (Excluding Statutory Authorities and Workmen and Employees).

C) PAYMENT TO FINANCIAL CREDITORS

Financial Creditors are proposed to be paid a total amount of Rs. 26,85,14,014/-. The said amount includes the sacrifice of receivables by Cian Agro of Rs. 80,53,753/- and the subsidy amount to be passed on to the Financial Creditors as and when received of Rs. 90,55,351/- within 105 days from the effective date. There are no dissenting Financial Creditors.

D) PAYMENT TO EMPLOYEES AND WORKMEN AND CONTRACTORS OF THE CORPORATE DEBTOR

No claim was filed or admitted of the Workmen and Employees of the Corporate Debtor. Therefore, the Resolution Plan has NIL payment to be made to the Workmen and Employees.

E) PAYMENT TO STATUTORY AUTHORITIES

It is submitted that the Applicant till receipt of Final Resolution Plan dated 25.01.2021 has admitted Statutory claim of Rs. 13,47,670/-. The Liquidation Value due to such Operational Creditors in NIL and hence Cian Agro has proposed to pay NIL amount to the Statutory Authorities.

F) DISBURSEMENT OF AMOUNT SHALL BE CARRIED OUT IN ACCORDANCE WITH AND IN THE ORDER OF PRIORITY SET OUT IN THE TABLE BELOW:

Sr. No.	Particulars	Category	Amount Admitted	Proposed Distribution	Upfront Payment made (as a % of Admitted Claims)	Remarks
1.	CIRP Cost		3,36,00,000	3,36,00,000	100%	The unpaid CIRP cost as estimated by Resolution Professional is Rs. 3.36 Crores. However, the same at actuals will be paid as certified by RP.
2.	Operational Creditors	Workmen and Employees	NIL	NIL	NIL	
		Statutory Authorities	13,47,617	0	0%	
		Other Operational Creditors	3,77,29,543	0	0%	
3.	Financial Creditors*		18,85,38,28,470	25,94,58,753	1.37%	Any amount available for

						distribution after the payment of Unpaid CIRP Cost and Operational Creditors as stated above shall be distributed to Financial Creditors.
	Total		18,92,65,05,630	29,30,58,753		

* The amount proposed above is excluding the subsidy amount of Rs. 90,55,351 to be passed on the Financial Creditors as and when received. The total consideration to Financial Creditors will be Rs. 26,85,14,014.

10. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor in terms of Section 30(2)(c). The Plan also provides for implementation of provision of the Resolution Plan as stated above as per Section 30(2)(d). The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:

- a) Payment of CIRP cost will be made in priority over Financial Creditor (Regulation 38(1)(a)).
- b) Since the plan has been approved by 100% voting share of the CoC. This is in compliance of Regulation 38(1)(b) of the Regulations.

- c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).
- d) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan.

11. It is beneficial to refer to the observation of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.*: (2019) SCC OnLine SC 1478 as under:

“67.

A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove.”

12. In view of the above ruling of the Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. As already indicated the Resolution Plan has been approved by the CoC in its meeting held on 27.01.2021 with 100% votes.

13. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to

submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

14. In **CoC of Essar Steel** (*supra*) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

*"Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (*supra*)."*

15. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims. Adequate provision is provided for future claims of Operational Creditors if any the by Resolution Applicant. Resolution Applicant agreed to pay the full CIRP cost and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Applicant is making full

payments to Financial Creditors. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

16. We are of the considered opinion that the distribution of the payments to the Creditors, Financial or Operational, as the case may be, shall be subject to orders to be passed in the respective Miscellaneous Application within the ambit of the Code. We are thus inclined to dispose of this Application in the following terms. Hence ordered.

ORDER

- i. The Interlocutory Application No. 592 of 2021 is allowed. The Resolution Plan submitted by **Cian Agro Industries and Infrastructure Limited** is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, 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 is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii. We shall clarify here that the Resolution Applicant shall take over the corporate debtor with all its assets and liabilities as per terms of approved resolution plan. If any relief concerning any identified liability of the corporate debtor is required then that needs to be specifically mentioned and sought for in the resolution plan. This bench cannot allow any general power to any resolution applicant absolving him of liability of the corporate debtor company, without knowing about the liability against which such exemption is sought. In other words, relief/exemptions from only existing liabilities which are specifically identified can be sought and allowed in the resolution plan.
- iii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by

the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

- iv. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- v. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vi. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- vii. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- viii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H. V. SUBBA RAO
MEMBER (JUDICIAL)